Somali Studies

A Peer-Reviewed Academic Journal for Somali Studies

Volume 5 2020

ISSN 2414-6501 (Print)

2517-9810 (Online)

About this Journal

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Somali Studies provides a forum for publication of academic articles in broad scope of areas and disciplines in Somali studies, particularly focused on the humanities and social science. ***Somali Studies*** appreciates papers exploring the historical background or navigating the contemporary issues; special consideration will be given to issues which are critical to the recovery and rebuilding of Somalia, a country emerging from a devastating civil war.

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Printed in Somalia

Published by Institute for Somali Studies
Hodan District, Near Km4 Square
Website: www.isos.so
Email: isos@mu.edu.so
Tel/Fax: +252 1 858118
Mogadishu, Somalia

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Editorial Note

Dear readers and colleagues,

We are pleased to present our issue of 2020, volume five of *Somali Studies: A Peer-Reviewed Academic Journal for Somali Studies*.

This year marks the fifth anniversary of this journal. It was early 2014 when we started the initial arrangements, although, the final decision was taken on 12 May, 2014. After two years of constant efforts, the inaugural volume became ready, in print and online forms, in May 2016. It became first of its kind issued from Somalia. Actually, launching a periodical academic journal devoted to Somali studies in Mogadishu at that time was both exciting and challenging!

This volume also has coincided with the 60th anniversary of Somalia's independence, the birth of a modern Somali Republic in 1960. This commemoration was sparked a vigorous and heated debate on what caused the collapse of the Somali state thirty years after its birth, and has stirred up a controversial discussion on the challenges and impediments which are hindering the recovering process. These discussions have been raging in academia, media outlets and other community platforms both across the country as well as the Somali diaspora around the globe. The articles of this issue are not far from these debates.

The first article examines the phenomenon of foreign aid dependency, which Somalia pursued throughout 1960-1990. The author finds that Somalia relied heavily on foreign aid in the economic, development, humanitarian and military fields throughout the three post-independence decades. Obviously, this behavior has become prevalent in the mindset of Somali leaders.

The second article entitled *"Somali Elite Political Culture: Conceptions, Structures, and Historical Evolution"*, where the author formulates that

"the ruling elite political culture is responsible for the Somali state's collapse and the impediment to its resuscitation". The author strongly argues for the indispensability of changing the political culture of the ruling elite, otherwise, there is no escape from the vicious cycle of state failure.

The next two articles discuss the significance of improving the Somali legal instruments, and they provide valuable suggestions each in his field of study. The third article signifies the importance of modernization of the Somali Penal Code to deal effectively with the new crimes and the complex forms of criminal activities that have emerged recently. It provides practical recommendations in this regard. The fourth article revises the newly adopted law for foreign investment and proposes some recommendations to improve it.

The last article is a literary essay under the title of *("Pen to Poet Is Weapon"—the Political in Abdirahman Mirreh's Poetry (1976-1994))*. It explores the miserable condition experienced by the Somali people because of tyranny and political violence by examining the political themes in selected collections of Abdirahman Mirreh's Poetry.

The preparation of this issue coincided with the outbreak of the COVID-19 global pandemic, which caused a delay of its release for a few months due to the complex challenges during these turbulent times.

Finally, I would like to express my sincere gratitude to our respected authors, our reviewers & the Editorial and Advisory Boards for their dedication and commitment to accomplish this volume successfully despite the uncertainty and disruptions of the COVID-19 pandemic.

Mustafa Feiruz
Editor-in-Chief

Somali Studies: *A Peer-Reviewed Academic Journal for Somali Studies, Volume 5, 2020, pp.11-29*

Somalia's Aid Dependency in 1960-1990

 Muhumed M. Muhumed

Abstract

Prompted by the unfortunate situation of the last 30 years whereby Somalia heavily relies on foreign aid, this article aims to probe the magnitude of the aid dependency of Somalia between 1960 and 1990. The article finds that Somalia heavily relied on external economic, development, humanitarian, and military aid throughout the 1960s, 70s, and 80s. This aid mainly originated from the Western World, oil-rich Arab countries, and the former Soviet Union. The economic and development aid received by Somalia in this period had a negligible positive impact on the economy.

Keywords: Somalia, aid dependency, economic aid, development aid, humanitarian aid, military aid, grants.

> *The net result of aid-dependency is that instead of having a functioning Africa, managed by Africans, for Africans, what is left is one where outsiders attempt to map its destiny and call the shots.*
>
> *Dambisa Moyo, Dead Aid, 2009*

1. Introduction

Somalia received US$2 billion official development assistance (ODA) yearly in 2017 and 2018 preceded by a yearly average of US$1.3 billion between 2012 and 2016 (Ministry of Planning, Investment and Economic Development, 2019). This implies an ODA to GDP (Gross Domestic Product) ratio of 21 percent in 2016 (Office of the Prime Minister, 2017) and 27 percent in 2018 (Ministry of Planning, Investment and Economic Development, 2019) which makes Somalia a highly aid dependent nation. This could be strongly justified by Somalia's current situation – the country is recovering from a prolonged civil war and instability coupled with terrorism, piracy, warlordism, and other forms of civil unrest and the absence of effective administrations. Therefore, one could be thankful to the generosity of the donor countries and the intergovernmental institutions in this critical period (1991-2020).

The unfortunate situation of Somalia in the last 30 years begs the question of whether the situation was different in Somali state's heydays in 1960-1990. In fact, the evidence shows Somalia remained to be a highly aid dependent nation throughout the three post-independence decades. Somalia largely relied on external assistance for all development projects (Laitin and Samatar, 1984; Samatar, 1985; Mets (Ed.), 1993; Mubarak, 1996) supplemented by intermittent dependency on humanitarian and military aid. This aid came from different countries in different times but

mainly from the Western world, the Arab world and the former Soviet Union.

However, the fact is that Somalia was not alone. Throughout the five decades after independence, Africa received more than US$1 trillion development aid from the developed countries (Moyo, 2009). Critics of aid contend these huge amounts of aid have very little success to show and rather exacerbated the existing economic and political problems in Africa. Moyo (2009) argues that aid working in Africa is a myth and rather caused more harm than good by leading to lower economic growth, widespread corruption, and increased poverty levels. Similarly, Mubarak (1996) argues that most of the development funds received by Somalia after independence resulted in a trivial impact on the economy except improvement of physical infrastructure. This was primarily due to the aforementioned factors that undermined the other African economies.

Aid could be a significant foreign policy instrument and proved to be a vital tool in the Cold War diplomacy (Hruskova, n.d.). It is also inspired and shaped by the national interests of the countries that provide aid. On the other hand, aid can define the position of aid recipients in global politics. In an attempt to capture the extent of post-independence Somalia's aid dependency, Mets (Ed.) (1993: xviii) writes: "*[f]oreign relations [of Somalia was] characterized by tension with neighboring states and economic dependence on aid from Arab and Western nations*".

Gaining independence in 1960, Somalia had a civilian non-military government until 1969 and had two Presidents and three Prime Ministers. A military regime usurped the power with a coup in October 1969 and lasted the following 21 years. Evidence shows that both civilian and military regimes heavily depended on foreign aid even though the first years of Socialist Somalia recorded remarkable economic, political, and military accomplishments.

This article aims to probe the extent to which Somalia depended on aid in the 1960s, 1970s, and 1980s. Our analysis covers the period between independence (in 1960) and shortly before the collapse of the state (in 1990). The article relies for most of its data on existing literature. It is not the interest of the author to scrupulously examine and evaluate the effectiveness of aid and the performance of the governments in this period but simply to give an overview of the aid received by Somalia, its magnitude and achievements. Readers will be able to understand Somalia's aid dependency before the state collapse and whether the situation was any different than the post-1991 Somalia.

2. Economic, Development and Humanitarian Aid

2.1. 1960s

The former Somaliland British Protectorate and the Italian Somaliland (under UN-mandated Italian Trusteeship) united on first July 1960 after gaining independence from Britain and Italy on 26 June and first July 1960 respectively. The financial abilities of this new country were very weak and its own capabilities were not enough to meet its needs. In addition, there was scarcity of skilled labor, professionals and experts. As a result, some British and Italian technical experts had to remain in the country after independence (Lewis, 1988) to support the continuity of the government work.

In the first three years, the country could not function without the budget support of Britain and Italy which contributed around 31 percent of the nation's national budget (Mets (Ed.), 1993), let alone financing development activities by itself. In fact, the government completely relied on foreign aid for development projects and received a substantial development aid in the 1960s; these funds were invested in physical infrastructure and industries (Mubarak, 1996). Among these projects were

the establishment of canned fish and meat, milk, and fabric factories, national theatre, the national airline, and public schools (Laitin and Samatar, 1984). Moreover, between 1961 and 1963, the yearly average external assistance received by Somalia was US$23.5 million – this external aid comprised grants, technical assistance, investment, and export subsidies (World Bank, 1964).

Not only that Somalia received significant foreign aid in the first decade after independence, it obtained the highest aid per capita in Africa; "*Somalia received US$90 per capita in foreign economic assistance, about twice the average for sub-Saharan Africa*" (Laitin and Samatar, 1984:62). Sponsoring Somalia to establish economic relations with the European Economic Community (EEC), Italy's economic support to Somalia in the 1960s accounted for one-fourth of the all international aid received by Somalia in this period (Mets (Ed.), 1993). In spite of Italy, Somalia also received a generous financial assistance from other European nations and institutions including West Germany and the EEC through the European Development Fund (EDF). Between 1959 and 1975, "*the European Community has granted over 84 million units of account in financial aid to Somalia, equivalent to over 600 million Somali Shillings*" (Commission of the European Communities, 1975:13). Moreover, the EEC aid through EDF accounted for around 17 percent "*of the total official aid received by Somalia between 1967 and 1974*" (Commission of the European Communities, 1975:13). Furthermore, aid from China financed factories and hospitals in the 1960s (Mets (Ed.), 1993).

From 1963 to 1969, 85.1 percent of Somalia's overall development spending was foreign financed – the Soviet Union was the largest development aid donor (with 20.4 percent of the 85.1 percent) followed by the US (with 17.2 percent of the 85.1 percent) and the European Economic Community (with 12.9 percent of the 85.1 percent) (Mehmet,

1971).[1] Although sizable aid from the Arab World had to wait until mid-1970s, Egypt gave aid to Somalia in the 1960s (Omer, 1992), while Saudi Arabia's aid constituted 0.8 percent of the 85.1 percent of the foreign development financing in 1963-69 (Mehmet, 1971).

In summary, Somalia remained to be a heavily aid dependent country in the 1960s as the aforementioned evidence shows. Evaluating the overall performance of the civilian governments (1960-1969), Samatar (1985:31) writes:

> *By the account of most Somali and external observers, the years immediately preceding 1969 were not only replete with the jettison of democratic practices, but also showed serious signs of economic disarticulation and imbalance, acute external dependency, and poor overall growth.*

Not far from this evaluation, Mubarak (1996) records that the 1960s governments and their institutions were characterized by corruption, bribery, nepotism, and poor economic performance. 1969 marks the end of the civilian democratic rule in Somalia when President Abdirashid Ali Sharmarke was assassinated on 15 October 1969 followed by a military coup led by Mohamed Siad Barre on 21 October 1969 (Ingiriis, 2016). Barre will rule the country in the following 21 years until his ousting by the armed movements in January 1991.

2.2. 1970s and 80s

On 20 October 1970, one year since the military took over, Mohamed Siad Barre announced that Somalia embraced socialism and became a socialist state (Laitin and Samatar, 1984). Caught in the middle of the Cold War and its land dispute with the neighboring Ethiopia and Kenya, one of the reasons to adopt the socialist development strategy was

because Somalia needed the Soviet Union's assistance, chiefly military support (Mubarak, 1996), even though Somali-Soviet relations officially commenced in 1961 when a delegation led by the then Prime Minister Abdirashid Ali Sharmarke visited Moscow whereby certain credit was approved for Somalia (Ivanova, 2019).

Although Somalia allied itself with the East, it still acquired significant development support from the West and the Arab world. This could be perceived from the public spending; external loans and grants essentially financed the Public Investment Program (PIP) which was the largest component of the public investment (Mubarak, 1996). As we have seen in the previous section, the European Community, through the European Development Fund (EDF) provided considerable development support to Somalia up until 1975. Despite the funding of infrastructure projects that spanned from the 1960s to early 1970s, the European Community also financed a massive industrial plantation project in 1975 (Commission of the European Communities, 1975). Additionally, aid from China funded the North-South road in the 1970s (Mets (Ed.), 1993).

As an oil importing country, Somalia largely depended on the Soviet Union and Saudi Arabia, among other donors, for its oil needs. Thus, with the assistance of Iraq, Somalia established an oil refinery plant with a daily capacity of 10,000 barrels by the end of the 1970s (Mets (Ed.), 1993). Interestingly but predictably, Saudi Arabia, with the help of Iran, offered a US$75 million aid to Somalia in exchange of Somalia downgrading its ties with the Soviet union and again immediately withdrew the offer when Barre declined this condition (Mets (Ed.), 1993).

In the 1970s, Somalia received more development aid from – and had stronger trade relations with – oil-rich Arab countries (OPEC member states) than OECD (Organization for Economic Cooperation and Development) countries. According to Laitin and Samatar (1984:70),

"*[b]y 1979, OPEC development aid to Somalia was about twice as high as aid from OECD states. Also, nearly 90 per cent of Somalia's exports went to Saudi Arabia in 1978*". In the same decade, the oil-rich Arab countries funded one of the largest development projects in the history of Somalia – the Marerey Sugar Factory. According to Worrall (1980), the project received US$188 million Arab money but Ali Khalif Galaydh, who served as the Governor of Marerey Sugar Factory in the 1970s and Minister of Industry in early 1980s estimates the project fund around US$400 million from the UAE, Saudi Arabia, Kuwait, and Qatar (Galaydh, 2017).

Somalia was in desperate need of foreign assistance in the face of crises. This has been exposed by the two tough crises that the country experienced in the 1970s: the 1973-74 *Daba-Dheer* drought and the refugee influx resulted from the 1977-78 Ethio-Somali war.

Droughts mainly led to the loss of human lives and difficult economic conditions as they affected the livestock sector, one of the most important economic sectors of the nation.[2] The *Daba-dheer* drought caught the government unprepared and financially impotent to deal with it. The government had to establish a fund for international contributions and revise its budget to divert project funds to emergency spending (Mubarak, 1996). Foreign countries contributed both food and financial aid as the drought hit the nomadic pastoralists in the North hard. There was later an initiative to move those who lost everything to the South so they could survive with agricultural and fishing cooperatives. Different contributions from different countries are recorded as follows:

> *By January 1975, China, the United States, the European Economic Community, the Soviet Union, Sweden, Switzerland, Sudan, Algeria, Yugoslavia, Yemen, and others had pledged 66,229 tons of grain, 1,155 tons of milk powder, and tons of other food products. Later*

> *that year, with aid from the Soviet Union, the government transported about 90,000 nomads from their hamlets to agricultural and fishing cooperatives in the south. […] The KFAED [Kuwait Fund for Arab Economic Development] and the World Bank supported irrigation projects in these cooperatives, in which corn, beans, peanuts, and rice were planted (Mets (Ed.), 1993: 129).*

Even though the food aid significantly helped those affected, it led to detrimental economic consequences as it affected the local production and, consumption and saving behavior.[3] The country became dependent on food aid and food imports which replaced the locally produced food – cereal aid was only one percent of the nation's total consumption in 1970 but jumped to around 25 percent in 1984, not to mention that external grants were used to import additional food (Mubarak, 1996). Throughout the decade preceding 1988, Somalia became not only largely food aid and food import dependent but more food import dependent than any other sub-Saharan nation despite that the economy of Somalia was mainly agricultural and pastoral (Farzin, 1988).

The Ethiopian-Somali War (1977–1978) led to a large refugee influx to Somalia. Although Somalia sought support from the United Nations High Commissioner for Refugees (UNHCR) and other donors, the Somali government has been criticized for exaggerating the actual number of refugees. A United Nations survey estimated the number of refugees to fall between 450,000 to 620,000 as opposed to the government's estimations of 1.3 million in the camps and an extra close to one million dispersed throughout the country (Mets (Ed.), 1993). Not only that the government inflated the number of refugees but it intentionally redirected the food aid to favored individuals who sold it in the open market; this led to a large black market around the refugee camps (Omer, 1992). Moreover, the country relied on the aid for the refugees as a general aid (Lewis, 2008), a plausible reason to overestimate their number in the first

place. Consequently, the government repeatedly dismissed "*plans to repatriate the refugees*" as that would terminate "*the more than $80 million in annual refugee aid*" (Maren, 1997).

The Ethio-Somali war also led to the fall out of Somalia and the Soviet Union; as a result, the Somali-Soviet Alliance came to an end and the Soviet Union suspended its assistance to Somalia. Ivanova (2019:85) summarizes the nearly two-decade-long Somali-Soviet relations, beginning from 1961, as follows: "*The Somali Republic and the Soviet Union have had a very complicated history of establishing and developing relations: many successes and numerous failures; trust and distrust; and friendship and hostility*".

As could be anticipated, Somalia turned to the West, the US in particular, for development aid and military support. The US provided a significant economic and development support throughout the 1980s and sponsored crucial infrastructure projects. Notably, the US financed the "*doubling of the berth*" and "*deepening of the harbor*" of Berbera port which cost US$37.5 million and the 4500 meters extension of the runway of Mogadishu Airport (Mets (Ed.), 1993:139).

Similarly, assistance from Finland enabled the creation of energy plants in Kismayo and Baidoa in the 1980s; Italy also supported further expansion to the Mogadishu Airport (Mets (Ed.), 1993). Italy was the largest donor in economic aid and financed over hundred projects in Somalia from 1981 to 1990 with a total cost of approximately US$1 billion but the economic achievements of these projects remained negligible due to a top-level corruption in both Somali and Italian governments (Mubarak, 1996).

Estimations from the World Bank categorize the aid received by Somalia into a project and non-project aid. In 1984, the total project and non-project aid received by Somalia was about US$280 million compared to

more than US$290 million in 1985; the non-project aid – cash aid, food aid, and commodity aid – amounted to US$137 including US$41 in cash aid mainly from oil-rich Arab countries in 1985 (World Bank, 1987).

Table 1
Exports, Imports, and Official Grant Aid Somalia
(in Millions of US$)

Year	Exports	Imports	Official Grant Aid
1975	88.6	162.2	100.2
1976	81.0	176.1	39.7
1977	71.3	256.9	105.9
1978	109.5	275.5	78.0
1979	106.0	394.2	58.1
1980	134.2	461.0	143.0
1981	114.0	422.0	150.0
1982	136.9	484.0	157.0
1983	100.7	450.0	148.0
1984	62.0	406.0	174.0
1985	92.5	362.0	179.0

Source: World Bank (1987)

The table above demonstrates the trade balance of Somalia and the official grant aid received in 1975-85. The data reveals that Somalia was in trade deficit in the entire decade but fortunately received considerable grant aid to finance this deficit. From 1975 to 1985, Somalia received a total official grant aid of over US$1.3 billion. Although not depicted here, the country also used foreign loans and credits to finance the trade deficit.

Despite foreign aid and grants, Somalia heavily relied on foreign loans and credits throughout the 1970s and 1980s, although loans are often considered as a component of the official or systematic aid. By 1979, Somalia's total foreign debt amounted to four billion Somali Shillings,

equivalent to 75 years' total earnings of the banana exports (Laitin and Samatar, 1984). Somalia's debt totaled US$600 million – equivalent to four times of the export revenues – by the early 1980s (Samatar, 1985). Furthermore, Somalia's external debt ratio – total external debt divided by the GDP – increased dramatically from 40 percent in the early 1970s to 189 percent (around US$2.2 billion) in 1989 (Mubarak, 1996).

In the early 1980s, Somalia turned to the World Bank and International Monetary Fund (IMF) for Structural Adjustment Loans. The 1981 Structural Adjustment Program (SAP) agreement signed by the Somali government with the World Bank and IMF, which invested the Banana Industry, did more harm to the Somali economy than good – banana production and exports increased but foreign interests gained 75 percent of the export earnings (Samatar, 1993). Throughout this period, the Somali government relied on the instructions of the World Bank and IMF for running the economy (Laitin and Samatar, 1984). The trustworthiness and effectiveness of the technical assistance from these institutions to the developing countries has been doubted and lambasted (Muhumed and Gaas, 2016).

In the late 1980s, the fighting between the Somali National Army and the armed rebel movements intensified and the regime's human rights violations increased. As a result, most of the donors suspended their aid to Somalia. The US for instance, suspended its economic and military aid in 1989 (Mets (Ed.), 1993).[4]

3. Non-Economic Assistance

Somalia also received substantial non-economic aid mainly technical support, scholarships[5], and military aid throughout the 1960, 70s, and 80s. For instance, Somalia received technical training scholarships and printing presses from the Soviet Union in the 1960s (Mets (Ed.), 1993). In

addition, the Soviet Union (offering diverse scholarships) remained to be a top destination for Somali students, including those in military training, from 1961 onwards (Ivanova, 2019). Somali students received scholarships from Western and Arab countries as well. Since Somalia joined the Arab League in 1974, an increased number of Somalis acquired tertiary education opportunities from Arab countries while many others were employed by oil-rich Arab countries-funded projects (Laitin and Samatar, 1984). On the contrary, numerous Somali students went to study in the US in the 1980s; the shift of Somalia's alliance from the East to the West might have caused this.

Nevertheless, military aid constitutes the largest non-economic aid received by Somalia in this period. Focusing on the military aid is based on the notion that a strong and independent economy will be able to independently manage its military budget; an acute military aid dependency may reflect on, though not always, weak and aid dependent economy. According to Mubarak (1994), shortly after the 1964 Ethio-Somali War, the Soviet Union signed a deal with Somalia to assist them to build a strong army of 5000 soldiers which later increased to 17,000 soldiers. Up until 1977, Somalia received sizeable technical and military aid to Somalia including "*Soviet specialists and technicians to teach Somalis*" in Somalia (Ivanova, 2019:73).

In 1980, Somalia and the US signed a deal in which Somalia would receive a US$40 million military aid in the following two years while Somalia would let the US use its ports and airstrips in Berbera, Kismayo, and Mogadishu. This was followed by an annual US military aid to Somalia of US$21.2 million in 1983; US$24.3 million in 1984; US$80 million in 1985; US$40 million in 1986, and US$37.1 million in 1987 (Mets (Ed.), 1993). From 1978 onwards, Italy was leading the military aid provided by the Western countries to Somalia while West Germany offered assistance to the security services and police totaling DM12[6] million between 1985 and 1987 (Mets (Ed.), 1983).

4. Conclusion

This article explored Somalia's aid dependency throughout the 1960s, 70s, and 80s. Somalia heavily relied on external economic, development, humanitarian, and non-economic aid. This aid mainly originated from the Western World, oil-rich Arab countries, and the former Soviet Union. In addition, Somalia largely depended on external loans and credits and the country's total debt in this period got out of control.

The existing literature underscores that the economic and development aid received by Somalia had a negligible positive impact on the economy and rather led to a detrimental economic consequence such us retarding the local production and changing the saving and consumption behavior of the consumers – the Somali people became largely dependent on food aid and food imports. The Somali economy suffered from rampant corruption coupled with "*institutional weaknesses, poor management, scarcity of trained personnel, and poor capacity for economic policy analysis*" (Mubarak, 1996:162) throughout these years.

One reason that many of these development projects did not materialize was that the money never reached Somalia, the recipient country. As mentioned earlier, Italy approved over hundred projects for Somalia in the 1980s. A staggering fact, though peculiar, is that in 1978, the Somali and Italian Governments opened a Chamber of Commerce Office in Milan, Italy, in which, most of these projects were arranged. The Chamber got a commission from every approved project while implementing partners who were awarded to carry out the projects paid millions of dollars of kickbacks to Italian politicians. Therefore, millions of dollars were looted before the aid money reached the government accounts (Achtner, 1993; Maren, 1997). Due to serious corruption allegations against the then Italian Government associated with this Chamber of Commerce Office, a law suit was filed in 1989 against Bettino Craxi, the Prime Minister of

Italy from 1983 to 1987 and his brother-in-law, Paolo Pillitteri who headed the Office (Achtner, 1993).[7]

According to Omer (1992:72-73), donor countries were not interested in the appropriate use of the aid they offer "*so long as their own interests were not endangered*"; the Western media will sometimes pick up the squandering of their taxpayer's money in which Somalia was several times represented as "*the graveyard of foreign aid*". The aid was often used for personal interests by the government officials and anyone else who could be involved in managing the funds based on the "*attitude of easy-come-easy-go*".

Calls from the West to suspend the economic and development aid to Somalia intensified in the late 1980s but the Foreign Minister of Italy Gianni De Michelis and the US Ambassador T. Frank Crigler insisted that as Somalia became more dependent on aid, suspending aid will result in complete disaster and will not only hurt Mohamed Siyad Barre but will mean the end of Somalia (Maren, 1997). Therefore, although foreign aid, refugee aid in the 1980s in particular, delayed what would otherwise be the immediate fall of Barre's regime, we can conclude that external aid contributed, in one way or another, to the collapse of the Somali state.

Somalia is in a recovery and reconstruction stage today. Thus, it is indispensable to learn from the history and avoid the nation's economy to become primarily dependent on external aid. Obviously, the phenomenon of aid dependency occupies the minds of the Somali leaders while Somalia is a rich country in terms of mineral resources, oil, gas, livestock, agricultural land, and with better governance system, have a better future.

Notes

[1] The author adds some specifications about this data: "[…] these figures are subject to important qualifications. The U.N. and the Italian shares are almost certainly understated, since the recurrent costs of technical assistance as well as fellowships are excluded, as is the Italian budgetary aid. Also excluded from Table I are technical assistance from the U.A.R. [United Arab Republic] [Obviously from Egypt] for education and health, and emergency aid from a number of countries during the famine of 1964-5." He adds that the data "includes only those projects for which financial agreements exist" (p. 37). Therefore, USSR was not necessarily the largest donor in this period.

[2] Somalia has been a victim of recurrent major droughts in every 10-15 years and medium droughts in every 4-6 years (Mubarak, 1996). These droughts hugely affected, and still affect, the lives of the nomadic pastoralists who rely on livestock for their lives as well as the national economy who depends on export earnings and national revenue for livestock, among other things.

[3] For more on this, see: Farzin, Y. H., (1988). Food Import Dependence in Somalia: Magnitude, Causes and Policy Options. *World Bank Discussion Papers*. The World Bank. And Mubarak, J. A. (1996). *From Bad Policy to Chaos in Somalia: How an Economy Fell Apart.* Greenwood Publishing Group.

[4] In fact, the East-West rivalry on Somalia came to an end in 1978 when Somalia and the Soviet Union parted ways. Therefore, Somalia had no choice but to associate itself with the West.

[5] Scholarships can be considered as an economic assistance if we consider them as a component of human capital. However, in this article we consider education as a social component and thus scholarships are categorized as non-economic assistance. The technical assistance mentioned in this section mainly associates with military aid and technical trainings, and is therefore categorized as non-economic assistance as well.

[6] Deutsche Mark (DM) was the currency of West Germany between 1948 and 1990 and that of United Germany from 1990 to 2002. Germany then adopted the Euro in 2002.

[7] The corrupt relationship between the Somali and Italian Governments traces its roots back to the 1970s and thrived when Bettino Craxi came to power in 1983.

In this period, Somalia received quite significant economic, development and military aid from Italy.

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Somali Studies: *A Peer-Reviewed Academic Journal for Somali Studies, Volume 5, 2020, pp. 30-92*

Somali Elite Political Culture: Conceptions, Structures, and Historical Evolution

 Abdurahman Abdullahi (Baadiyow)

Abstract

Somalia celebrated the 60th anniversary of its independence in 2020 while still striving to recover from the state collapse and protracted civil war. Over 60 years' continuous failure to build the Somali state indicates a general trend and recurring phenomenon of the elite political culture.

This paper explores what has made the Somali government fail repeatedly and impede its recovery. Its premise is that the ruling elite political culture is responsible for that. Thus, the paper conceptualizes the basic terminologies of elite political culture and explains Somalia's elite formation and structures. Moreover, it traces the historical development of the elite political culture and how the blended elite culture of Somali tradition, Italian political culture, and military dictatorship contributed to its collapse. This culture developed to the worse as a considerable obstacle for state recovery. Finally, the paper recommends that recovering the Somali state depends on breaking the vicious cycle of state failure by transforming the ruling elite political culture and reforming state institutions.

Keywords: Somali state, Somali elite, political culture, Somali elite political culture.

1. Introduction

Somalia celebrated the 60th anniversary of its independence while still striving to recover from the state collapse and protracted civil war. The Somali post-colonial state experienced two governance systems: liberal democracy (1960-69) and military dictatorship (1969-1991). During these two governance systems, the ruling political elites "remained aloof from society"[1] and evolved later during the military regime as "government at war with its own people."[2] However, over thirty years, many factors led to the state's collapse, such as state and society in conflict, war with Ethiopia, dictatorship, economic underdevelopment, and ruling elite fragmentation.[3] This state of affairs ushered in chaotic conditions and a devastating civil war that fostered extremism and militancy of tradition.[4] On the other hand, the ruling political elites that emerged after the state's collapse generally comprised warlords and their cohorts. These ruling political elites had repetitively failed to reach meaningful agreements in the 12 reconciliation conferences.[5] Thus, the third model of governance was introduced during the Somali Peace and Reconciliation Conference (SPRC) held in Djibouti in 2000. This conference empowered civil society, marginalized armed factions, and adopted the 4.5 clan power-sharing formula.[6] This clan-centric model was intended as a short-term transitional solution until restored democratic system. This model dug in its heels and lingered on for a quarter of a century in five consecutive regimes since 2000. This model also failed to bring about a functioning and legitimate government that could fully control its territory.[7] As a negative impact of this model, ruling political elites who accumulated wealth and gained power through the clan-centric system stand for an anti-democratic transition.[8]

The Somali state's collapse within 30 years is puzzling, and the same can be said for the other 30 years of deficient successes. Thus, the state collapse contravenes the hypothesis made by many early modernization

scholars, who asserted that Somalia was better prepared for state-building than most African countries.[9] Somalia continues "in search of a state" to borrow Samatar & Laitin's book title and has historically swung through three systems of governance. [10] The first system was a unitary parliamentary system and a liberal democracy applied by the post-colonial civilian governments. However, the system gradually corroded, owing to its failure to deliver necessary public services and uphold societal cohesion. The system then reached its lowest point following the rigged election of 1969 and the assassination of President Abdirashid A. Sharmarke on October 15, 1969.[11] This precarious state of affairs induced the military to launch a coup d'état that arrested the embryonic democratic state. As a result, the military regime espoused a new system of governance. The second government system adopted the ideology of socialism and adopted a presidential system of governance, dictatorial rule, rigorous nationalist programs, anti-societal policies, and a one-party system. Thus, the regime's programs and policies had worsened the rift between the state (modernity) and society (tradition).[12] Moreover, the administration spawned armed conflicts with Ethiopia and armed opposition that, ultimately, collapsed the regime and the state in 1991.[13] The third system of governance was adopted during the Somali Peace and Reconciliation Conference (SPRC) in Djibouti in 2000.[14] In this conference, political elites accepted traditional elites as partners for state-building. The adopted clan-centric system empowered clan elders as the ultimate political dispenser of their communities. As such, they selected members of parliament from their sub-clans. Nonetheless, state institutions continue to falter in all three systems of governance. Over 60 years, the continuous failure to build the Somali state, even with elite circulation and different governance systems, indicates that the elite political culture's general trend requires further revision and examination.

Therefore, in this paper, the author explores what has made the Somali government fail repeatedly and impede its recovery. The author also

focuses on the agency of the ruling political elites in building and breaking the state.[15] Other contributing factors to the state's failure, such as social, economic, political, and external actors, are considered the context and the environment in which ruling political elites navigate to succeed or fail in their state-building venture.[16] This environment also necessarily molds the political elites' culture in a complex process of reciprocal relations. The factor of the ruling political elites is vital, particularly in the initial phase of state-building. This notion agrees with Montesquieu's statement that "at the birth of societies, it is the leaders of the common wealth who create the institutions; afterward, it is the institutions that shape the leaders."[17] Thus, this paper's premise is that the ruling elite political culture is responsible for the Somali state's collapse and the impediment to its resuscitation. This culture pervasively permeates the gamut of politics in the various levels of the "governing elites," to use the term coined by Italian sociologist Wilfredo Pareto.[18]

Academic studies on the ruling Somali elite's political culture are in short supply because Somali studies tend to be obsessed with the clannization of politics.[19] Somali nationalists and pioneering scholars of anthropology followed modernization theory, which reduced Somali politics into clan politics. For that reason, scholars and politicians always blamed societal structure and its cultural tradition as the main obstacle to political development.[20] Besides, ruling political elites considered clans and the associated sense of clannism as incurable cancer that requires elimination.[21] These ruling elites justified their leadership failure by pointing the finger at society and their culture. Untenably, there is a lack of critique on the adopted European system of governance and ideologies that fluctuated between liberal democracy and socialism. Thus, recovering the Somali state requires identifying the root cause of Somalia's troubles and formulating proper solutions. This notion accords Chinua Achebe's conclusion of the plight of Nigeria, who wrote that "the trouble with Nigeria is simply and squarely a failure of leadership."[22]

Therefore, in this paper, the author addresses the intricate question of why all ruling political elites of the past 60 years who applied different political systems failed. The author also argues that the ruling elite's compounded political culture explains its collapse and an impediment to its recovery. However, this does not necessitate excluding other vital factors, such as the institutional and systemic factors that contribute to shaping this culture. In this paper, the author conceptualizes the basic terminologies, such as culture, politics, elite culture, and elite political culture. Then, the author proceeds to explain the formations and structures of the primary elites in Somalia. Finally, the author traces the historical development of the dominant political culture among the elite ruling class and how that blended culture contributed to its collapse, and how it hinders its recovery. It aims to present sequential development of the main elements of the ruling elite political culture and their linkages, rather than indulging in a rigorous analysis of each evolving phase.

2. Conceptualization of the Basic Terminologies

The ruling elite political culture has been considered one of the main subjects of early political thinkers.[23] Moreover, contemporary theorists of this topic included C. Wright Mills, Floyd Hunter, G. William Domhoff, Thomas Ferguson, and others. The ruling elite political culture concept derives from three compounded words: culture, politics, and elite. Each of these three words has multiple definitions in different academic fields. In this paper, the author has chosen some of these definitions and mixed them to produce a sense of the ruling elite political culture.

Defining Culture

The meaning of culture had evolved from the term *Cultura Animi*, first used by Marcus Cicero, who understood the word as a cultivation of the soul. The term culture means “place tilled” in Middle English, pointing to inhabit and care. Gradually, it became an umbrella that encompasses the

social behaviors and norms found in human society.[24] It is a complicated term in social science that is open to many interpretations. For instance, as Orlando Patterson states succinctly, "leaders and activists, as well as scholars, challenge each other, not only on the interpretation of their cultures but also on the very definition and meaning of culture itself."[25] One of its definitions is "a set [of] perspectives shared by a group of people and reflected by their actions, relationships, communities, and artifacts."[26] It can categorize this perspective into perceptions, beliefs, values, and attitudes. Therefore, different interpretations of culture can be likened to the narratives of blind individuals, who, while touching one part of an elephant, each person claims that part of the elephant he/she is touching constitutes the whole reality. Indeed, culture could be signified merely as a broad set of relationships that include "codes of manners, dress, language, religion, rituals, art, norms, behavior, and a system of belief that binds a specific community."[27]

Culture is a central concept in the field of anthropology. Anthropologists generally agree on the definition given by E.B. Tylor, who described it as "that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society." [28] As such, culture demonstrates itself in the expressive, material, and immaterial forms. Expressive culture "refers to the intentional use of the human body to engage in performances of group identity."[29] It also includes intentional performances of shared identity, such as dance, rituals, arts, sports, fashion, oratory, song, body language, and religion. On the other hand, material culture consists of things invented by humans, such as cars, airplanes, buildings, tools, shelter, clothing, cities, schools, factories, etc. All these physical and cultural elements help to define its members' behaviors and perceptions. Moreover, the immaterial aspect of culture refers to the nonphysical ideas people have about their cultures, such as beliefs, values, rules, norms, morals, language, organizations, and institutions.

In the field of sociology, culture can be referred to as non-material and material culture.[30] To put it simply, culture is the way of thinking, acting, and the material objects that shape a people's way of life. "When considering non-material culture, sociologists refer to several processes that a culture uses to shape its members' thoughts, feelings, and behaviors. Four of the most important non-material elements of culture are symbols, language, values, and norms." [31] A cultural symbol is a physical manifestation that signifies a particular culture's ideology or that merely has meaning within a culture.[32] For example, Islam has the symbol of the crescent moon and star, Christianity has the cross, and Judaism has the Star of David. Moreover, all countries, organizations, and companies have particular symbols, such as flags and emblems. The other common cultural symbols are the language in which its letters of an alphabet symbolize the sounds of a specific spoken language of a social group. Furthermore, norms and values are necessary pillars for social survival. It is the agreed expectations and rules by which a culture guides its members' behavior in any given situation.

There are four types of norms expressing different levels: folkways, mores, taboos, and laws. Folkways are behaviors that are learned and shared by a social group. We often refer to folkways as customs in a group that are not morally significant, but they can be necessary for social acceptance. Mores are norms of morality, or right and wrong, and if you break one, it is often considered offensive to most people of a culture.[33] A taboo goes a step farther and is a very negative norm that should not get violated because people will be upset. Additionally, one may get excluded from the group or society. The nature and the degree of the taboo are in the mores. Laws are social norms that have become formally inscribed at the state or federal level and can result in formal punishment for violations, such as fines, incarceration, or even death.

Every individual is born into a specific societal culture with prevailing values and norms that nurture and shape his way of life. Hence, culture is learned in the processes of enculturation, socialization, and acculturation.[34] Additionally, according to the continuity and change theory, societal cultures are dynamic in that they change over history.[35] Culture could be divided into covert and overt levels similar to the iceberg, of which the majority is invisible, and only the tip is exposed above the surface. Surface culture refers to human actions, such as language, art, food, traditions, customs, rituals, and institutions. On the other hand, deep culture is divided into human thinking, such as norms, roles, ideologies, philosophies, beliefs, and human feelings, such as values, tastes, desires, assumptions, and expectations. Nonetheless, it is essential to point out that all human behavior is not only attributed to culture. Universal values and actions, as well as unique individual behaviors, are not part of the culture. In that setting, we will use David Matsumoto and Linda Juang's definition of culture as a "unique meaning and information system, shared by a group and transmitted across generations that allows the group to meet [the] basic needs of survival, pursue happiness and wellbeing, and drive meaning for life."[36]

Finally, every nation always has dominant societal culture and sub-cultures of different sub-nationalities, ethnicities, or tribes. The literature on culture often uses generalized terminologies, such as Western Culture, Eastern Culture, Islamic Culture, and African Culture, and so on. Western culture is most strongly influenced by the Judeo-Christian and Greco-Roman cultures that originated from Europe and spread to other continents through migrations and colonization. Its geography is not well defined, even though it dominates North and South America, Europe, and Australia. Western culture is contrasted with Eastern Culture, which includes various cultural groups and belief systems, mostly in the Asian continent. Among these cultures are followers of Islam, Hinduism, Buddhism, Jainism, and Taoism. Muslim culture is a subset of Eastern

culture, even though Islam has a strong foothold in Africa. It also has a noticeable presence in the Western cultural zone. Muslim culture is related to all beliefs and practices developed by Muslims over the course of their history and consists of elements driven from the revealed texts (Qur'an and Prophetic traditions) blended with various societal cultures. The Muslim culture has standard features shared by all Muslims and specific cultural traits of each locality. Furthermore, African cultures consist of a mixture of the colonial and traditional cultures among various ethnic groups. Although African Culture is highly diversified, they have many similarities and distinctive characteristics compared to Western and Eastern cultures.

Defining Politics

The term politics had originated from the Greek word "polis," which means a city and confined to the study of the state. It is associated with power, defined as "the ability to exercise ones' will over others."[37] Politics has two basic concepts: legitimacy and authority. Legitimacy is "a value whereby something or someone is recognized and accepted as right and proper."[38] The three types of political legitimacy described by German sociologist Max Weber are traditional, charismatic, and rational-legal.[39] Traditional legitimacy derives from societal customs and habits that emphasize the history of the authority of tradition. Moreover, charismatic legitimacy derives from the leader's ideas and persona charisma, whose authoritative status allures and psychologically dominates the people of society. Furthermore, rational-legal legitimacy derives from the institutional procedure, wherein government institutions establish and enforce law and order. On the other hand, "authority is the legitimate power which one person or group possesses and practices over another."[40]

Nowadays, politics is a topic of daily discussion among the masses interested in political issues, whether they be local, national, and international affairs. They connect with growing media platforms, such as radio stations, TV, newspapers, social media, etc. In popular perceptions,

politics is a loaded term and associated with biases and wrong views. Moreover, besides academic variations on the meaning of politics, even ordinary people dispute with one another; what is the real sense of politics? Politics in the mass perceptions "is usually thought of as a "dirty" word: it conjures up images of trouble, disruption, and even violence on the one hand, and deceit, manipulation, and lies on the other."[41] In that sense, politics is seen, according to Isaac Disraeli's words, as "the art of governing mankind by deceiving them."[42] In the field of political science, politics has numerous definitions. For instance, American political scientist Harold Lasswell defined politics as "who gets what, when, and, how."[43] Moreover, David Easton defined politics as "the authoritative allocation of values for a society."[44] Furthermore, Vladimir Lenin provided a Marxist definition that "politics is the most concentrated expression of economic."[45] Another description was given by Bernard Crick, who argued, "Politics is a distinctive form of rue, whereby people act together through institutionalized procedures to resolve differences, to conciliate diverse interests and values, and to make public policies in the pursuit of common purpose."[46]

Therefore, the definition of politics is broad in scope in that it enables political science researchers to look for politics in many social settings beyond state functions and organizations. Therefore, politics takes place everywhere: homes, offices, and marketplaces, as well as in parliaments, companies, and universities. Thus, politics can be narrow since it focuses on governments, politicians, and political parties. It also takes a broad definition, including the interrelationships between people and their rules and norms, institutions, and actions in all social spheres.

Political Culture

Linking culture with politics produces the term political culture, thus making politics a function of public culture. It has multiple definitions. For instance, Larry Diamond defines political culture as "a people's

predominant beliefs, attitudes, values, ideals, sentiments, and evaluations about the political system of its country, and the role of the self in that system."[47] Moreover, as Lucian Pye states, "Political culture is the set of attitudes, beliefs, and sentiments, which give order and meaning to a political process and which provide underlying assumptions and rules that govern behavior in the political system."[48] Political cultures are different in each country since other societies have different cultures. Political culture produces political behavior, which is "defined as any action regarding authority in general and government in particular."[49] In another way, political behavior means the beliefs and values that underpin the political system's operation and determines how people participate in politics. Examples of political behavior are voting, protesting and demonstrations, roadblocks, and rebelling. To better understand the links between political culture and political behavior, one could say, "by their political behavior (their deeds), we can know their political culture (their beliefs)."[50] Many factors influence political behavior, such as ideology, ethnicity, expected rewards or punishments, etc.

Political behavior is the function of political attitude. Eagly and Chaiken define attitude as "a psychological tendency that is expressed by evaluating a particular entity with some degree of favour or disfavour."[51] A person's attitude shows how people think or believe, feel, and tend to behave regarding other people or/and things that may be positive or negative. Attitudes precede behavior, and the behavior of a rational individual is consistent with his/her attitude. This behavior is known as "cognitive resonance." However, when there is an inconsistency between attitude and behavior, a tension arises in the individual, known as "cognitive dissonance." Political culture requires people to grasp four attitudinal dimensions. The first dimension concerns political attitudes and political values. Political attitudes mean an orientation or tendency to politics that is relatively temporary and may change with circumstances and over time. It is defined broadly as "the opinions and values individuals hold about political issues, events, and

personalities."[52] Political attitudes are related to political beliefs, which are longer-lasting and often influence a specific attitude. Political attitudes may include embracing democracy and rejecting dictatorships, believing in freedom, justice, equality, the rule of law, Etc. It may also have negative attitudes, such as believing in racial supremacy, clan/ethnic hegemony, apartheid, clannism, authoritarianism, and anarchy. The second-dimension concerns attitudes towards political and national institutions. These institutions include media outlets (TV, radio, social media, etc.), mosques and Islamic scholars, clans and clan elders, civil society organizations, political parties, the business community, and government. Here comes the issue of trust/mistrust, respect/disrespect, and legitimacy/illegitimacy, etc.

The third-dimension concerns attitudes to political identity and relates to the primary identity of the individual. Identity is the story that we tell ourselves and others about who we are, who we were, and whom we foresee ourselves. For example, Somali individuals may identify themselves, depending on the circumstance, as belonging to a specific geographic location (district, regional state); national identity (Somali); and religious affiliation (Muslim), and so on. Fourthly, leadership attitudes. Here, we will adopt the simplest definition of leadership: an individual or group's ability to move others to action or agree on a particular course. Generally, there are three types of leadership: charismatic (savior), paternalist (e.g., father requires total obedience), and managerial (e.g., a manager of the institution).

Elite Political Culture

Every society can be divided into "elite" and "mass" groups. In a general sense, elite is a selected and small group of citizens and/or organizations that control a large amount of power in the societies. In general, the elite is someone who has a reputation in the community and "somebody who enjoys the best social, economic, political, as well as cultural levels."[53]

Elite theory starts with two underlying assumptions. In every society, the distribution of political power is unequal, and in every system, some people have more power than others do.[54] People who have more power (economic, political, and religious) within every society may be one person (a political leader) or a small group (the elite).[55] Usually, the elite's concept is used to analyze groups that either control or are situated at the top of societies. The first conception of the elite could be found in Plato's Republic, in which he classified people into gold, silver, iron, and copper.

You who are the people of this city. You are all brothers, but among you, there are those who deserve to rule the others. God has molded their nature on the gold. Hence, they are considered the most valuable and desirable individuals. However, God has used silver for molding the guards' nature and has utilized iron and copper for molding the farmers' and artisans, nature.[56]

As John Higley stated, "Elites may [be] defined as persons who, by virtue of their strategic locations in large or otherwise pivotal organizations and movements, are able to affect political outcomes regularly and substantially."[57] In the Qur'an, the elite is synonymous with the Arabic term *al-Mala`*, which means the great ones, the chieftains, the leaders, the notables, the eminent, the dignitaries, the elders, and the ruling circle.[58] Being the ruling elites and the privileged class, the Qur'an characterized these elites as ardent refusers of the messages of the prophets. This is so because the prophets' message carried fundamental ideological change and a vision for societies' socio-economic reform.

As class theory postulates, political elites not only drive political power from the ownership of economic resources. They acquire other resources that promote access to and retention of political power. These resources include social backgrounds, such as gender and educational qualifications, and communal attributes like ethnicity, religious affiliation, and political party affiliations.[59] Critical elite analysts insist that the political elite, despite their nominally different nature, stem from

common backgrounds, which explains their similar political socialization, the formation of attitudes, and interest cohesion.[60] The elite's concept could be considered someone who has a reputation in the community and enjoys the best social, economic, political, and cultural levels.[61]

Robert Putman offers that "elite political culture may be defined as the set of politically relevant beliefs, values, and habits of the most highly involved and influential participants in a political system."[62] In the elitist view, elites can only be substituted by another set of elites, meaning that a minority necessarily rules a majority. Elite political culture analysis presented a significant challenge to the study of political power in non-western societies. In post-colonial countries like Somalia, elite political culture is a mixture of elements of the externally acculturated political culture blended with local clan culture. The following section will put forth formations and structures of the basic Somali elites classified into traditional and modern.

This paper will use another set of terminologies that requires definitions to avoid confusion for the readers. These terminologies are related to Islam and its derivatives.

Islamic is a generic term used to signify anything related to the Islamic religion. For example, Islamic education, Islamic belief, Islamic manners, Islamic laws, and so on. Muslim actions should not be related to the Islamic religion because they can differ from the Islamic principles. For example, Islamic civilization, the Islamic movement, Islamic history, Islamic revolution, and Islamic terrorism are inaccurate. Instead, it is a Muslim civilization, Muslim history, and the Iranian revolution. This conceptualization includes negating the use of the "Islamic State" terminology, which is inappropriate. Instead, the best wording is to use Muslim majority states.

Islamists (activists) are devoted individuals or organized groups (movements) who assertively promote Islamic teachings and values in society and advocate for applying Islamic principles in the society and the state. Islamists are not monolithic and range from moderate reformists, extremist revolutionaries, and state collaborators. They differ in their objectives, approaches, understanding of Islam, and relations with non-Muslims and other religious traditions. Indeed, it is crucial to be aware of those claiming Islamists and use Islam only as a political tool, and when they become in power, forget Islamic values and principles.

Non-Islamists (non-activists) are the majority of Muslims who may or may not be devoted to Islam. They share the common characteristic of not advocating for the application of Islam in society and the state. They are not synonymous with secularists. Indeed, Islamists and secularists are minorities among Muslims in all countries, but they are more organized and vocal. Secularists are mainly ruling elites, academicians, and media experts, while Islamists constitute mostly opposition forces having broad public support among disgruntled masses. In every free and fair election, most Muslim groups elect Islamist parties that appeal to the emotional attachment to Islam.

3. Formation and Structure of the Basic Elites

After the collapse of the medieval Somali states in the 17th century, segmented mini-states were established in various territories.[63] Then, during the colonial scramble for Africa, Britain, France, Italy, and Ethiopia seized different parts of the Somali regions. Since then, the basic Somali elites were formed as an asymmetrical mixture of the top-down, authoritarian, and bureaucratic colonial system of governance and local system of authorities. This infusion of cultures is reflected in the emergence of modern elites, the political parties, the electoral system, the legal system, institutions of the state, and governance.[64] On the other hand, local culture is based on the deep-rooted Islamic faith synthesized

with conventional clan ethos. The modern elites' assumption of the state is that modern and traditional societies are dichotomous and mutually exclusive. This conception is drawn from the modernization theory, which asserts the indispensable death of traditions and triumph of modernity. As a result, modernity and tradition were imagined as irreconcilable yielding state and society in conflict. This conception and related policy implemented by the military regime finally triggered the triumph of the society and the collapse of the state in 1991. Indeed, the fusion of these two cultures fashioned four well-structured types of elites in Somalia. Two of these elites are long-established and deep-rooted in the traditional society. They constitute clan elders and scholars of Islam belonging mainly to the Sufi orders. The other two types of elites are modern superstructures that comprise Islamists and non-Islamists. Among these modern elites are political elites, who have different ideological orientations.

The four basic types of elites are traditional elites and modern elites. Traditional elites are friendly and cooperative, while modern elites are conflictual. Their conflict emanates from their opposite viewpoint on the state's nature and its legal framework and references. Furthermore, vertical relations demonstrate that the ruling non-Islamist elites are the modern development of traditional elites, while Islamist political elites are rooted in the traditional scholars of Islam. Paradoxically, the ruling non-Islamists viewpoint is that traditional elites (their roots) are obsolete for building a modern state, while political Islamists consider them an obstacle to a proper understanding of Islam.[65] As such, the modern elites were in agreement to marginalize traditional elites.

The ruling non-Islamist elites were the post-colonial state's inheritors and resolutely coveted retaining the state's quasi-secular nature. Conversely, political Islamists advocate zealously to apply Islamic principles and values in the state and society.[66] During their early formative period, the Islamist political elites were influenced by the school of Salafia, and they had

unfriendly relations with the traditional scholars of Islam belonging to the Sufi order.[67] However, with the maturation of the Islamists, relations with the Sufi orders substantially improved. Moreover, hostile relations between political Islamists and the ruling non-Islamists have been softened with adopting the Islamic compliance Transitional National Charter (TNC) in 2000.[68] These two political elites also worked closely during the two regimes produced by the Union of the Islamic Courts (Presidents Sheikh Sharif and Hassan Sheikh) and after. As such, the current trend shows the realization of all-inclusive reconciliation between all Somali elites.

Formation of Clan Elders

Before the colonial incursion into Somalia in the last quarter of the 19th century, two types of traditional elites collectively ruled the segmented Somali society: clan elders and traditional scholars of Islam. These two elites' power was harmonized and delineated, so that clan elders are mostly responsible for worldly affairs, while the traditional scholars of Islam are assigned to religious matters.[69] Clan elders usually exercise their power through customary laws (*Xeer*), which comprise Islamic sharia and local traditions. They are structured into multiple hierarchies from the smallest "*diya-paying"* unit to the largest *"clan-families,"* as termed by IM Lewis.[70] In the pastoral areas, the diya-paying unit is generally founded on blood relations (*jus sanguinis*), while in the agricultural and urban areas, it is formed through naturalization and alliances. They constitute "4 to 8 generations of span, whose members are bound not only by their close agnatic ties but also by an explicit treaty or contract."[71] In the higher clan hierarchies, many diya-paying units are amalgamated to constitute larger clan-lineages**.** At this level, clan elders use different titles, such as *Imaam, Ugaas, Islaan, Boqor, Wabar, Malaaq, Garaad, Sultaan*, Etc. Many clan-lineages constitute clan-families. Generally, the Somali nation comprises four main clan families and many minority clans. The main clan families are Daarood, Dir,

Digil&Mirifle, and Hawiye. The minority clans constitute many smaller clan-families, such as Banadiri, Barawani, Bajuni, Jareer-weyne, Yahar, Meheri, and Reer Aw-Hassan. They are neither blood related nor reside in the same territory but were instead amalgamated in 2000 for political convenience. As such, the political dispensation in Somalia was divided into a 4.5 power-sharing formula.[72] Indeed, Somalis are close families through agnatic relations and intermarriages, and the overwhelming majority of them speak the same language and adhere to the common Faith of Islam.

Every diya-paying unit is an autonomous entity and has a common territory, clan wells, customary laws, and clan elders, and is recognized as such by other neighboring clans. The clan elder's function is to oversee security and resolve conflicts, run the diya system's administration, and maintain inter-and intra-clan relations. Thus, the diya-paying unit could be considered a small state since it has many similar modern state system features.[73] This small state takes its major decisions in the assembly through all adult male members' participatory deliberations until a consensus is reached. This process is what I. M. Lewis succinctly called "Pastoral Democracy" in his anthropological study among Somalis in Northern Somalia.[74] Clans do not merely roam anarchically in the bushes, as many may conceive, but they are, in fact, organized and regulated by a set of customary laws and procedures. Their inter-and intra-clan relations are well handled by customary law, an unwritten law memorized by the clan elders and passed across generations.

Traditional elders were the supreme leaders of their clans before the colonial incursion. Nonetheless, the colonial powers recognized them as their local partners after signing various agreements with them. As such, many clan elders were integrated within the colonial system of governance and became salaried employees. As reported by Lewis, "In the late 1950s, there were 950 recognized diya-paying groups in Italian Somaliland and 361 in British Somaliland."[75] In southern Italian Somalia,

these clan elders often used the state's coercive power to administer their clans. Gradually, many clan elders dwelled in the urban centers and established permanent homes instead of living among their pastoral people. Settling in the cities offered progenies of clan elders, early modern education opportunities, and state employment.[76] This trend was encouraged by the colonial policy of providing an educational opportunity to the traditional authorities' progenies to maintain the clans' leadership. Implementation of this policy was evident in the Territorial Council's formation in the UN Trust Territory under Italian Administration, where traditional elites were dominant. [77] Equally, empowering traditional authorities was also evident in British Somaliland during the formation of the first Legislative Council in 1957. Accordingly, the British Governor had appointed 24 Advisory Council members representing the leading clans of the Protectorate.[78]

Conversely, Somali nationalists undertook a different course in dealing with clan elders and considered them perilous to the nationalist goals. Thus, the previous colonial policy of integration during the trusteeship period in the 1950s was reframed as a marginalization policy. Indeed, the whole traditional institution was looked at as both an antithesis and an enemy to what nationalists were aiming to invent. Therefore, Somali nationalists embarked on the ambitious task of undermining clan elders to promote nationalism. However, reconfigured the role of clan elders after the collapse of the state in 1991. Since then, clan elders have been active in reconstructing local and national institutions besides their traditional role.

Formation of Traditional Scholars of Islam

Traditional scholars of Islam are responsible for the religious functions of communities. These functions include Islamic education; dispensing and directing functions and events, such as teaching the Qur'an and the other Islamic disciplines; conducting marriage contracts and administering

inheritance; and leading prayers, fasting, and celebrations of Islamic festivities, among other functions. Beyond this, traditional scholars of Islam have a religious authority that community members hold in the highest respect. During the broader Islamization period of the 13th century, scholars of Islam initiated a sustainable system of education using effective techniques. Thus, Islamic education was "community-centered and locally administered."[79] It was also an Islamic-centred schooling system that began with the memorization of the Qur'an in early childhood. The creative way of learning the Arabic alphabet was invented by the Somali scholar Sheikh Yuusuf al-Kawnayn. He introduced the notation system for Arabic alphabets in the Somali language known as *Higaad*.[80] Memorization of the Qur'an is the first level of Islamic education that remained sustainable for centuries. Some talented graduates from this primary level specialize as teachers of the Qur'an and open Quranic schools.

The second level of Islamic education begins when some ambitious students proceed to a higher Islamic learning level. Their endeavor is encouraged by the communities, who aim to cultivate a culture of promoting and supporting Islamic education through scholarships.[81] Upon graduation, some new scholars return to their original home territories and establish Islamic education centers. In that process, new villages are set to foster the settlement and urbanization of the rural population. Moreover, the most distinguished graduates are sent by their mentors as emissaries to their home territories to propagate Islam, as recommended by the Qur'an.[82]

The third level of Islamic education is Sufism, which is dispensed by the masters of the Sufi orders. Sufi orders focus on spiritual purification under the guidance of a spiritual master. Followers of Sufism seek a closer personal relationship with Allah through particular disciplines and spiritual exercises. With their symbolical activities and closeness to

people's culture, Sufi orders contributed significantly to Islam's revival among the masses, using innovative mobilization techniques.

These techniques create a sense of belonging and mutual support for the Sufi orders' adherents. They also make a web of trans-clan networks in society, thereby diluting clan polarization and segmentation. These Sufi orders remain active across Somalia and boast popular support. There are two main Sufi orders in Somalia: *Qaadiriyah* and *Axmadiyah*. Each Sufi order has its local offshoots. [83] *Qaadiriyah* has two main branches, *Zayli'iyah* and *Uweysiyah*. On the other hand, *Axmadiyah* has three offshoots: *Raxmaaniyah*, *Saalixiyah*, and *Dandaraawiyah*. [84] With the modern education system's influence, the followers of Sufi orders are going through a reformation.

Formation of Non-Islamist Elites

The early development of non-Islamist elites was associated with traditional elites' descendants because of the colonial policy of creating a continuation of traditional elites' loyal line. The children of traditional elites who dwelled in the cities received early education opportunities. Thus, non-Islamist elites were developed with the proliferation of modern schools and during the state-building process. In general, the development of modern education in Somalia was sluggish for many reasons. The reasons include insufficient budgetary allocation of colonial rulers, religious sensitivities, socio-political unrest, volatile security, and the lack of vested interests. "With such a slow process, the formation of the Somali elite was sluggish, deficient, and divergent, mired within the Cold War atmosphere and Muslim-Christian tensions."[85]

Modern education was taught in the colonial languages and adopted colonial curricula that promoted a Western outlook. Thus, Italian and English became the official languages of instruction while kept the Arabic

language (the official language of the early educated elites) an insignificant part of the curricula. Unluckily, the Somali language was not committed to writing until 1972 formally. Moreover, non-state modern education, which appeared mostly by the 1950s, embodied a hodgepodge of different schools and curricula, such as Christian Mission schools, Egyptian Arabic schools, Italian schools, and others.[86] In the past, the Italian Fascist regime that took power in 1922 prohibited formal education in all Italian colonies.[87] It allowed cultural schools bequeathed to the Roman Catholic Church. The objective of that education was to provide qualified workers for the jobs unsuitable for Italians' "superior race."[88] Moreover, it was unfair that cultural schools were reserved only for the sons of obedient notables and those expected to succeed their fathers in serving colonial masters as interpreters, clerks, and office assistants.[89] Nevertheless, this policy has changed after Italy's defeat in the Second World War in 1941. Since then, modern education began "without a ceiling."[90] Therefore, the Somalis took great interest in modern education through civil society groups and political parties' local initiatives. Remarkably, emerging political parties were competing with each other by investing in education to attract public support. The SYL party took a pioneering role in this race by advancing education in its major programs.[91] Other political parties also followed suit and conducted similar education programs. By 1947, 19 elementary schools funded by the state were taught in Arabic as the second language in southern Somalia. This trend was spreading horizontally, and by 1950, there were 29 schools with an enrolment of 2850 students employing 45 teachers.[92]

When the UN Trusteeship mandated Italy in 1950 to prepare Somalia for independence within ten years, education's objective was radically changed.[93] Italy launched a five-year development program in 1952 in collaboration with UNESCO. According to this plan, modern schools, technical institutes, and teacher training programs were established. As

reported by I.M. Lewis, "by 1957, some 31,000 children and adults of both sexes were enrolled in primary schools, 246 in junior secondary schools, 336 in technical institutes, and a few hundred more in higher educational institutions."[94] The above data shows a notable advance in modern education compared with the conditions before the 1950s when fewer than 2,000 students were receiving education. Moreover, specialized schools, such as the School of Politics and Administration, were established in Mogadishu in the 1950s. Some of the graduates of this institute were offered scholarships for further studies at Perugia University in Italy. Others were employed during the speedy Somalization program in the government administration after 1956.

During this period, the Italian administration employed 4,380 Somalis (88% of the labor force) in government institutions. This employment was a large number compared with that of the British Administration in Somaliland during the same period, where only 300 were employed in the state administration, with only 30 (10%) of them being Somali.[95] Also opened other institutes in 1954, the most important of which was the Higher Institute of Law and Economics, which later became Somalia's University College. It subsequently developed into the Somali National University in 1972.[96] Moreover, the Italian administration provided scholarships, seminars, and official visits to Italy to the emerging Somali elites to familiarize them with the Italian language and culture. Through better modern education and improved employment privileges, new Somali elites emerged, imbued with Italian culture. These elites became leaders of the political parties, senior administrators, district councilors, and provincial governors. They were also employed in the security apparatus of the state. The new elites' role grew even more rapidly as, in 1956, they emerged the ruling elite when they replaced Italians in all senior administrative positions to prepare Somalia for independence in 1960. Nonetheless, in the higher echelons of education, there was not much development to boast. "According to [the] UN report on Somalia,

three years prior to independence, there was not a single Somali medical doctor, professional pharmacist, engineer, or high school teacher in Somalia."[97] However, 37 Somali students in the Italian universities in 1957-58, among whom 27, were expected to graduate in 1960.[98]

In British Somaliland, all attempts to introduce modern education were delayed because of the Christian Mission's expulsion in 1910 and the subsequent atmosphere of public worries from introducing Christianity and the impact of Sayid Mohamed's Jihad.[99] Moreover, a combination of the Somali resistance to taxation and colonial financial allocations' insufficiency contributed to modern education's postponement in British Somaliland. In 1950, the first two intermediate schools were opened and expanded gradually afterward. According to the public records, the total number of Somaliland students had increased from 623 in 1948 to 6,209 in 1959.[100]

With the Somali independence in 1960 and the unification of British Somaliland and UN Trust territory of Somalia under Italy, the non-Islamist elites became the national leaders of the Somali state. Under the Cold War competition between the West and the East, Somali students received scholarships to many countries. For instance, incomplete statistical data shows the following trends: in the 1960s, about 500 civilian students were studying in the Soviet Union, 272 in Italy, 152 in Saudi Arabia, 86 in the USA, 40 in Sudan, 34 in the UK, 32 in France, and 29 in India.[101] These data indicate that Western countries' total number of scholarships was less than that of the Soviet Union alone. This trend is even more evident in the military sector. After Somalia grew dissatisfied with the small amount of Western assistance for military purposes, in 1963, the Soviets agreed to help Somalia build a strong army as part of a Cold War strategy to balance the US presence in Ethiopia. According to Laitin and Samatar, "a joint western countries' proposal for the military assistance to Somalia was $10 million for an army of 5,000 persons. However, the Soviet offer was a loan of $52 million and an army

of 14,000 persons. Thus, the Soviets succeeded in taking over the training of the Somali army."[102] As a result, Somali military officers trained in the Soviet Union alone were estimated at more than 500 by 1969. Thus, the majority of non-Islamist elites were indoctrinated with the socialist ideology.[103] Elites trained in the socialist countries added to a far-left drift to the growing westernization, and the ramifications of this phenomenon were experienced during the military regime in 1969.

Formation of Islamist Elites

Islamist elites were developed through two processes. The first was formal education in Arabic/Islamic schools, where some graduates had an opportunity to further their studies at Arab higher education institutions in Egypt, Syria, Iraq, and Saudi Arabia. Joining higher Arab universities does not mean that these students were automatically subjected to an Islamic agenda since most Arab institutions of higher learning had been secularized during the colonial period and subsequent Arab nationalist movements. Nevertheless, students of Arabic schools were imbued with Islamic/Arabic culture, and some of them, either through direct contact or by reading published literature, became aware of the new Islamist trends in the Muslim world. After becoming traditional scholars of Islam in Somalia, the second process was through those who traveled abroad and joined Islamic higher learning institutions. These scholars contacted other Islamic scholars and students from many Muslim countries where Islamist activism was intense. These scholars could be called "transitional scholars of Islam" since they bridged traditional and modern educational systems. Indeed, these scholars were the pioneers of the modern Islamist movements in Somalia.[104]

In the process of state-building, Islamist elites were marginalized, initially through unequal job opportunities. For instance, graduates of Arabic high schools and universities could not compete for local jobs with graduates from government schools or other non-state schools because of the language barriers. The language of the administration in Somalia

remained either Italian or English until the Somali language was committed to writing in 1972. Therefore, the only jobs available for graduates from Arabic schools and universities were low-paying jobs for Arabic and Islamic teachers in schools, judges, or joining the national army. This structural inequality through diversified curricula and languages created a bifurcation of the elites. Discrimination against the elites educated in Arabic forced many of them to explore alternatives.

Students educated in the Arabic language realized that the only equal opportunity for them was to join the national army or explore scholarships in socialist countries such as the Soviet Union, East Germany, or China. In these countries, all Somalis had equal opportunities since new languages had to be learned. Exceptions were a small number of civilian scholarships and cadet officers sent to Italy who graduated from Italian schools. Similarly, civilian scholarships and cadet officers sent to Arab countries such as Egypt, Syria, and Iraq had to be conversant in the Arabic language. The trend of sending young Somalis to Eastern and Western countries with either Socialist or capitalist ideologies eventually brought a cultural and ideological schism orchestrated through the Cold War fever. With their meager resources and capacity, they were initially advocating the Islamic culture's revival and promoting the Arabic language.

The Islamic revivalism was the culmination of the rising consciousness of Islam in Somalia as part of a broader awakening that was taking place in the Muslim world. It had initially begun in the 1950s and gradually spread in the 1960s with the founding of the organizations *Nahdah*, *Ahal*, and *Wahdah* that were actively preaching the Muslim Brotherhood approach of preaching Islam. Even though early Islamist movements were short-lived, their impact was significant and lasting. *Nahdah* operated for only three years, although its members remained prominent in Islamic activism for an extended period. *Ahal* ceased to exist in 1977 after about eight years of active work, and its members were divided into different

new Islamic organizations. In 1983, *Wahdah* was united with Jama Islamiyah and became part of *Al-Itihad,* although this unification did not last long.[105] However, it is crucial to characterize the Islamist awakening in this period as embryonic and with a high emotional attachment to Islam, low organizational capacity, meager economic resources, and a romantic approach to social and political realities. These organizations' collective work created a wave of spreading modern ideas of the Islamist movements among Somali ethnic communities in the Horn of Africa. Islamist elites' formation took great strides by the 1990s, acquiring higher education. After the state's collapse in 1991, Al-Islah and Al-Ittihad emerged as strong organizations adopting two different approaches to the civil war, moderation, and militancy, respectively.[106]

The impact of the Islamist movements in politics appeared strongly during the SPRC in Djibouti in 2000. Their influence is evident from the adopted Transitional National Charter (TNC), making Islam the ultimate reference of all laws. Moreover, many Islamists became members of the parliament and cabinet ministers. The political role of Islamists grew exponentially after the emergence of the Islamic Court Union in 2006. Since then, various Islamists' persuasions have participated actively in Somali politics and even took a leadership role in the two regimes (2009-2016).[107] The impact of Somali Islamist movements is ubiquitous in all sectors encompassing politics, economic, and societal. Thus, Islamist political elites are growing and occupying more spaces.

Concluding this section, Somali elite formation went through stages and transformed gradually. Its new trends indicate rapprochements of all elites since the SPRC in 2000. During this conference, traditional and modern elites accepted each other and reconciled the state and society in the adopted TNC. Further, modern elites abandoned eschewing traditional elites after their empowerment to select parliament members in the clan power-sharing formula of 4.5.

Moreover, Islam was adopted as the ultimate reference of laws in the TNC, and Islamists and non-Islamist had equal opportunities to be selected by their clans. This trend has been growing in the last 20 years and the biased view based on ideology very much dwindled. Moreover, many traditional elites transformed, whereas many others became highly educated individuals who inherited their fathers' leadership. Furthermore, the distinction between Islamists and non-Islamists has become cloudy and increasingly narrow due to pervasive Islamism. Nonetheless, in the elite political culture, Islamic values remain shallow, while performing basic Islamic practical obligations is ubiquitous.[108] The new trend shows the early stage of reconciling tradition and modernity, and Islamists and non-Islamists.

4. Historical Evolution of Elite Political Culture

The elite political culture and the impact of society's institutions are the two variables to be understood regarding the failure of the Somali state. These two variables are mutually interdependent and co-evolve in a complementary way.[109] Culture may change in different ways depending on institutions' nature, and institutions may perform differently in various cultures. This section examines the Somali elite political culture, which is very complex, with multiple factors shaping its development. The first factor is the local political culture of clannish society, a fusion of the universal Islamic culture and particularistic Somali clan culture. The second culture is the Italian political culture imposed/acquired as part of elite acculturation during the 70 years of Italian rule. Relatively, the British indirect rule of Somaliland and its cultural influence was ephemeral. The first manifestation of modern elite political culture appeared in Somalia under UN trusteeship with establishing the first local administration in 1956. This culture was formed as a hybrid of the asymmetrical mixture of the top-down, authoritarian, and bureaucratic Italian colonial rule and local societal elite culture. The hybrid culture of local and Italian continued dominant until 1969. The second phase was

introduced during the military rule that espoused socialism. The 21-year rule of the dictatorial regime left behind an enduring impact on the subsequent generations' elite political culture. The third phase was during the civil war and the warlords' dominance (1991-2000). The culture warlordism had anarchy, lawlessness, marginalization of the minority clans, and strong foreign patronage. The fourth phase was acquired in 2000 through clan-power sharing. As a result, Somali nationalism has been weakened, and sub-nationalism consolidated through the adoption of the federal system. The following section provides an overview of each phase's central tread to understand the chemistry of these multiple elite cultures' intricate fusion. Then, through synthesis, the last section concludes with a description of the resultant elite political culture currently discernible in Somalia.

The Formative Period of Elite Political Culture (1956-1969)

In the pre-colonial era, clans were the only existing socio-political units that functioned in small geographical areas. In general, the type of political culture in this clannish society is termed as a parochial-localism culture. The Somali clan system's fundamental unit is called the diya-paying unit, which provides two essential functions. First, it provides the basic human need for affection, belonging, and identity; second, it offers solidarity among its members to provide social welfare and collective security. According to Harold Lasswell's broad definition, politics takes place everywhere. Thus, this paper considers the diya-paying unit as a sovereign mini-state. The following list describes the main elements of the political culture of the clannish society.

*a. Clan Solidarity***:** The clans' main cultural characteristic is strong solidarity among its members, which generates the ideology of clannism. This solidarity is called “mechanical solidarity” compared to “organic solidarity” as theorized by the French sociologist Emile Durkheim (1858-

1917).[110] Although this solidarity is necessary for the survival of the pastoral communities, it is not always positive and often discriminates and excludes those who are not members of their clan. Clannism is like nationalism in many aspects, with the only difference between them being solidarity levels. Clannism is located at the micro-level, while nationalism is at the macro-level. Both clannism and nationalism may be positively used as factors of solidarity or negatively as factors of oppression and intolerances. Clannism generates dominant sentiments, whereas an individual's fame and glory derive from "the fame and the glory of his ancestor."[111] Accordingly, clan members glorify their clans and ancestors and express solidarity to their political elites. This behavior generates vanity and an attitude of superiority among clans. This cultural pattern produces the exclusion of other clans and the fragmentation of society. Clan solidarity in Somalia is robust in the pastoral areas and among their extended families in the urban centers.

b. Rivalry over Resources: The other political culture concerns rivalry over scarce resources. This rivalry instigates continuous fighting between neighboring clans over posture and water wells. These clans have a high rate of intermarriages that often mitigate their conflicts because of their mothers' blood relations.

Nonetheless, continuous conflicts over scarce resources and fighting are cyclical and part of the nomadic life. The recurring conflicts have produced a culture of looting the defeated clans' properties, particularly their camels. However, this culture is dominant in the nomadic pastoral societies. In the urban and agro-pastoral communities, peaceful and cooperative cultural trends have developed. This cultural attitude generates violent behavior among the nomadic population.

c. Collective Leadership: Somalis are traditionally independent and egalitarian people, and as described by I.M. Lewis, "all men are councilors,

all men are politicians."[112] Generally, there is no culture of dictatorship in the local Somali culture. Governance is founded on the participatory consultation among all male members of the clan and consensus decision-making process. In some areas, hereditary hierarchical leadership had developed but maintained a high level of participation by the elites of sub-clans. In general, Somalis are independent-minded, excessively freedom-loving people that sometimes reaches a chaotic level and anarchy.

d. Strong Islamic Identity: Somalia is located at the periphery of the Muslim World, where Muslims and Christians interact. It is a frontier state in defending Islam's heartland from external invasions and extending its frontiers through various means. On the other hand, Somalia is where the Islamic identity took prominence, and the Christian-Muslim borders are drawn. It is also a source of inspiration for the Muslim population in the Horn of African region. The depth of the Somali identity is expressed on the maxim that "Somalis, for the most part, do not by and large apply Islamic values, but they always protect Islam and guard it against abuses of others."[113] Moreover, the Somali wisdom that is "two are inviolable in Somalia: clan culture and Islam" conveys the same message, which means most Somalis are ready to sacrifice their lives to defend these two inviolable ideals.

e. Disregarding State Authority: According to Michael Bauman, "all laws, regardless of their content or their intent, arise from a system of values, from a belief that some things are right and others wrong, that some things are good and others bad, that some things are better and others worse."[114] Moreover, Ibn-Khaldun wrote, "Arabs [nomads] can obtain royal authority only making use of some religious coloring such as prophecy, or sainthood, or some great religious event in general."[115] Accordingly, Somali people respect their local customary laws and accept Islamic Sharia founded in their values. However, "disregard secular laws derived from the inherited colonial laws [and] imposed on the Somali society."[116]

The Impact of Italian Political Culture

Having the above-stated characteristics of the local political culture in general, in the nineteenth century, Italy and Britain occupied Somali territories, France and Ethiopia. The Italian rule was effective in two periods: The Fascist regime (1922-1941) and the UN trusteeship period under the Italian Administration (1950-1960). In between, Somalia was under BMA (1941-1950). Somali political development occurred during the UN trusteeship period, in which Somali political elites were trained, and socio-economic programs were implemented. Thus, Italian political culture was introduced in Somalia. The emerging political elites adopted the Italian political culture mixed with local political clannish culture, which created a cultural dynamism that "once established, these orientations [the hybrid culture] have a momentum of their own, and may act as an autonomous influence on politics and economics long after the events that gave rise to them."[117] Comparatively, the cultural impact of Britain's indirect rule in Somaliland and its 10-year rule under BMA in most Somali territories was insignificant. To comprehend the new hybrid culture better, we will briefly address the Italian political culture.

Italian politics are founded on a parliamentary system of governance and a multi-party system. This system has a reputation for political fragmentation and government instability. Indeed, Italian political culture's predominant narrative was characterized as "static, backward, '*immobile*,' and impermeable to change, as described in the early 1950s."[118] Moreover, the Italian political culture was summarized during the 1950s as being "familistic-parochial-localistic." The familistic-parochial culture is "the prevalence of local sources of identifications, low pride for the country, and unwillingness to make sacrifices if required." [119] The main elements of this political culture could be summarized as follows:

a. Localism: Localism is identification with a group to which each Italian refers when he thinks of himself as part of the body politic. It is similar to a clannism based on agnatic affiliation or a territorial alliance in the Somali context. When studying Italian political culture, Edward Benfield coined the term "amoral familist" to describe a person who behaves according to the following rule: "maximize the material, short-run advantage of the nuclear family; assume that all others will do likewise."[120] In this political culture, individuals are greedy and busy amassing wealth for their gain and characterized by a high level of corruption, ineptitude, and lack of political direction. Early scholars defined familism as a strong identification with family characterized by loyalty, reciprocity, and solidarity.

b. Widespread Corruption: another characteristic of Italian political culture is widespread corruption. Explaining Italian corruption culture, Diego Gambetta expressed that "the level of corruption is on a par with or worse than that of much less developed countries while being far above the level of similarly developed countries." [121] Empirical evidence demonstrates that bribery, extortion, and graft are often the outgrowths of the more profound Italian culture of "corruption."[122]

c. Political Patronage: this culture allowed groups of citizens linked directly to politicians to reap high rewards through special laws (leggine) or political appointments. The internal patronage that produces rewards and appointments were not aimed at enhancing efficiency or recruiting professional expertise. The interaction between politicians, bureaucracy, and groups of citizens directly linked to politicians was a characteristic of the Italian political system. Political patronage is a worldwide phenomenon; however, Italy ranks high in the index of party patronage.[123]

d. Political Fragmentation and Instability: One of the main features of the Italian political culture is instability and fragmentation. This culture often leads to short-lived coalition governments and unlimited political

parties. "Political instability and fragmentation have been constants of the Italian scene through most of the post-war period. Until recently, governments changed with bewildering frequency. Italy has had over 60 governments since the end of World War II."[124] The instability of the political system is associated with the political party system, the structures of two houses of representatives, the electoral model, and so on.

e. Democratic Culture: Democratic countries choose one of the two models of democracy: consensual and competitive (majoritarian). Consensus democracy is founded on the culture of consensus decision-making, which involves coalition building and a broad range of opinions. On the other hand, the majoritarian system considers only the majority party's decision-making and that minority parties' voices are ignored.[125] The adopted type of democracy depends on that particular society's culture, and each type has its advantages and limitations. Italian democracy belongs to the consensus system, characterized by a broad coalition of power-sharing, the executive and legislative balance of power, multi-party system, proportional representation election model, a federal and decentralized system, strong bi-cameralism, and so on.[126]

	Somali Traditional Clan Culture	**Italian Political Culture**
Political Culture	1. *Clan Solidarity* 2. *Fighting over Resources (violence)* 3. *Collective leadership and participatory decision making* 4. *Strong Islamic identity* 5. *Disregarding State Authorities*	1. *Localistic culture* 2. *Political Patronage* 3. *Widespread Corruption* 4. *Political Fragmentation and instability* 5. *Democratic culture*

Table 1. Comparative Political Cultures, Somalia and Italy

It is noticeable from the above comparative cultures that Somali political elites adopted Italian political culture, while some traditional cultural elements were assimilated or disregarded. The disregarded aspects of local Somali culture include the culture of collective leadership and consensus decision-making process. Moreover, strong adherence to Islamic values was substantially weakened. Furthermore, political clannism, which was similar to the Italian culture of localism, was assimilated. The manifestation of such localism or political clannism was the unlimited clan-based political parties established in Somalia. Thus, Somali elites' resultant political culture includes political patronage (internal and external), political clannism, widespread corruption, political instability, and a volatile democratic culture.

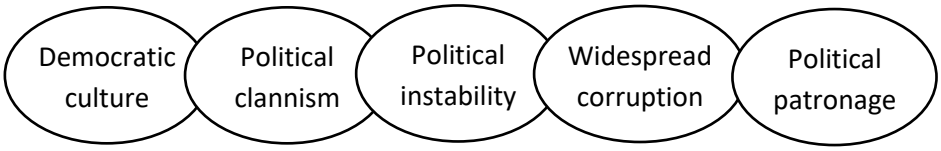

Fig.2. Somali Elite Political Culture (1956-1969)

This political culture has developed in the formative period of Somali state-building and persisted for 14 years (1956-1969). However, the system corroded gradually, and new political elites emerged with different ideological persuasions. Many of these new elites were educated in the socialist countries (USSR, Germany, China, and others) and the Arab military regimes (Egypt, Iraq, and Syria).[127] The fragile democratic culture in the early years of the Somali Republic has been deteriorating further since 1967.[128] As such, the corruption level and rigging election reached an unprecedented level in the election of 1969. This cruel practice caused the second President of the Republic's assassination, Abdirashid Ali Sharmarke, on October 15, 1969.[129] Consequently, the Somali army took over the power in a bloodless coup on October 21, 1969. On the other hand, a new generation of Islamists emerged in the 1960s to advocate for the abidance of the Islamic tenets and manners. The

new period of the Somali period has begun with military rule, socialist orientation, dictatorship, and a growing Islamist awakening.

The Evolution of Elite Political Culture (1969-1991)

The evolution of elite political culture begins with the military coup in 1969. The military regime had added new elements to the political culture of the elites and illuminated others. The military regime abrogated the constitution, disbanded the Parliament, and imprisoned leaders of the government. The regime adopted socialism in 1970 and implemented anti-societal policies.[130] The new regime's socialist policies included suppressing Islamic activism, rigorous programs that diminished traditional elders' role, the elimination of democratic tradition, and a transformation of the whole society into subjects. These policies mean that relations between the military leadership and citizens were patron-follower relations. The military and the National Security Service (NSS) role were oriented to suppress any plausible oppositions. Moreover, the establishment of a para-military force, "*Guulwadayaal,*" aimed to keep a watchful eye over the communities.

The military regime's rule could be divided into two phases. The first phase (1969-1978) was a socialist transformation, national mobilization, and institutions' rebuilding. The main characteristics of this phase were the formation of new socialist elites, which began with committing the Somali language into writing in 1972 and opening hundreds of schools in every village with a new socialist curriculum. Included in this program, and illiteracy campaign was conducted in 1974 to educate the rural population. Moreover, Somali National University was opened in 1971 to produce socialist indoctrinated elites. In the curriculum of the schools and the university, studies of socialist ideologies were made compulsory. Besides that, specialized political faculty to train socialist party cadres were opened. What is more, other cultural manifestations were established, such as the National Academy of Arts, Sciences, and Culture,

the National Theatre, and the National Museum. Moreover, the rich Somali poetry was excessively instrumentalized to propagate the new ideology of socialism and to praise the supreme leader of the revolution, General Mohamed Siyad Barre. The regime empowered women and girls' enrolment in the schools increased extensively. Also, many women were promoted to higher bureaucratic positions, diplomatic corps, and cabinet ministers. As part of women's empowerment, secular family law was issued in 1975, which encountered significant societal opposition. As a result, 10 Islamic scholars were executed by the regime who publicly opposed the law on the pretext that it contravenes the Qur'an.[131] This event energized embryonic Islamist activism, and the regime was then branded as anti-Islamic and Godless Atheists. To further promote the socialist transformation, the Somali Revolutionary Socialist Party (SRSP) was formed in 1976, the only party in the country. However, this phase's defining moment is the Somali-Ethiopian war of 1977/78, in which the Somali military was humiliated and defeated.

The second phase of the military regime begins after the military defeat of Somalia in 1978. In this phase, the early impetus of national mobilization and the socialist ideology was exhausted and faltering. Military officers' coup d'état was attempted on April 9, 1978, [132] nevertheless aborted.[133] Since then, the national army disintegrated along clan-lines, and clannish armed opposition emerged one after another.[134] The regime's opposition was growing and included diplomatic corps, former ministers, high-ranking military officers, and Islamist movements. The regime opted for a militaristic policy and unrestrained force filing to resolve internal conflicts through democratization and peaceful dialogue. The armed conflict process between the regime and the armed opposition continued until the total collapse of the regime and the state in 1991. Indeed, three elite political culture continued from the previous civilian government during the military regime. These are political patronage, political clannism, and widespread corruption. Moreover, the military regime

introduced dictatorship/violence and related behavior, which led to the elimination of democratic culture and interconnected political stability.

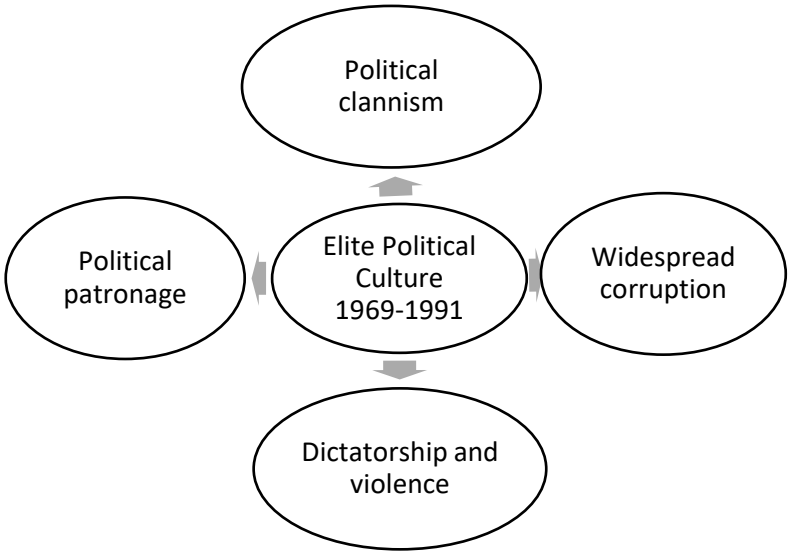

Fig.3.The Ruling Elite Political Culture (1969-1991)

After the state's collapse, the ruling elite political culture of the previous regime continued in the context of the radicalized clans, and warlordism had resulted in excessive violence. The pre-state culture of clannish society based on relentless fighting became rampant. Moreover, extremism in the name of Islam emerged and intensified. Former Somaliland unilaterally declared succession on May 18, 1991. After ten years of continuous conflict and the failure of 12 warlord-reconciliation conferences in southern Somalia, the direction of reconciliation shifted to a civil society-driven course. In this process, the clan-power sharing 4.5 formula was institutionalized, and the Islamic compliant constitution was adopted during the SPRC in Djibouti in 2000. Since that time, reconstructing the Somali state was sluggish and revolved around the clan-power sharing and the vicious recycling of dysfunctional national institutions. The elite political culture accumulated different elements of

the previous phases following continuity and change theory. Since 2000, the following elite political culture persisted: political patronage, institutionalization of political clannism, the ubiquity of corruption, and political violence. The culture of violence, which is a continuation of the dictatorship and warlordism mentality, has continued to some extent. Political instability and quasi-democratic culture have also been revived.[135] Moreover, foreign political patronage intensified, and internal patronage became insidious.

In conclusion, the ruling elite political culture (2000-2020) was a collection of pieces of all elements of culture acquired since 1956. Some of these elements were weakened and faded while others persisted and augmented. The primary resultant political culture is as follows:

a. Institutionalization of Political Clannism: Although this culture continued during all the Somali state-building phases, it was nonetheless institutionalized at the SPRC in Djibouti in 2000. The adopted 4.5 clan power-sharing formula marked a complete shift in the elite political culture previously based on demeaning clannism. The political clannism culture was promoted and encouraged by the electoral system, permitting unrestricted political parties introduced by the Italians in 1954. However, political clannism was growing and was finally institutionalizing since the SPRC.

b. Ubiquity of Political Corruption: This culture has existed since the beginning of elections in Somalia in 1954; however, it has been growing in magnitude gradually. Corruption has many phases, but the most prominent one in Somalia is open vote-buying. It reached the level of commercialization of politics having all characteristics of commercial goods in buying and selling votes publicly to the highest bidder. To become a member of the Parliament, individuals should buy the seat from the clan elders and associates and then sell to the presidential candidates. As reported, the highest cost of one of the seats in the 2016 election

reached approximately one million dollars, while the average price to buy an MP's vote on the night before the presidential election was estimated at around $50,000.[136] In the index of transparent international, Somalia has placed in the highest corruption perceptions index over the last ten years.[137] This culture enabled foreign countries to invest in empowering their proxies for the highest public offices and presidential candidates.[138]

c. Political Violence: This culture was developed since the early years of the election in the 1950s as part of traditional clan culture and the disability of Italian administration to register voters and conduct a census. For instance, "the planned census, to be completed in 1957, failed miserably in three of the total six administrative regions: Majertenia, Mudug, and Lower Juba, while it was successful in Banadir, Upper Juba, and Hiiran. As a result of the shortcoming of AFIS to accomplish a reliable census, the early unfair representation of the seats in the parliament began, which also led to the early culture of rigging elections. Thus, the authorities' rigging of elections became a norm besides the unfair allocation of seats of the Parliament to various constituencies. For instance, in the early period of 1956-1969, SYL ruling party has been accused of rigging elections.[139] The same phenomenon recurred since 2000, and rigging election and violence were even more evident afterward.[140]

d. Strong Foreign Patronage: The culture of foreign patronage started during the UN trusteeship period. This period was the height of the Cold War, and competition between the East and West to dominate Africa's strategic Horn was at a high pace. Western countries supported moderate leaders of the ruling party of SYL and suppressed other parties who were ideologically oriented towards the Eastern bloc.[141] The major countries that influenced Somali foreign policies during this period were Italy, Egypt, and the USA. However, gradually, the USSR's role was growing, particularly since 1963, to build the Somali National Army. The USSR became the major country that offered patronage to Somali political elites

after the military takeover in 1969. Subsequently, Somalia also received USA and Italian patronage after its relations with the USSR deteriorated in 1977. With the collapse of the state, Ethiopia was the primary country that provided patronage to the warlords. Finally, after the Gulf crisis, the rich Arab countries' patronage's role increased substantially, particularly the UAE, Qatar, and Saudi Arabia. Local political patronage in the form of clientelism and nepotism also continued.

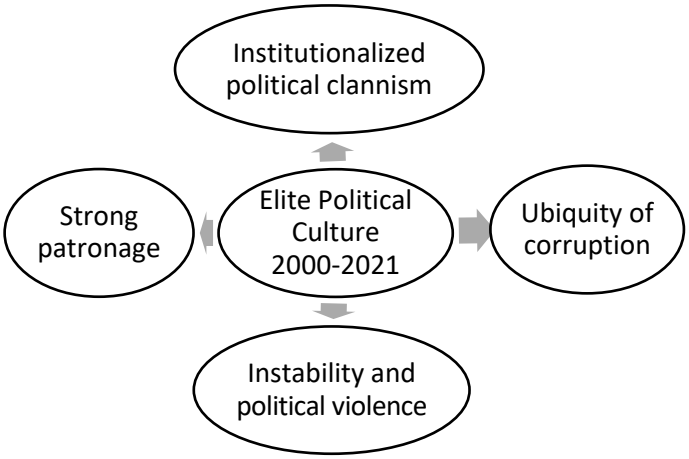

Fig.4. Somali Elite Political Culture (2000-2020)

5. Conclusion

This paper explores what has made the Somali government fail repetitively and frustrate its recovery for the last 60 years. The hypothesis is founded that the elite political culture is the main contributing factor in building and breaking the state. Other contributing factors to the Somali state's failure are considered the socio-political and economic environment in which political elites navigate to succeed or fail. However, this is not to negate that this environment necessarily shapes political elites' culture in a complex process of reciprocal relations. There are only limited studies on elite political culture and the responsibility of state failure on the governing elites.

The first section of the paper provides a theoretical backdrop to elite political culture by defining its components (e.g., culture, politics, and elitism) and combining them to constitute the conception of elite political culture. It posits various concepts of culture and its expression as expressive, material, and immaterial forms. It is evident that every individual is born into a specific societal culture, but culture could be learned in the processes of enculturation, socialization, and acculturation. Moreover, culture could be divided into covert and overt levels similar to the iceberg. On the other hand, politics could be narrowly defined as governments, politicians, and political parties, or so broadly, that it includes the interrelationships between people and their rules and norms, institutions, and actions in all social spheres. Combining these two words gives the term political culture, which is different in each country producing political behavior. What is more, in post-colonial countries like Somalia, elite political culture is a mixture of colonial elite political culture elements blended with local clan culture.

The second section traces the formation and structure of the Somali elites' basic components dividing them into traditional and modern. Traditional elites mean clan authorities comprising clan elders and traditional scholars of Islam, who collectively manage the clans' affairs. It was evident that relations between traditional authorities were cordial and cooperative, while modern elites consisting of Islamists and non-Islamists were conflictual. However, after the collapse of the state, the role of traditional elites had grown from a purely managing clan affair to selecting members of the Parliament, and in some regions, as part of decision-making institutions.

The third section explores the historical evolution of elite political culture since 1956. It is evident from the historical analysis that the Somali elite political culture was formed in stages. Initially, it was developed as a hybrid of the asymmetrical mixture of the top-down, authoritarian, and

bureaucratic Italian colonial rule and local participatory and collective leadership elite culture. The formative political elite culture produced a shaky democracy plagued with corruption while maintaining clannism and internal and external political patronage. Then, the military rule introduced the ideology of socialism, dictatorship, and the related violence that followed, until its collapse in 1991. After the state's collapse, the previous culture continued by the warlords during the civil war can be characterized by anarchy, lawlessness, and strong foreign patronage. The final stage of the ruling elite political culture's historical evolution was acquired in 2000 through clan-power sharing. Hence, the resultant culture is an assortment of the accumulation of all the above cultures since 1956. However, its main elements are the clannization of politics and pervasive commercialization of politics, violence and rigging elections, and strong foreign and local patronage. Having acquired this culture, politicians swing between instrumentalizing clannism, Islamism, and nationalism to serve their self-centric interest. Finally, recovering the Somali state depends primarily on transforming the above-stated ruling elite political culture and breaking the vicious cycle of state failure. How to break this political culture and reform institutions that are reproduced? These are questions that require comprehensive academic studies to reform a viable Somali state.

Notes

[1] Terrence Lyons and Ahmed Samatar, *Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction (*Brookings Occasional Papers, 1995), 8.

[2] African watch committee, 'Somalia: A Government at war with its own people' (Human Rights Watch; 1st Edition (June 1, 1990).

[3] Abdurahman Abdullahi, *Making Sense of Somali History, Volume one* (Adonis & Abbey, 2017), 196.

[4] Somali tradition has two components: clan and Islam. Both elements have been used to mobilize the population for war and peace.

[5] Interpeace, *History of Mediation in Somalia since 1988*. Research for Peace Program. https://www.interpeace.org/wp-content/uploads/2009/05/2009_Som_Interpeace_A_History_Of_Mediation_In_Somalila_Since_1988_EN.pdf (accessed on May 27, 2020), 10.

[6] 4.5 clan power-sharing was adopted in the Somali National Peace and Reconciliation Conference held in Djibouti in 2000. This formula allocated parliamentary seats equally to 4 major clans and half of the seats to collections of other smaller clans.

[7] All state-building milestones are not achieved, such as completing the constitution, security arrangement, and democratic election.

[8] See David Laitin and Said Samatar, *Somalia: Nation in Search of a State* (Westview, 1987).

[9] These scholars considered Somalia a nation that can quickly build a state because of its people's homogeneous nature. See Neil Joseph Smelser, *Toward a Theory of Modernization* (New York: Basic Books, 1964), 268-274, Marion Levy, *Social Patterns and Problems of Modernization* (Englewood Cliffs, New Jersey: Prentice-Hall, 1967), 189-207.

[10] The title of the book "Somalia: Nation in Search of a State" by David Laitin and Said Samatar expresses this phenomenon very well.

[11] Mohamed H. Ingiriis, *"Who Assassinated the Somali President in 1969? The Cold War, the Clan Connection, or the Coup d'Etat"*. *African Security*, 10(2), 2017, 131–154.

[12] An example of this rift is the adopted secular family law, which was contrary to Islamic law. Moreover, the regime attempted to eliminate clan elders' role and offered new titles such as "*Nabadoon*," among others.

[13] Mohamed H. Ingiriis. *The Suicidal State: The Rise and Fall of Siad Barre Regime, 1969-1991* (UPA, 2016).

[14] Abdurahman Abdullahi, Making Sense of Somali History, volume two. Adonis &Abbey, 2018, 156-164.

[15] See the note, "the single most important immediate factor responsible for Somali Catastrophe is the nature of political leadership." Hassan A. Mire, "On Providing for the Future." *The Somali Challenge: From Catastrophe to Renewal*, edited by Ahmed Samatar (Lyne Rienner Publisher, 1994), 23.

[16] Many works of literature have been produced on the subject of elite failure in Africa. Mostly tailored these studies to the concepts of "extraversion" and elite dependence on former colonial powers. See Samir Amin, *Accumulation on a World Scale: A Critique of the Theory of Underdevelopment* (New York and London: Monthly Review Press, 1974), Also, Jean-François Bayart and Stephen Ellis, "Africa in the World: A History of Extraversion." *African Affairs*, Vol. 99, No. 395, 2000, 217-267.

[17] Quoted in Danwart A. Rustow, *A World of Nations* (Washington, D C: Brookings, 1967), 135.

[18] John Higley and Jan Pakulski, Pareto's Theory of Elite Cycles: A Reconsideration and Application. Available from Pareto"s Theory of Elite Cycles: A Reconsideration and Application (ecpr.eu) (accessed on January 23, 2021)

[19] Abdurahman Abdullahi, 'Revisiting Somali Historiography: Critique and Idea of Comprehensive Perspective.'*Journal of Somali Studies*, Volume 5, 1-2, 2018, 31-59. Also, Tobias Hogman, "Stabilization, Extraversion, and Political Settlement in Somalia." The Rift Valley Institute, 2016.

[20] See Thomas Hodgkin, *Nationalism in Colonial Africa* (London: Frederick Muller, 1956).

[21] Abdalla Omar Mansur, "Contrary to a Nation: The Cancer of the Somali State." In *the Invention of Somalia* edited by Ali Jumale (The Red Sea Press, 1995), 107-116.

[22] Chinua Achebe, *The Trouble with Nigeria* (Fourth Dimension Publishing Co, 2000), 1.

[23] These scholars include Plato, Aristotle, St. Thomas, Aquinas, Machiavelli, Montesquieu, Rousseau, Max Weber, Foucault, and Marcuse. Italian scholars like Vilfredo Pareto, Gaetano Mosca, and Robert Michels greatly influenced the elite theory in the Western tradition.

[24] Edward Tylor, *Primitive Culture, Vol 1* (New York: J.P. Putnam's Son, 1871).

[25] Orlando Patterson, "Making Sense of Culture." The Annual Review of Sociology 2014. Available from https://scholar.harvard.edu/files/patterson/files/making_sense_of_culture.pdf (accessed on Jan.15, 2020).

[26] Andrew Riemann, *Introduction to Culture Studies: Introductory activities for exploring and comparing cultures* (Intergraphica Press, 2013), 5.

[27] Carol Frieze, Lenore Blum, Orit Hazzan and M. Bernardine Dias, "Culture and Environment as Determinants of Women's Participation in Computing: Revealing the 'Women-CS Fit'." Available from https://www.cs.cmu.edu/~cfrieze/women@scs/SIGCSE_06_final.pdf (accessed on January 15 2020).

[28] Tylor, *Primitive Culture.*

[29] Kawan J. Allen, "Expressive Culture," *The Department of Cultural References*, accessed January 16, 2020, http://tammysgordon.org/DCR/items/show/55 (accessed on October 12 2020).

[30] John J Macionis and Linda Marie Gerber, *Sociology* (Toronto: Pearson Prentice Hall, 2011), 53.

[31] See https://www.cliffsnotes.com/study-guides/sociology/culture-and-societies/material-and-nonmaterial-culture (accessed on January 16, 2020)

[32] [31]https://study.com/academy/lesson/cultural-symbol-definition-examples.html(accessed on July 14 2020).

[33] William Graham Sumner, *Folkways: A Study of Mores, Manners, Customs, and Morals (Cosimo Classics, 2007).*

[34] Enculturation is learning how to use the accepted patterns of cultural behavior that one's culture prescribes. Conversely, acculturation is the learning process where knowledge is transferred from one culture to another, usually more powerful ones. For example, colonialism, modernization, and globalization created intense acculturation of the people in the former colonies of the South.

[35] B. Howitt, And R. Julian, *Society, and Culture* (Heinemann, Second Edition, Sydney, 2009).

[36] David Matsumoto and Linda Juang, *Culture and psychology* (Jon-David Hague publisher, 2013),15

[37] Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (Berkley, CA: U. California Press, 1922).

[38] Chen, Jing (2016). *Useful Complaints: How Petitions Assist Decentralized Authoritarianism in China* (New York: Lexington Books, 2016), 165.

[39] Patrick H. O'Neil, *Essentials of Comparative Politics* (New York: W.W. Norton & Company, 2010), 35–38.

[40] Frank Bealey, *The Blackwell Dictionary of Political Science: A User's Guide to Its Terms, 1999),* 22–23

[41] What is politics? Available from https://www.macmillanihe.com/resources/sample-chapters/9780230363373_sample.pdf (accessed on January 15, 2020).

[42] Quoted by Bernard Crick, *In Defense of Politics* (London: Pelican Books, 1964), 16

[43] Harold Lasswell, *Politics: Who Gets What, When, and How?* (Meridian Books, 1951), 13.

[44] David Easton, *The political system: an inquiry into the state of political science* (University of Chicago Press, 1981).

[45] Lenin, V. I., *Collected Works. September 1903 – December 1904*, 1965.

[46] Crick, *In Defense of Politics*, 16.

[47] Larry Diamond, *Political Culture and Democracy in Developing Countries* (Lynne Rienner Publisher, 1994), 7.

[48] Leonardo Morlino, Dirk Berg-Schlosser, Bertrand Badie, Political Science: a global perspective (Sage Publications, 2017), 64–74.

[49] Trevor Munroe, *An Introduction to Politics: Lectures for first-year students (*Jamaica: Canoe Press, 2002), 3.

[50] Ibid, 8.

[51] Alice H. Eagly and Shelly Chaiken, *The Psychology of Attitudes* (Belmont USA: Wadsworth, 1993),1

[52] Attitudes, Political. https://www.encyclopedia.com/social-sciences/applied-and-social-sciences-magazines/attitudes-political (accessed on May 13, 2020).

[53] A.R. Khajeh-Sarvi, *Political Competition and Political Stability in Iran (*Tehran: Revolution Documents Center Publications, 2003), 339.

[54] Asaf Hussain, *Political Perspective on the Muslim World* (New York: Praeger, 1981),

[55] Abdurahman Abdullahi, "Tribalism, Nationalism, and Islam: The Crisis of Political Loyalty in Somalia." MA Thesis submitted to the Institute of Islamic Studies, McGill University, 1992, 7.

[56] Plato. *The Republic* (Tehran: Cultural and Scientific Publications, 1995), 202.

[57] John Higley, *Elite theory in political sociology* (the University of Texas at Austin, 2008), 3.

[58] See al-Mala's meaning in the Qur'anic translations of Pickthall, Yusuf Ali, Shakir, Arberry, and others.

[59] Weber M. *The theory of social and economic organization* (New York: Oxford University Press 1943).

[60] Prewitt K, Stone A. "The ruling elite." In Olsen ME, Marger MN, Eds. *Power in modern societies. Boulder* (Westview Press 1993).

[61] A. R. Khajeh-Sarvi, *Political Competition and Political Stability in Iran* (Tehran: Revolution Documents Center Publications, 2003), 339.

[62] Robert Putman, "Studying Elite Political Culture." Available from https://www.cambridge.org/core/journals/american-political-science-review/article/studying-elite-political-culture-the-case-of-ideology/2EE8F3FE3 (accessed on September 17, 2020).

[63] The strongest medieval Somali states were Ajuran Imamate in the south and Adal in Northern Somalia. See Abdullahi, *Making Sense of Somali History, volume one,* 59-62.

[64] Endalcachew Bayeh, "The Political and Economic Legacy of Colonialism in the Post-independent African States." *International Journal of Commerce, IT and Social Sciences,* Volume 2, issue 2 (February 2015). Available from https://www.researchgate.net/publication/273577309_ (accessed on January 22, 2020).

[65] Samuel Huntington, *The Change to Change: Modernization, development, and politics (*New York: Free Press, 1976), 58-60; 58-60.

[66] Other elites, such as economic elites, civil society elites, and professional elites, are crosscurrent.

[67] Terminologies of Islamists and non-Islamists are redefined in the unpublished paper, Abdurahman Abdullahi, "Theorizing Islam and Islamists in Somalia: Conceptions and Cultural Challenges."

[68] See National Transitional Charter, "The Islamic Sharia shall be the basic source for national legislation and any law contradicting Islamic Sharia shall be void and null," article 4: 4.

[69] Lee Cassanelli, *The Shaping of Somali Society: Reconstructing the history of a Pastoral People, 19600-1900* (University of Pennsylvania Press, 1982), 112.

[70] Diya-paying unit is derived from the Arabic language of *'diya'*; Somali, *'mag'*. See I.M. Lewis, "Force, and Fission in Northern Somali Lineage Structure." American Anthropologist, Available from https://anthrosource.onlinelibrary.wiley.com/doi/pdfdirect/10.1525/aa.1961.63.1.02a00060 (accessed on September 20, 2020).

[71] Ibid, 97.

[72] The 4.5 power-sharing formula was adopted in the Somali Peace and Reconciliation Conference held in Djibouti in 2000. It was founded to offer the main clan families equal shares in the parliament and to give amalgamation of the minority clans half of the share.

[73] Abdullahi, Tribalism, Nationalism and Islam, 37-39.

[74] I.M. Lewis, *Pastoral Democracy: A Study of Pastoralism and Politics among Northern Somali of the Horn of Africa* (LIT Verlag, 1999).

[75] I.M. Lewis, *A Modern History of Somalia: Nation and State in the Horn of Africa (*Longman, 1980), 166-67. Also, Abdullahi, *Tribalism, Nationalism, and Islam*, 36-37.

[76] Sylvia Pankhurst, *Ex-Italian Somaliland* (London: Watts & Co., 1951), 214.

[77] Abdullahi, *Making Sense of Somali History, Volume two*, 145.

[78] Lewis, *Modern History of Somalia*, 152.

[79] Abdinoor Abdullahi, "*Constructing Education in the Stateless Society: The Case of Somalia." A* Ph.D. thesis submitted to the University of Ohio, 2007, 25.

[80] Sheikh Yusuf Al-Kownayn (Aw-Barkhadle) is one of the oldest known scholars of Islam who propagated Islam in Somalia around the 13th century. Little is known about his biography; however, I. M. Lewis reconstructed some insights from oral traditions and findings of Cerulli in Harrar. His tomb is located at Dogor, about 20 km from Hargeysa. See I.M. Lewis, *Saints, and Somalis: Popular Islam in Clan-based Society (The Red Sea Press, 1998)*, 89-98.

[81] This scholarship package encompasses free education offered by the learned scholars and the community members' free accommodation. This system, called *Jilidda Xer-cilmiga* (feeding seekers of knowledge), founded that cities' dwellers to provide food for the Islamic studies' rural students.

[82] See the verse from the Qur'an (9:122), "and it is not proper for the believers to go out to fight (Jihad), all together. Of every troop of them, a party only should go forth, that they may get instructions in the Islamic religion, and that they may warn their people when they return to them, so that they may beware (of evil)."

[83] Most scholars fail to distinguish between the original Sufi order and their later derivatives. Sometimes these Sufi orders are said to be three, making *Salihiyah* a separate Order from *Ahmadiyah* and neglecting the *Rufaiyah* order's existence. See David Laitin and Said Samatar, *Somalia: Nation in Search of a State* (Westview, 1987), 45.

[84] Abdurahman Abdullahi, *The Islamic Movement in Somalia: A Study of Islah Movement, 1950-2000* (Adonis & Abbey, 2015), 39-42

[85] Abdurahman Abdullahi, *Making Sense of Somali History, Volume one* (Adonis &Abbey, 2017), 101.

[86] Some of these schools are Russian Banadir High School, Italian schools, and Saudi Islamic Solidarity School.

[87] Moḥamed Sharif Moḥamūd, "*Abdirizāq Hāji Hussein, Rais Wasāra al-Somāli (1964-1967),* 2009," available from http://arabic.alshahid.net/columnists/6110 (accessed on April 21, 2010).

[88] A fascist regime ruled Italy from 1922 to 1943, a far-right ideology based on racism and authoritarianism.

[89] Abdurahman Abdullahi, Tribalism, Nationalism, and Islam, 63.

[90] This terminology used by Salah Mohamed means that granted of establishing schools and even local organizations. The fascist rule prohibited these activities. See, Salah Mohamed Ali, *Hudur and the History of Southern Somalia (*Cairo: Nahda Book Publisher, 2005), 358.

[91] The party had opened many adult night classes with its members' generous contributions, and by 1948, 65% of its classes were taught in English compared with 35% in Arabic. The Somali Youth League (SYL) was the first political party in Somalia. It was founded as a youth organization in 1943 and transformed into a political party in 1947. Being the major nationalist party, it became the ruling party (1956 -1969).

[92] See Paolo Tripodi, *The Colonial Legacy in Somalia: Rome and Mogadishu: From Colonial Administration to Operation Restore Hope* (Palgrave Macmillan, 1999), 59. There is a discrepancy with the statistical data of the numbers of student enrolment. Tripodi gives 2,850 while another paper gives 1,600 while. Lee Cassanelli and Farah Sheikh Abdulkadir, "*Somali Education in Transition" (Bildhan*, vol. 7, 2007), 91-125

[93] Tripodi, Ibid, 59.

[94] Lewis, *A History of Somalia*, 140.

[95] Somalization of administration was a program giving Somalis responsibility in administering the country through training and coaching by Italian administrators. The significant difference in the new elites' administrative style and nurturing is evident in the British and Italians' two colonies under the UN trusteeship. See Tripodi, *The Colonial Legacy*, 75.

[96] Lewis, *A History of Somalia*, 141.

[97] Abdirahman Ahmed Noor, "Arabic Language and Script in Somalia: History, attitudes, and prospects." Ph.D. diss., Georgetown University, 1999, 52.

[98] "In 1960, the year of independence, only 27 seven Somalis would receive university degrees in Italy; one in medicine, six in political science, one in social science, nine in economics and business administration, one in journalism, three in veterinary medicine, two in agronomy, one in natural science, one in pharmacy, and one in linguistics." See Mohamed Osman Omar, *The Road to Zero: Somalia's Self-destruction (*HAAN associates, 1992), 45.

[99] Saadia Touval, *Somali Nationalism: International Politics and the Drive for Unity in the Horn of Africa* (Cambridge: Cambridge University Press, 1963), 64.

[100] Ahmed Samatar, *Socialist Somalia: Rhetoric and Reality* (London: Zed Press, 1988), 47.

[101] Luigi Pastaloza, *The Somali Revolution (*Bari: Edition Afrique Asie Amerique Latine, 1973), 350.

[102] Laitin and Samatar, *Somalia: Nation*, 78.

[103] Samatar, *Socialist Somalia*, 78.

[104] The most notable Islamist scholars were: Sheikh Ali Sufi, Sayid Ahmad Sheikh Muse, Sheikh Abdulqani Sheikh Ahmad, Sheikh Nur Ali Olow, Sheikh Mahamad Ahmad Nuur (Garyare), Sheikh Mohamad Moallim Hasan, Abdullahi Moallim, Sheikh Abdirahman Hussein Samatar, Sheikh Ali Ismael, Sheikh Ibrahim Hashi, Sharif Mohamud, and others.

[105] This unification did not last long, and many members of Wahdah quit Ittihaad and reorganized themselves. This group has made a great effort in working with SNM during the difficult period of the civil war. They have focused their work on the refugee camps and later influenced the Somaliland Constitution and flag. The author interviewed Ismail Abdi Hurre on August 14, 2009, in Hargeysa, Somaliland.

[106] Abdurahman Abdullahi, 'The Islah Movement in Somalia: Islamic Moderation in War-torn Somalia. Available from https://www.hiiraan.com/oct2008/ISLAH.pdf (accessed on October 4, 2020). Also, see Andrew McGregor, 'The Muslim Brotherhood in Somalia: An Interview with Islah's Abdurahman M. Abdullahi (Baadiyow). Terrorism Monitor, volume: 9 issue: 30, July 29, 2011.

[107] Sheikh Sharif and Hassan Sheikh (2009-2017) regimes were considered to belong to the Islamic persuasions.

[108] See Abdullahi, Theorizing Somalia: Islam and Islamists.

[109] Alberto Alesina; Paola Giuliano. '*Culture and Institutions'*, IZA Discussion Papers, No. 9246, Institute for the Study of Labor (IZA), Bonn, 2015.

[110] According to French sociologist, Emile Durkheim, mechanical solidarity refers to connection, cohesion, and integration born from homogeneity, or

similar work, education, religiosity, and lifestyle. On the other hand, organic solidarity is born from the interdependence of individuals in more advanced societies. For more details, see Emile Durkheim, *The Division of Labour in Society*. Trans. W. D. Halls (New York: Free Press, 1997)

[111] Ignaz Goldziher, *Muslim Studies*, vol. 1. (London: George Allen & Unwin Ltd., 1910), 22.

[112] Quoted in David Laitin, *Politics, Language and Thought: The Somali Experience* (The University of Chicago Press, 1977), 26.

[113] Abdurahman Abdullahi, *Recovering the Somali State: The Role of Islam, Islamism and Transitional Justice (*Adonis & Abbey, 2017), 67.

[114] Michael Bauman, "Law and Morality," available from http://www.equip.org/ article/law-andmorality/ (accessed on October 4, 2020).

[115] Ibn-Khaldun, *The Muqaddimah: An Introduction to History* (Princeton University Press, 1980), 305.

[116] Abdullahi, Recovering the Somali State, 81.

[117] Ronald Inglehart, *Culture Shift in Advanced Industrial Society* (Princeton University Press, 1990), 17.

[118] Pierangelo Isernia and Danilo Di Mauro, "The Bumble-Bee is Still Flying: Italian Political Culture at 50." Available from https://en.idi.org.il/media/ 6383/bythepeople_iserniadimauro.pdf (accessed on September 30, 2020).

[119] Ibid, 150.

[120] Edward Banfield, *The Moral Basis of a Backward Society* (Free Press, 1958), 83.

[121] Diego Gambetta, "Why is Italy Disproportionally Corrupt? A Conjecture." In *Institutions, Governance, and the Control of Corruption*. Edited by Kaushik Basu and Tito Gardella (Palgrave McMillan, 2018), 133.

[122] Corruption costs Italy 60 billion Euros or 4% of its GDP each year. Italy ranks equally corrupt as Senegal, Montenegro, and South Africa. See https://www.thelocal.it/20160127/italy-is-still-one-of-europes-most-corrupt-countries (accessed on September 8, 2020).

[123] Research Note: Party patronage in contemporary democracies: Results from an expert survey in 22 countries from five regions. European Journal of

Political Research. Available from https://openaccess.leidenuniv.nl/bitstream/handle/1887/46621/a23ff93a9bbc5d48e219e1c585e186485c48477b7ba1e29101ce134b907b5e2b.pdf?sequence=1 (accessed on September 8, 2020).

[124] Michael Calingaert, "Italy's Choice: Reform or Stagnation." Current History, March 2008, 105-111.

[125] Arend Lijphart, *Democracies: Patterns of majoritarian and consensus government in twenty-one countries*. (New Haven, CT: Yale University Press, 1984).

[126] Matthijs Bogaards, *Comparative Political Regimes: Consensus and Majoritarian Democracy* (Oxford Research Encyclopaedia and Oxford University Press, USA, 2016). Online Publication Date: Mar 2017, 4.

[127] Ibid, 145.

[128] The early culture of democracy abysmally deteriorated during the Sharmarke-Igal regime (1967-1969). The country was transformed into a one-party system, the SYL, under Premier Mohamed Ibrahim Igal in 1969. After the election, all members of Parliament joined SYL except former Premier, Abdirisaz Haji Hussein.

[129] Mohamed H. Ingiriis, "Who Assassinated the Somali President in October 1969? The Cold War, the Clan Connection or Coup d'état." African Security Journal, Volume 10, 2017.

[130] The anti-societal policies included diminishing clan elders' role, introducing forced secularism, and suppressing Islamic activism.

[131] See Abdurahman Abdullahi, "Women, Islamists, and Military Regime in Somalia: The New Family Law and its Implications" in Markus Hoehne and Virginia Luling (ed.), *Milk and Peace, Drought and War: Somali Culture, Society, and Politics* (London (Hurst & Company, 2010), 137-160

[132] A power struggle emanated within the military junta in the early years of the revolution. As a result, then Vice President General Mohamed Ainanshe, the Defence Minister Lieutenant Colonel Salad Gabeyre, and Colonel Abdulkadir Dheel were executed on 3 July 1972 on suspicion of involvement in a coup d'état in 1971.

[133] Abdullahi, *Making Sense, volume one*, 152. Also, Gebru Tareke. "The Ethiopia Somalia War Revisited." *International Journal of African Historical Studies* 33, no. 3, 2000, 615-34.

[134] The first four opposition movements were established in the 1980s. These are the Somali Democratic Salvation Front (SSDF), the Somali National Movement (SNM), the United Somali Congress (USC), and the Somali Patriotic Movement (SPM).

[135] Since SPRC in Djibouti in 2000, a quasi-democratic transfer of power has been occurring, and their clans selected members of parliaments. However, there was no direct election so far.

[136] Marsai Viktor, "Somali Elections 2016-2017: Business as usual or new hope?" National University of Public Service, July 2017. This paper quotes Nur Jimale Farah, the Somali Auditor General, who wrote that "Some votes were bought with $5,000, some with $10,000, and some with $20,000 or $30,000. The Auditor General told reporters that two seats cost their respective winners $1.3 million each." Available from https://www.researchgate.net/publication/319313837_Somali_elections_in_2016-2017_Business_as_usual_or_a_new_hope (accessed on October 10, 2020). The average cost paid by one of the presidential candidates on the night before the election was estimated to be $50,000.

[137] Somalia is ranked the lowest in the corruption perceptions index, ranking 180 (9/100). https://www.transparency.org/en/cpi/2019 (accessed on October 10, 2020).

[138] Abdullahi, *Making Sense, volume one*, 137.

[139] SYL corruption is well documented since the election of 1959. However, the most significant corruption was witnessed in the election of 1969. See ibid, 147.

[140] It is speculated that money to buy votes of the MPs was received from the rich Gulf countries, particularly UAE and Qatar. Election violence in the South-West state of Somalia was reported. See Amnesty International, Somalia: Use of Lethal Force to Quell Protests is Unjustifiable. Available from https://www.amnesty.org/en/latest/news/2018/12/somalia-use-of-lethal-force-to-quell-protests-in-baidoa-unjustifiable/ (accessed on October 10, 2020). Moreover, due to the Galmudug election of 2019, violence erupted between soldiers loyal to Ahlu-Sunna Wa-Al-Jama and the newly established administration. See https://www.somaliaffairs.com/news/close-to-10-killed-as-government-forces-ahlu-sunnah-fight-in-galmudug/ (accessed on October 10, 2020). Furthermore, Jubaland's conflict was continuing since its establishment having many faces.

[141] The USA and Italy orchestrated a policy of keeping Somalia aligned with the West. Their approach was to cultivate pro-Western orientation in the dominant SYL party. Reciprocally, this had warranted the SYL the support of the West to overshadow other parties in 1956. See, Okbazghi Yohannes, *The United States and the Horn of Africa: An Analytical Study of Pattern and Process* (Westview Press, 1997), 204-212.

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Somali Studies: *A Peer-Reviewed Academic Journal for Somali Studies, Volume 5, 2020, pp. 93-119*

Problems of the General Part of the Somali Penal Code

 Anton Girginov

Abstract

The Somali Penal Code [PC] came into force in 1964, almost 60 years ago. Over this period of time new crimes and complex forms of criminal activities appeared. This PC is expected to remain the main legal instrument in fighting crime. This situation dictates modernization of the Somali PC.

This article is focused on the General Part of the PC as more difficult, challenging and applicable to special penal laws as well. Improvement of some key provisions is proposed. The conservative nature of penal law has been taken into consideration. This is why abrupt changes are not recommended, as they might be counterproductive, especially in the current situation.

Keywords: Somalia, law, penal code, criminal offence, guilt, justification.

Introduction

The Penal Code of the Somali Republic [PC] was approved by Legislative Decree in December 1962, but came into force on 3 April 1964 when it replaced the 1930 Italian Code, then applicable in Somalia, and the Indian Penal Code of 1860, which was applied in Somaliland. This PC has been in force for almost 60 years. Over this period of time significant changes occurred. Penal law theory made remarkable progress. Also, new crimes and complex forms of criminal activities appeared. In response, the international community recommended and many foreign countries introduced a number of new penal provisions to oppose them.

The current situation dictates modernization of the Somali PC as well. It is expected to remain the main legal instrument in fighting crime. The de-codification policy, which has been followed lately[1], should not be encouraged, as it is likely to create difficulties to both lawmaking and application of the law. The innovation of the Somali penal law through special laws, though acceptable under Article 14 of the PC of Somalia, shall be truly exceptional and individually justified. In general, the necessary new penal provisions should be inserted in the Somali PC[2].

This article is focused on the General Part of the Somali PC as more difficult, challenging and applicable to special penal laws as well. Improvement of some key provisions is proposed. They concern the application of the PC, the criminal offence in general and the main justifications for crimes.

The conservative nature of penal law has been taken into consideration. This is why abrupt changes are not recommended, as they might be counterproductive, especially in the current situation. The aim of the recommendations is to ensure a smooth improvement of the Somali PC

which will not create serious difficulties to the judicial actors who shall apply this Code.

I. Application of the Penal Code

A. According to Article 3 (1) of the Somali PC, "*(Persons to Whom the Penal Law Is Applicable). Except as otherwise provided by national or international law [6' Const.], the Somali penal law shall be applicable to all, citizens or aliens, who are in the territory of the State [4 Const. 4' P.C.]*".

The initial words of this Paragraph "*except as otherwise provided by national or international law*" are hardly justifiable. They are misleading and it would be wise to delete them. Persons who seem to be excluded from the operation of the penal law in the territory of the State are those who enjoy procedural immunity until withdrawn[3]. They cannot be subject to any criminal repression: be prosecuted, tried, punished and/or detained, e.g. by the virtue of Article 31 of the 1961 Vienna Convention on Diplomatic Relations (Somalia acceded thereto on 29th March 1968).

However, this is not sufficient to conclude that the PC is not applicable to the persons who enjoy immunity. On the contrary, because the PC is applicable to their offences also, the accepting country, incl. Somalia, may expel such persons by declaring them *persona non-grata*. Otherwise, the accepting country would hardly have a solid legal basis to argue that their acts or omissions constitute unacceptable conduct deserving expulsion. Finally, such persons may be held criminally responsible when the sending party (country or international organization) decides to withdraw their immunity. If in such cases the sending party's withdrawal causes also the applicability of own penal law to the crimes of these persons, it would mean that the action of the PC is dependent on individual foreign decisions, which is absurd.

Actually, the immunity of the aforementioned persons makes sense only if the PC is applicable to them; otherwise, they do not need any immunity. Therefore, immunity presupposes the applicability of the PC. It is true that, after all, there would be no criminal repression against such persons. However, this is not an argument in support of the non-applicability of the PC to them. Children under fourteen years of age are also free of any criminal repression. This does not mean, though, that the PC is not applicable to them. If it were not, they cannot benefit from its Article 59 (Persons under Fourteen Years of Age): "*Whoever, at the time he committed an act, had not attained fourteen years of age [177 P.C.], shall not be liable [47 P.C.]*." The fact that only one provision exists, this favourable one, does not change anything. The PC, nevertheless, is applicable to such children as well.

This is why the PC needs a much simpler provision than the existing Article 3 (1); it should be a provision without any conditions in its text. Good examples are the corresponding German and French penal rules. Thus, pursuant to Section 3 of the German PC, "*German criminal law shall apply to acts committed on German territory"*. Likewise, Article 113-2 (1) of the French PC reads: "*French Criminal law is applicable to all offences committed within the territory of the French Republic"*.

B. Article 3 (2) of the PC reads as follows: *The Somali penal law shall also be applicable to citizens or aliens [4 P.C.] who are outside the territory of the State [4 Const.], within the limits established by the said law [6, 7, 8, 9 P.C.] or by international law [6' Const.]*[4].

The last words in the text "or by international law" might be deleted. They mean that international law may directly determine the extraterritorial application of the PC. However, this is not true. Actually, it is the other way around.

Contemporary international law and, particularly, multilateral conventions require from Parties to produce criminal law provisions through their parliaments for the purposes of criminalizing certain conducts in their PC-s (acts and/or omissions) and/or expanding the extraterritorial application of their PC-s to such conducts. This is the only way to make the own PC applicable "*outside the territory of the State*" as only the national law can yield such a result – on its own or through the implementation of the respective international convention. If such a convention exists, it solely puts in motion the national legislative mechanism for the production of the result.

For example, Article 15 (a) of the UN Convention against Corruption reads: "*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties*..." Obviously, until the adoption of the said measures by the national legislation, the respective criminalization cannot occur. Also, pursuant to Article 42.1 (b) of the same Convention, "*Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when ... The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed*". Obviously, until the adoption of the said measures by the national legislation, the respective criminal jurisdiction cannot be established.

Moreover, when it comes to the extraterritorial application of national criminal laws, conventions, often, give only recommendations for

establishing extraterritorial jurisdiction. Thus, Article 105 of the UN Convention on the Law of the Sea stipulates that

> *"On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed..."*.

Therefore, the country which apprehends the pirates may (not shall) establish own extraterritorial jurisdiction over the piracy crimes in this situation. Hence, the duty of Somalia as a Party to this Convention is to solely consider the option of expanding its national criminal law to acts of piracy in the aforementioned situation. It is unthinkable that the Somali legislator would state in general that it unconditionally accepts in advance whatever such multilateral conventions may recommend by converting it in advance into mandatory law.

Actually, it might be only the other way around; Somalia is not obliged to follow recommendations, such as the one in Article 105 of the UN Convention, let alone accept their direct application by making them mandatory legal provisions without any the legislative approval of each by the Parliament. The acceptance of Article 105 depends on the national penal law provisions, which govern the territorial application of the penal law as the recommendations might be materialized only through their texts. In view of thereof, the parallel reference to international law in Article 3 (2) of the PC is redundant and misleading. This is why it should be abandoned.

II. The Criminal Offence

A. The *Actus Reus* (the punishable conduct)

When does any punishable conduct (act or omission) exist? As preparation has not been criminalized [see Articles 18.1 and 76 of the PC], the attempted crime (the attempt) is the first act/omission to indicate the existence of punishable conduct.

According to Article 17 of the PC, "*(Crimes Attempted) A crime shall be considered attempted where the act or omission on the part of the offender, unequivocally directed towards causing the event [19 P.C.], has not been entirely completed, or where the event has not resulted [125 P.C.]*".

To define attempt the text resorts to the so-called 'material criterion'. Essentially, this criterion means that the interest (value), protected by the criminalization of the respective act or omission, is in some immediate danger. This danger to the object of the crime has not yet amounted to any direct negative consequences on it. This criterion successfully distinguishes attempt from accomplished crime.

However, the bigger problem, usually, is to distinguish between preparation (unpunishable under this PC) and attempt rather than attempt and accomplished crime. If this is valid also for Somalia, the attempt should be delineated more clearly in the text of this Article. It is to be particularly highlighted that, unlike, preparation, attempt is a part of the respective accomplished crime (this is why the latter consumes the former), "*a commencement of the performance"* – Article 53 (1) of the Indonesian PC, "*perpetrating all or part of"* its constitutive acts– Article 16 (1) of the Spanish PC. It, more or less, contains the ingredients of the accomplished crime provided by the legal description of the crime, consumes them being "*a beginning of its execution"* –

Article 121-5 of the French PC. An attempt is the undertaking of the initial perpetration of the crime; the start of its consummation. It is an activity which, more or less, fulfils the legal description of the respective crime and in particular, the specific *conduct* (the 'executive conduct') of the crime outlined in the legal description – Article 13 (1) of the Polish PC. Unlike attempts, preparation, though also an overt act, does not go that far to begin satisfying the legal indications of the executive conduct of the crime[5].

Thus, attempt exists if the offender's activity has begun satisfying the legal indications of the specific conduct of the respective crime. This is the so-called formal or technical criterion for the existence of attempt. If, however, the executive conduct is outlined too broadly or/and unclearly, e.g. as in the case of murder (Article 434 of the PC), then the material criterion under the present text of the Article 17 comes into service as an auxiliary one. This material criterion, actually, indicates the satisfaction of the 'formal' one. It assists the interpreter of law in finding whether or not a given activity has begun fulfilling the legal description of the specific criminal conduct. The fulfilling of this legal description occurs and therefore, the attempt takes place, whenever the activity produces an immediate danger to the interest (value), protected by the criminalization of the respective act or omission. Otherwise, if such danger has not yet been produced, no attempt takes place.

B. The *Mens Rea* (the Forms of Guilty Mind)

Article 24 (1) of the PC reads that "*A crime:*
a) *is with criminal intent, where the harmful or dangerous event which is the result of the act or omission is foreseen and desired by the offender as a consequence of his act or omission, and where the law makes the crime dependent upon such event [f. ex.: art. 434 P.C.];*

b) *is preterintentional or beyond the intent, where the harmful or dangerous event arising from the act or omission is more serious than the one desired by the offender [f. ex.: art. 441 P.C.]* ".
c) *is with culpa, or against the intent, where the event, even if foreseen, is not desired by the offender and occurs as a consequence of negligence, imprudence, lack of skill, or non-observance of laws, regulations, orders or instructions.*

Only *dolus directus* (the direct intent, commission with purpose) has been defined: in letter "a" of the text. *Dolus eventualis* (the indirect intent, committed knowingly) is missing. It is neither in letter "b", as the description there of "preterintentional (beyond any intent)" does not fit in any way what is meant by indirect intent, nor in letter "c", as its text envisages imprudence (recklessness), which is quite different, and negligence. Obviously, this gap should be filled in with a definition of indirect intent.

This intent, on the one hand, occurs where the offender does not desire the detrimental consequences of his act or omission as it is the case with the direct intent. On the other hand, indirect intent differs from imprudence (recklessness) as well. It is true that the two sorts of guilt (or the two *mens rea* forms/the two guilty minds) look alike. The common peculiarity of both, the indirect intent and the imprudence, is that the offender does not want the probable detrimental consequences of his act or omission although he knows that they are likely to occur.

However, when it comes to the indirect intent, the offender, in contrast to the case with the imprudence, is not against the occurrence of the detrimental consequences of his act or omission. Actually, he is indifferent to them, agrees with their occurrence as a probable additional (or side) result to what he wants to achieve through his conduct. In the case of indirect intent, the offender realizes that the probable

additional/side result is not excluded in his individual situation. The offender wants a specific outcome but knows that his action could also result in another outcome: some detrimental consequence(s). Nevertheless, he chooses to proceed with this conduct leading to the desired outcome.

For example, somebody wants to shoot a particular person in a crowded restaurant. The perpetrator would be aware that in shooting a particular person, he also runs a very real risk that other people in the restaurant are likely to be harmed, but, nevertheless, proceeds to shoot. If someone else dies as a result of the shots being fired, the court will find that the perpetrator had the indirect intent and will convict that person for murder (i.e. although the accused did not have the intention to kill that particular individual). The offender, therefore, is aware of the concrete probability of the occurrence of specific detrimental consequence(s) as an additional/side result of his planned conduct but being indifferent to it, proceeds with his activity.

The imprudence (recklessness) has quite a different meaning. Hence, it cannot cover indirect intent. The imprudent/reckless offender (the road traffic offences are the typical examples) is not any indifferent to the detrimental consequences of his act or omission. Actually, he is against their occurrence. The sole reason to perform his act/omission, which eventually led to them, was his conviction that they, though possible, would not occur in his individual situation. The offender was in his mind unfoundedly sure that (thanks to his own abilities or another excluding factor, the reliability of which was grossly overestimated) the likely detrimental consequence(s) would successfully be prevented from occurring. This is why, contrary to the case with indirect intention, the offender is not aware of the concrete probability of their occurrence.

III. Justifications (The Precluded Wrongfulness)

A. Private Defence

As per Article 35 of the PC, "*Whoever has committed an act, having been compelled by the necessity of defending his own or another person's right against the actual danger of an unlawful injury, shall not be punishable provided that the defence is proportionate to the injury [37 P.C.]*".

A.1. According to the text of this provision, the conduct of the actor may be qualified as a 'private defence' only if s/he "*has committed an act having been compelled by the necessity of defending his own or another person's right*". **Per argumentum a contrario**, if the defence was not necessary, e.g. the actor or the other assaulted person had the chance to run away from the assailant, no private defence may exist and no one is authorized to harm the assailant even to stop him/her. Hence, if the assailant is guiltily harmed, the act would constitute a crime. Nowadays, though, such necessity is not required; it is sufficient that the assault is contrary to the law to have the right to harm the assailant.

Therefore, the defence is also allowed when the actor or the third person can run away and if they harm the assailant within the boundaries of private defence, the act would be justified and would not constitute any crime. As per Section 22 (4) of the Hungarian PC, "*the person assaulted shall not be liable to take evasive action so as to avoid the unlawful attack*"; s/he is always allowed to defend him/herself against any such attack. This is why the words, indicating the subsidiarity of defence (when there are no other means to protect the endangered interest), should be deleted.

A.2. As everywhere, the defence shall be proportionate to the assault, which it repels. The text of Article 35, however, requires that *the defence is proportionate to the injury*.

Obviously, the word “injury” should not be used as it wrongly implies that the defending actor or the third defended person, if any, should be harmed to some extent before starting the defence; the harmful consequences of the assault should have begun occurring. This is not necessary, though; the start of the activity constituting the assault is sufficient. Either way, it is not possible to compare one activity, such as the defence, with the result of another, namely: the consequences of the assault. Actually, the opposing forces of defence and assault and the opposing values, targeted by defence and assault, are comparable.

For many years, until a century ago approximately, the private defence was seen as a defensive war, which had to be ‘successful’. This is why only the opposing forces of defence and assault where compared: the stronger the assault, the stronger the defence might be. The private defence could be as strong as it is necessary to repel the assault. As a result, in 1920, the Supreme Court of Germany accepted that an apple thief might be killed if no other means exist to protect the apples from being taken away[6].

To avoid such conclusions nowadays the opposing values, targeted by defence and assault, are also compared. The contemporary concept is that private defence shall be ‘successful' but to the extent, it is ‘just'. The comparison of both the opposing forces and the opposing values as well has been made in the text of the law in Azerbaijan (Article 36.3 of the PC), Bulgaria (Article 12.2 of the PC), Uzbekistan (Article 37.2 of the PC). The private defence laws of these countries do not require any strict proportionality at all. As a result, the rule of the boundaries of private defence has the following general meaning:

- the force of the defence shall not be strikingly out of proportion compared to the assault force and
- the value of the interest harmed by the defence shall not be strikingly out of proportion compared to the value of the interest endangered by the assault as well.

The alternative option is to generally state in the text of the applicable law that the defence shall be carried out in accordance with the circumstances, e.g. "*to ward off the attack by means that are reasonable in the circumstances*" (Article 15 of the PC of Switzerland). Such text, containing no comparison criteria, is less specific but provides more freedom for its interpretation, both adequate and inadequate, regretfully.

B. Necessity

Article 36.1 of the PC reads as follows: "*Whoever has committed an act, having been compelled by the necessity of saving himself or others from actual danger of serious bodily injury, and where such danger has not been voluntarily caused by him or could not otherwise be avoided, shall not be punishable provided that the act is proportionate to the danger, and the person is not legally bound to expose himself to such danger"*.

According to this text, the conduct of the actor may be qualified as a necessitous act only if the danger "*has not been voluntarily caused by him*". P**er argumentum a contrario**, if the danger has been caused by him, the unlawfulness of his saving action shall not be precluded. It is unjustified and therefore, a prohibited action.

The Penal Codes of a limited number of foreign countries also contain such a 'no provocation' requirement. For example, Article 54 of the Italian PC and Article 25 of the PC of Bosnia and Herzegovina also prescribe that the state of necessity shall not have been deliberately

created by the actor to produce permission for himself to cause the harm, which occurred, under the disguise of a rescue operation.

However, any such deliberate creation of the danger together with the causation of the necessary final harm by the same person is regarded as an intentional crime everywhere. It is a crime even in countries where the 'no provocation' requirement does not exist at all. Therefore, the non-compliance with this requirement is not needed to make a crime out of such person's conduct. It follows that the 'no provocation' requirement (if it exists at all), does not contribute in any way to the criminalization of the person's conduct.

Actually, the 'no provocation' requirement criminalizes solely the provoked necessitous act of the person by excluding it from the justification under Article 36.1. It follows that the unlawfulness of such an act is not precluded. Hence, any infliction of harm for averting the danger, which has been previously provoked by the same actor, is prohibited. If nevertheless, such a necessitous act is performed, it may be repelled as unlawful through the private defence under Article 34 of the PC.

In this sense is also the provision of 3.2.2 in CHAPTER 3, Protection of Persons and Property at Sea and Maritime Law Enforcement of the US Commander's Handbook on the Law of Naval Operations. The provision allows foreign ships in distress to enter safe harbours but only if the conditioning distress is "*real and not contrived*"[7]. Otherwise, if it has been contrived (deliberately created), the foreign ship is prohibited from entering the harbour. If the ship tries to enter, it might be stopped by force…

The problem, however, is that such dangers rarely affect only the persons who have deliberately created them to misuse the state of necessity.

Usually, the danger affects third persons (solely or together with the creating person). Such persons have never participated in the creation of the danger, let alone for the purpose of opening the way to producing the final detrimental result. In view of thereof, it makes no sense to disallow the protection of the third persons. If the captain of the ship causes distress, the passengers shall not suffer: he shall be authorized to save them by entering the harbour and punished afterwards for the illegal border crossing into the country.

Exceptionally, the actor may have created such a danger, which affects him only. Again, however, it is difficult to argue that he shall be prohibited from protecting himself by excluding his necessitous act from the justification under Article 36.1. On the one hand, such exclusion may be counterproductive as it would further complicate the law on necessity. On the other hand, the civil law obligation, deriving from the situation, might be a sufficient deterrent. Because the actor was the intentional creator of the danger as well as the beneficiary of his own necessitous act for averting this danger, he shall pay the compensation to the victim of the final detrimental result, as this victim is the one at the expense of which the endangered values of the actor were rescued. This 'zero' benefit alone is likely to dissuade him from undertaking the whole operation.

Secondly, the necessitous act of the person, who provocatively created the conditioning situation, constitutes his positive post-criminal behaviour, actually. Contemporary penal law encourages such behaviour of offenders in the implementation of its growing preventive function. The necessitous act in question is such behaviour also; it is very similar to the voluntary withdrawal from attempt under Article 18.2 of the PC. Moreover, the two post-criminal acts may even coincide as the voluntary withdrawal from attempt might be performed through a necessitous act as well. For example, late in the evening, the actor has given poison to a whole family;

they are likely to die in an hour or so. The only way to save them is to break into the nearest pharmacy shop and take medicine, which would neutralize the given poison. Obviously, no one shall be allowed to stop the actor from saving the poisoned family in this only possible way.

Further on, since such a necessitous act, which constitutes a voluntary withdrawal, shall be allowed, there is no point in prohibiting other necessitous acts for the sole reason that they do not constitute any voluntary withdrawal. On the contrary, as the only peculiarity of their conditioning danger is the lack of the actor's desire to produce the respective derivative harm, this actor shall **per argumentum a fortiori** be allowed to prevent its occurrence.

Thirdly, the comparison of the provoked state of necessity with the **actio in libera in causa** [Latin: *produced incapacity*] under Article 49 of the PC also supports the conclusion that the necessitous act shall not be prohibited and repelled through the private defence. The two situations look very much alike. Both situations consist of two consecutive acts. The same actor performs them: the first act initiates a process leading to some harm while the second one materializes the existing danger by converting it into some actual harm.

However, when it comes to the *actio in libera causa*, the actor is held penally responsible only for his former act bringing himself to the situation of insanity/incapacity. He is not responsible for his latter act, although it is harmful as it does not save anything at all. This following act is unlawful and therefore, is an act, which may be stopped through the private defence. In contrast, the actor who provoked the state of necessity should not be stopped from performing his second act of saving the endangered value as this act is even socially useful. Because the criticized 'no provocation' requirement in Article 36.1 prompts the opposite conclusion, its removal from the text is strongly recommended.

This legal requirement might be a source of confusion; it signifies a bad understanding of the legal institution of necessity. It is counterproductive to require that the danger shall not have been created by the actor who averts it to protect the endangered interest. Even in such a case, he is authorized to protect the interest by causing necessary harm. As the actor saves this interest, his activity is socially useful and shall not be prevented through any private defence as 'unlawful conduct'. His rescue act is no less useful than similar acts by persons who have not caused the danger.

This does not mean, though, that in this situation, the actor does not commit any crime at all. The only problem is not to confuse his act of averting the danger with his previous criminal act of creating this danger and eventually resulting in the occurrence of some necessary harm. Obviously, he would be responsible for this previous act. The complication in the causal connection cannot preclude its criminality.

C. Justified (Reasonable) Risk

C. 1. The Somali PC contains no rule of justified or reasonable risk. In part, such a justification exists in Article 41 (3) of the Iraqi PC which outlines the medical risk. Other countries have rules on the economic risk, e.g. Article 13a of the Bulgarian PC. The PC-s of third countries have provisions codifying all risks into a single justification, e.g. Article 41 of the Russian PC.

This justification might be considered for introduction in the Somali PC as well. This is why a short explanation of it follows.

C.2. The Essence of Risk

To take a risk means to stand the possibility of causing some undesired harm while in pursuit of some desired benefit. The undertaking of “risky” activities is generally encouraged in cases when the desired result could

be socially useful. For example, society accepts the risk of speeding ambulances and fire engines in order to save life and property, but it does not accept a similar risk posed by a reckless motorist fleeing the police. Hence, when some risky act is under consideration, in deciding whether it is justifiable, its social purpose is of utmost importance.

"Danger" and "risk" are not synonyms. Risk always involves some danger, but not any danger constitutes a risk. When it comes to risk, the accompanying danger is never wanted. It is solely a necessary condition that the actor must tolerate while attempting to achieve some desired result. Therefore, the risk is a combination of danger and opportunity to achieve the result. This result shall be socially useful in order to make the justification of the act possible at all.

The risky act may end up with success. This happens when its overall balance is positive: the desired result has been achieved without any accompanying harm at all, or it has been accompanied by significantly smaller harm. In such situations, the act committed is socially useful, and the actor is likely to be granted some award only. Such risky acts are not relevant to criminal law, in general.

Certainly, a risky act may be unsuccessful: the desired result has not been achieved at all, or though achieved, has been accompanied by greater harm. Such situations of an overall negative balance require checks as to whether the risk was worth taking since it might have ended up in a failure. The production of the harm caused is generally prohibited by some provision of the PC and it must be determined as to whether there are sufficient grounds to exceptionally justify the performed risky act.

Thus, risk alone is not sufficient to make the act a criminal law issue. To this end, it is also necessary that the created danger should eventually materialize by causing some loss. For example, a driver of a fire engine

rushing to a fire is justified in exceeding the speed limit. Even with sirens wailing, the speeding engine may raise the danger of a traffic accident, but the risks of harm are greater if time is lost getting to the fire. In this situation, the driver's behaviour executes special permission for fire engines to take the risk of a traffic accident. The permission excludes the applicability of the general administrative restrictions regarding the speed. At this point, though, the driver's behaviour has not yet become any criminal law problem. It may become such a problem only if some serious harm actually occurs, e.g. the driver crashes into another car and cannot reach the burning building at all. These undesired consequences make the unsuccessful risky act fall under the legal description of some crime (e.g. damage or destruction of another person's property or economic mismanagement); thus, given the harm it causes, the act corresponds to the criminal law prohibition, expressed by the legal description. Only then the act actually becomes a subject of interest to criminal justice. Hence, the act must otherwise constitute a crime, if it were not a risky one. As any other justification in criminal law, justified risk "*simply reflects a permission - extended for whatever reason - to do what the criminal law otherwise forbids*"[8].

C. 3. Conditions

It would never be possible to fully avoid the risk of failure and undesired harm in any sphere of life because it would mean to stop all expeditions, experiments, tests of new vehicles/technologies, investments, rescue operations. As almost all such activities pose some danger, it may follow that all of them shall be prohibited. However, this is not possible.

On the contrary, in the name of the progress society has to tolerate certain dangers which accompany medical interventions, military operations, production of many goods, banking activities, etc. Nowadays, with the development of complex technologies, risk became a part of the human

progress that plays an important role in financing, banking, commerce, construction works, transport, science that requires investment, undercover operations by police and other law enforcement agencies, etc. In some situations, heavy losses occur, namely: death, injuries, destruction of property, financial losses. Inevitably, they will occur in the future. Nothing can fully prevent them from occurring.

In situations when serious harm occurs, competent judicial bodies shall make sure that the risky act was justifiable. For this purpose, they must find the right answer to the question as to whether it was worth taking the risk in the given conditions.If the answer is a positive one as the risky act meets the requirements for its undertaking, this risk is qualified as justified (also: permissive or reasonable). Such risk is unsuccessful but acceptable.

C.3.1. Conditions Relating to the State of Justified Risk

a. First of all, the state of risk can exist if there is some serious social need, which can be satisfied by achieving a specific result. There are two types of desired results that may justify any risk, incl. those that conclude with a failure. The first of them is to attain some significant positive change – knowledge, financial benefit, etc. through an expedition, experiment or investment, involving in any case possibility of loss. In such situations, the problem arises when and because society does not gain anything at all as the action results in inflicted losses only or it gains something but at the expense of significantly greater harm.

The other desired result that may justify a risk is to avoid some negative change – prevent damage from occurring through a rescue operation involving the possibility of losses. In such situations, the problem arises when and because the damage has not been prevented at all, as the action

resulted in inflicted losses only and the necessity rules are not applicable, or the damage has been prevented but at the expense of greater harm.

b. One is allowed to risk if there is no "non-risky" (not posing any danger) way to attain a socially useful objective that he wants. In view of this, justified risk resembles necessity as both are subsidiary in the aforementioned sense. In contrast to them, the private defence is not subsidiary since anyone is allowed to resort to it, even if he or the third person assaulted may run away.

c. The risk must be reasonable. It may be undertaken if it does not represent any pure adventure where the actor relies solely on luck to avoid failure demonstrating in this way insufficient concern for others. The actor should be aware that legal interests might be infringed, but his action is in pursuit of a socially useful goal. The risk should make sense. The planned action must be aimed at a result which is sufficiently serious and/or very likely compared to the possible harm.

The risk taken must be reasonable in accordance with two general criteria: a qualitative – how much the value of the desired result exceeds the value of the possible harm; and a quantitative criterion – the probability of achieving the desired result compared to the probability of causing greater harm. Thus, according to Article 13a (2) of the Bulgarian PC, "*In deciding the issue whether the risk was justified, taken into consideration must also be the correlation between the expected positive result and the eventual negative consequences, as well as the probability of their occurrence*". Where the risk constitutes some experiment with a physical person involved as a potential victim, his/her informed consent (for the risk assumption) is required in advance under most criminal laws regulating the risk.

It follows that, in contrast to the legal framework for necessity, risk law requires a comparison not only of the values of the two opposing results (the harms): the desired positive result and the negative result which actually occurred. Risk law also requires a comparison of the probabilities of their occurrence. Thus, the idea of the lesser evil, inherent in extreme necessity, is no longer sufficient when it comes to justified (allowed) risk. The quantitative comparison between saved and sacrificed values is insufficient to judge whether the risky act is justified or not. If solely the value criterion of extreme necessity were valid, the risky act would always be justified when e.g. one buys a lottery ticket for 10 dollars to win 10,000 dollars. However, once probabilities are also taken into account, the risky act may get the opposite evaluation, as the loss of the invested 10 dollars is inevitable (100% probability) while the probability of the gain is insignificant (1%, even less). Hence, this qualitative comparison between the probabilities of occurrence of the desired positive result and the undesired harm shall also be made to judge whether the risky act is socially beneficial justified or not.

Regardless of the insufficiency of the quantitative comparison between saved and sacrificed values, the general idea of proportionality stays as an objective characteristic of the risky act. The combination of the absolute value of the desired social result and the likelihood of its achievement must always exceed the combination of the absolute value of the harm suffered and the likelihood of its occurrence. The act would be "unjustifiable if the gravity of the foreseeable harm, multiplied by the probability of its occurrence, outweighs the foreseeable benefit from the conduct."[9]

C.3.2. Conditions Relating to the Act in Justified Risk (the Risky Act)

The leading peculiarity of risky action is that it is not successful. This makes the risk different from and even contrary to the necessity. First of

all, the risky act may be undertaken for attaining a positive change - a situation that has nothing to do with necessity and cannot, therefore, be governed by its rules. More importantly, the necessity rules always require success while the risk becomes a criminal law matter when the risky action is unsuccessful.

However, the harm to the interests affected shall not occur through arrogant miscalculation. Besides, the actor should have exercised necessary care to avoid the negative result. To this end, Article 13a (1) of the Bulgarian PC requires that the actor should have taken all necessary measures to prevent the harm from occurring or to reduce its volume, at least.

Conclusions

Somali penal law should be improved but this must be done gradually and carefully. Legislative authorities are not advised to make drastic changes in the current situation, let alone introduce a new PC immediately. The PC in force should be modernized and this might be the necessary and appropriate step towards a new PC.

De-codification of penal law should not be encouraged as it produces negative results:

a. The officials who have to apply the Somali penal law would need to construe multiple legal institutions, such as extraterritorial applicability, complicity, confiscation, etc. They have to learn and understand two or more parallel set of rules rather than address a single codified set of rules in the PC. The interested officials are obliged to compare these parallelly existing rules; otherwise, they will not assimilate the meaning of any well. Thus, the interested persons must work with two laws, drafted at different times and based, more or less, on different ideas.

b. Besides, those who have to apply the Somali penal law are likely to face or/and get involved in more disputes which would not occur if there had been no special laws at all. The interested officials shall have to decide which law is the applicable one in cases of conflict. It cannot be always clear what is covered by the special penal law and what has been left for the general PC, respectively.

Therefore, as a general rule, the innovations should be made in the existing PC. Their introduction through special penal laws should be avoided as it complicates unnecessarily the criminal justice system.

Notes

[1] Somalia is probably the only country with a codified penal law (own Penal Code), where all new criminalizations are produced by special penal laws. So far, I have not come across in Somalia any law [draft or in force] for inserting new criminalizing provisions in the Penal Code. Such provisions bypass it. Regretfully, by doing this, Somalia misses the well-known advantages of the law codification. See also Codifying the Criminal Law. Expert Group on the Codification of Criminal Law, Stationary Office (Govt Publication), Nov 2004, Dublin.

[2] I would highlight that its de-codification should not be encouraged as it produces serious negative results: (a) The officials (judges, prosecutors, police investigators, etc.) who have to apply the Somali penal law would need to construe multiple legal institutions, such as justifications, complicity, etc. They have to learn and understand two or more parallel set of rules rather than address a single codified set of rules in the Penal Code [PC]. The interested officials are obliged to compare parallelly existing rules; otherwise, they will not assimilate the meaning of them well. Thus, the interested persons must work with two laws, at least, written at different times and based, more or less, on different ideas. (b) Also, those who have to apply the Somali penal law are likely to face or/and get involved in more disputes, which would not occur if there had been no special laws at all. The interested officials shall have to

decide which law is the applicable one in a case of conflict. It cannot be always clear what is covered by the special penal law and what has been left for the PC, respectively. (c) Lastly, the special law may contain some rule, pertaining to the general part of the penal law. In such cases, it might be a problem to decide whether or not this rule may be used to better interpret also the provisions of the PC as well (along with those of the special law). Such a rule in a special law (e.g. in some Sexual Offences Act) may, for example, specify the requirements for the victim's consent. No doubt, this rule is applicable to all situations within the subject-matter of this special penal law. However, it cannot be sufficiently clear whether this rule might be used also in support of the application of Article 32 of the PC [Consent of the Injured Party] to situations with victims beyond the subject-matter of the above-mentioned special penal law. The PC is subsidiarily applicable in support of special penal laws, by virtue of its Article 14, but no provision prescribes the contrary, namely: the subsidiary applicability of any special law in support of the PC.

[3] E.g. Seid, Mohammed M. (2017). Criminal Law Manual for Somalia. PDF copy. Garowe, p. 23.

[4] See also Ganzglass, Martin R. (1971). The Penal Code of the Somali Democratic Republic: With Cases, Commentary and Examples, Rutgers University Press. New Jersy, USA, p. 7.

[5] Also Fishman, M. (2015). Defining Attempts, in *Duke Law Journal*, Durham, USA, Vol. 65, p. 345.

[6] Fletcher, George and Ohlin, J. (2008). Defending Humanity: When Force is Justified and Why. Oxford Univ. Press, p. 118.

[7] US Navy, US Marine Corp, US Coast Guard. The Commander's Handbook on the Law of Naval Operations, Eddition July 2007, Washington, p. 56. Retrieved May 22, 2019 from: https://www.jag.navy.mil/documents/ NWP_1-14M_Commanders_Handbook.pd

[8] Also Eser, A., 1976, Justification and Excuse, *American Journal of Comparative Law*, v. 24, p. 621-629

[9] Dressler, J., 2005, Criminal Law, p. 15. Retrieved November 11, 2016 from: https://lscontent.westlaw.com/ images/content/DresslerCrim Law. pdf

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Somali Studies: *A Peer-Reviewed Academic Journal for Somali Studies, Volume 5, 2020, pp. 120-141*

Notes on the Somali Foreign Investment Law (Law No: 13 of 21st January 2016)

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Abstract

Somalia has a cluster of laws governing the relationship between foreign investors and Somali society. This article gives a commentary and in-depth analysis of the Somalia's current foreign investment law (Law No:13 of 21st January, 2016) as well as other related laws in order to articulate standard of investment protection and provide a road map for foreign investors, showing up the incentives provided by the current law to the foreign investors. A comparison with some other foreign laws is undertaken to highlight the key weaknesses that can be improved in the Somali New Foreign Investment Law.

In addition, the article attempts to propose some recommendations to improve the gaps in the Somali's current foreign investment legal regime, particularly the recent enacted foreign investment law.

Keywords: Somalia, Foreign investment, property rights and settlement of investment disputes.

1- Introduction

Somalia is in the process of rebuilding and recovery after a devastated civil war. It is one of the poorest countries in the world, with one of the lowest GDPs per capita. Ensuring the flow of foreign direct investment is particularly important to stimulate economic recovery in any country. Somalia is no exception. To attract foreign investment, it is vital to provide an environment that welcomes investments and adequately addresses the concerns of investors while protecting their capital and their interests.[1]

With regard to attracting foreign investors, Somalia had adopted the new foreign Investment Law of 21/1/2016, degree No1, which is an amendment Of Law No: 19/of 9 May 1987. The new law regulates the legal position of foreign investors.[2]

This Article provides and gives an analysis of the Somali's Foreign Investment Law (SFIL) and other relevant laws. It articulates the standards of the forging investment protection it contains; giving Road Map to the foreign investors who are willing and interested in investing in Somalia.[3] In addition, the article aims and seeks to highlight the key weaknesses of the SFIL that can be improved and repaired.

However, the important questions which need to be answered are: Does the existing law encourage the investors by facilitating the admission and establishing of investment or imposing unnecessary conditions and complicating the admission procedures? Does the law treat similarly both foreign and national investors or discriminates on the basis of nationality? What are key weaknesses of the SFIL? What are the types of incentives provided by the law to the foreign investors? This article discusses and sheds light on these points.

2- Legal Sources of Foreign Investment Law in Somalia

There are several legal instruments that are supposed to be the key legal sources of foreign investment law in Somalia which guides investment activities. Those legal instruments can be divided into three Levels:

A- **National Level, which includes the following**:

- The Provisional Constitution, the Constitution stipulates general principles that can be applied to the foreign investments including: the right to own properly, the guarantee of private property rights, the principle of none discrimination and ensuring the security of foreign investors.[4]
- Somali Foreign Investment Law No.19 of 9 May 1987, that came into force on 1st September 1987.[5] This Law is not applicable now because it was replaced and repealed by the current law.
- Foreign Investment Law No.13 of 21st January 2016, which is the amendment of the previous foreign investment law. It is the law in force now.
- Somali Foreign Employment Law No; 10 of 9/12/2015.
- Law No. 19 of 10 July 1986, on tariff reduction within the preferential trade area; came into effect on 15 September 1986. [6]
- Law No. 7 of 9 January 1984, regarding the Mining Code; effective on 9 January 1984.[7]
- Decree No. 22 of 9 January 1984, concerning the Mining Regulations; effective 9 January 1984.[8]
- The Civil Code (Chapter 2),[9] containing Company Regulations, of 2 June 1973; effective on 1 July 1973.[10]
- Legislative Decree No. 5 of 5 November 1966, concerning the body of Laws on Direct Taxation (Income Tax); effective on 1 January 1967.[11]

- Law No. 65 of 18 October 1972, enacting the Labor Code; effective on 21 October 1972.[12]
- Ordinance No. 1 of 22 January 1955, concerning Patents on Industrial Design; effective on 1 January 1955.[13]
- Ordinance No. 3 of 22 January 1955, concerning Trademarks; effective on 1 January 1955.[14]

B- International Level:

Somalia is a part of the following multilateral and regional instruments:

- Convention on the Settlement of Investment Disputes between States and Nationals of other States of 1965. Entered into force on 14 October 1966.[15]
- Treaty Establishing the Market for Eastern and Southern Africa (COMESA), 1993.[16]
- Charter on a Regime of Multinational Industrial Enterprises (MIEs) in the Preferential Trade Area for Eastern and Southern African States that was signed in December 1981.[17]
- Unified Agreement for the Investment of Arab Capital in the Arab States that was signed on 26 November 1980 in Amman, Jordan, during the Eleventh Arab Summit Conference. It entered into force on 7 September 1981.[18]
- Agreement on Investment and Free Movement of Arab Capital Among Arab Countries that was signed on 29 August 1970 by the member states of the Agreement of Arab Economic Unity. It entered into force on 29 August 1970. It was amended by resolution 648 of 3 December 1973.[19]
- Agreement for the Promotion, Protection and Guarantee of Investment among Member States of the Organization of Islamic

Conference, on 1 June 1981; entered into force on 23 September 1986.[20]

- Agreement of the Islamic Corporation for the Insurance of Investment and Export Credit of 19 February 1992. Entered into force on l August 1994.[21]
- Agreement on Arab Economic Unity of 3 June 1957; entered into force on 30 April 1964.[22]

C- Bilateral Treaties Level:

- Bilateral investment treaties for the protection and promotion of investments between Somalia and Germany 1981.[23]
- Bilateral investment treaties for the protection and promotion of investments between Somali Democratic Republic and the Egypt concerning the Encouragement and Protection of investment was signed 25/5/1982 and interred into the force on 16/4/1983.[24]
- Bilateral treaties with Government of Turkey on 1/6/ 2016.[25]

3- Admission and Entry Requirements of Foreign Investors

The foreign investors were defined in article one of Somali Foreign Investment Law as any foreign juridical or physical person who makes an investment in the territory of Somalia in accordance with Somali law.[26]

The admission of investment is a reflection of State sovereignty. Thus, each State has the discretionary power to decide how to admit foreign investors into its national economy. In this respect, international investment treaties usually take one of two main approaches, either admission of investments in accordance with the law and regulations of the host state or, alternatively, a right of establishment granted to foreign investors under a relevant treaty which grants national treatment at the pre-establishment stage.[27]

In Somalia, the SFIL regulates the rules on the admission of foreign investment, requiring foreign investors to acquire a license in order to practice their activity in Somalia as stipulated in Article 8 of SFIL.[28]

3.1 Foreign Investment Board and the Foreign Investment Promotion Office

The SFIL establishes Foreign Investment Board (FIB) which consists of:

A. The Permanent Secretary of the Ministry of Planning
B. The Permanent Secretary of the Ministry of Foreign Affairs.
C. The Director General of the Ministry of Finance.
D. The Director General of the Ministry of Commerce and Industry.
E. The Director General of the Ministry of Labor and Social Affairs.
F. The Director General of the Central Bank.
G. The Chairperson of Somali Chamber of Commerce.
H. The Permanent Secretary of the Ministry of Commerce and Industry.

The Director General of the Ministry of Commerce and Industry is the Chairperson of the Board. The following are the key functions of the Board:

1. To approve proposed foreign investment in accordance with the policy guidelines.
2. To approve the registration of foreign investment.
3. To review the registration of foreign investment made under previous foreign investment legislation in order that such investment may benefit from the more favorable provisions, as per article 20 of this law.
4. To determine the value of foreign investment.
5. To ensure compliance with the provisions of article 16 concerning the contracting of debt from domestic sources.

6. To facilitate the granting of visas to foreign personnel to be employed by enterprises registered under this law; this law will require that all firms who invest in Somalia provide for employment and training of local Somali staff, employment for the citizens of Somalia including 50% of all staff, contractors and consultants must be residents of Somalia.

Alongside the Foreign Investment Board, there is Foreign Investment Promotion Office with the following duties:

1. To implement the decisions taken by the Board.
2. To propose the administrative and regulatory procedures required for the implementation of this law.
3. To provide information and advice to the foreign investor on foreign matter such as: application and registration procedures under this law; taxation; foreign exchange regime; economic legislation; foreign trade regime; investment opportunities; institutional framework; local sources of debt financing; partner search.[29]
4. To assist the foreign investor in meeting the application requirements related to foreign investment; including the requirements of domestic labor.
5. To assist foreign approved investments, at the incorporation and development stages, with guidance and advice concerning official institutions and channels and related administrative procedures.
6. To formulate proposals concerning foreign investment policy and the improvement of investment conditions.
7. To promote and attract new foreign investment in collaboration with other institutions involved in this field.
8. To perform any other duty related to foreign investment, assigned to it by the Board.[30]

3.2 Foreign Investment Application Process

Generally, foreign investors need a special license to exercise any activity in Somalia. However, the SFIL prevents non-Somalis – whether natural or juridical persons – from practicing any commercial, industrial or tourism businesses unless and until they secure a license from foreign investment board which we explained earlier.[31]

The foreign investor has to submit an application for a foreign investment license to the Somali Foreign Investment Board "SFIB". The application should be made by completing the form "Application Form for Approval and Registration", available at the office located in the Ministry of Planning and International Cooperation, and mailing it by registered mail or express service with delivery receipt to "The Foreign Investment Board c/o Ministry of Planning and International Cooperation.[32] Alternatively, the foreign investor may deliver the application directly to the office, which will issue a delivery receipt. Applications can be emailed to the Ministry of Planning and International Cooperation. Then the Office shall review the application, at the applicant's request, for completeness and certify its satisfaction in respect of this requirement.[33]

The SFIB has to notify the applicant of its decision within a period not exceeding 60 days from the date of the receipt of a duly completed investment application; the board shall notify the applicant by registered mail of its decision. At the applicant's option, this notification may be collected by his representative directly from the office.

In case a modification of an application is required, The Board shall notify the applicant to this effect by registered mail. At the applicant's option, this notification may be also collected by his representative directly from the Office against issue of a delivery receipt.

The Board shall notify, through the Office, the approval of a foreign investment by issuing a "Certificate of Foreign Investment in an Approved Enterprise". Such approval shall be construed by the foreign investor as conferring eligibility for registration under this law.[34]

The “Certificate of Foreign Investment in an Approved Enterprise” shall be valid for the period of twenty four (24) months from the date of issue. During said period, the applicant shall affect the transfer of assets to Somalia.[35]

Regarding the investment license, the SFIB prioritizes investment projects that play an important role in developing the national sectors of tourism and local products, projects using local products and raw materials as stipulated in article7 of SFIL as following sectors:

a Agriculture
b Livestock
c Fishing
d Natural resources
e Industrial activities using significant amounts of inputs produced by the afore-mentioned sectors.
f Tourism provided the investment harmonizes with the prevailing social, economic and infrastructural conditions.
g Any other investment in production. Technology and manufacturing.
h Recommends the grant of land concession for the youth of public private partnership.[36]

As mentioned above, one of the functions of SFIB is to approve the proposed foreign investment, which implies that the Board can reject the proposal but it is not stated clearly; also the law does not mention whether the decision of the Board is final or needs the approval of concerned minister.

One of the key weaknesses of this law is that the law does not mention the possibility of challenging the SFIB decision before Administrative Court which in Somalia is the Supreme Court.[37]

4- Incentives and Facilities of Foreign Investors

Somalia encourages nationals of other states to invest capital, technology and managerial skills in its territory and, to that end, is expected to admit such investments. Under Foreign Investment Law, investors are eligible for several incentives and facilities which are listed below:

4.1. Debt from Domestic Sources

As stated in article 16 of SFIL, any enterprise that is the object of a Duly Registered Foreign Investment may contract debt from institutional domestic financial sources up to the limit established by the Central Bank of Somalia, in consultation with the Board.[38]

4.2 Facilities for Foreign Personnel

The Board should ensure that the immigration authorities facilitate the granting of the entry permits and residence visas to foreign personnel employed by an enterprise registered under this law, and to their families.[39]

4.3 Long Term Lease of Building and Lands

One of the key facilities and incentives for the foreign investor is to have long term leases for up to 99 years for substantial investment in accordance with the applicable legislation governing such incentives and facilities as mentioned in article 15 of SFIL.

4.4 Transfer of Profit

Profit originating from a Duly Registered Foreign Investment may be freely transferred abroad in a freely convertible currency. In the case that only part of such profit is transferred abroad in one year, the foreign investor may transfer the remaining portion in any one of the following years.[40]

4.5 Equal Treatment

All enterprises that are the object of foreign investment shall receive treatment as favorable as that accorded to domestic enterprises. Such treatment would be subject to the requirement of fair and equitable treatment as favorable as that accorded by the state to national investors in similar circumstances. In all cases, full protection and security should be accorded to the investor's rights regarding ownership, control and substantial.

4.6 Guarantees of Property Rights;

The property of foreign investment, duly registered under this law, shall not be subject to expropriation measures, except in the case where public interest cannot be satisfied by other government measures.

In the case of such expropriation, prompt and adequate compensation shall be paid. Said compensation shall reflect the fair market value of the assets and shall be freely transferable.[41]

4.7 Admission Facilitation

The SFIL facilitates the admission and establishment of investments by nationals of other states as mentioned in several articles of the Law including article 4, 8 and 9; but the period between the receipt of application and notification of board which is 60 days is too long, in comparison with other laws, for example, foreign investment law of Oman requires to notify the investor within two weeks.[42]

4.8 Tax Reduction or Exemption

As stated in article 16 and 17 of Body of laws on direct taxation the tax may be exempt from some enterprises, but this is not mentioned in SFIL.[43]

5- Settlement of Disputes with Foreign Investors under SFIL

5.1 ADR Mechanism

With the aim of complying with the recent developments in international commercial law, Somalia paved the way for foreign investors by accepting the principle of settlement of disputes through Alternative Dispute Resolution "ADR"[44] and Somalia ratified the ICSID Convention on 27 September 1965.[45] Under the Somali Foreign Investment Law, the disputes will be settled as follows:

a. If there is an agreement between Somali Government and an investor, the dispute will be settled in a manner agreed upon.
b. In the absence of such agreements, the dispute should be settled within the framework of the agreements in force between the Somali Federal Republic and the foreign investor's home country (Bilateral agreement between Somali Republic and foreign investor's home country)
c. In the absence of the above two options, disputes may be submitted to arbitration under the International Centre for the Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington 19 March 1965 (the "ICSID Convention"). Somalia confirms its consent to the submission of a dispute to ICSID and subject to its provisions.[46]
d. In the absence of three options mentioned above, the disputes shall be settled through arbitration as follows: An arbitration

> panel shall be established, comprising one member on behalf of each disputing party and third member acting as a chairperson, to be jointly named by the said two members. In the case that the disputing parties fail to agree on the nomination of the chairperson within 30 days of the date of the nomination of the second member, the chairperson shall be appointed by the President of the Supreme Court of Somalia.

The arbitration panel shall lay down its rules of procedure unrestricted by the rules contained in the civil procedure. Awards shall be rendered by majority vote, and shall be final and binding on both parties and enforceable as any other final judgment. The arbitration panel shall decide who shall bear the arbitration costs.

5.2 Competent Court of Investment Disputes

Article 19 of SFIL entitles foreign investors to resolve their disputes by arbitration, but it does not clarify whether the Somali Courts has a jurisdiction to such dispute or not, and this is one of the areas of Somali foreign investment law that needs further reform.[47]

6- Sanctions for Violations of the SFIL

The SFIL is not providing detailed guidelines for dealing with violations of its provisions. It says only that the failure to comply with the provisions of SFIL shall result in the forfeiture of benefits provided by law.[48]

It was supposed that this law gives to the investors a detailed guideline to maintain good relations with foreign investors by giving them the chance to correct their mistakes within a limited period, and does not explain deeply how to deal with the following issues:

1. Conducting investment business without a license.

2. The breach of any other provision of the SFIL.
3. How to conduct investigation related to unauthorized investment activities.
4. The difference between foreign and national violators regarding for violations of the SFIL.
5. The issue of withdrawing the license of the violator.

Those detailed guidelines are necessary for the investors to be aware.

7- Foreign Investment not Subject to the SFIL

Article 21 of the SFIL give details and clarify some foreign investment issues that are not subject to this law including the following issues:

1. Foreign investment in mineral research.
2. Mining activities.
3. Investments related to petroleum Industry and nuclear power.

Such investments should be subjected to other relevant laws such as mining code and the mining regulations, petroleum industry act and agreements reached, hereunder, between the Somali government and the interested party.[49]

8- Weakness of the Somalia's New Foreign Investment Law

The followings are key weaknesses of current SFIL:

8-1 Ambiguity of some provisions of the law

It is not clearly stated whether the decision of the Board is final or need the approval of concerned minister. Furthermore, the law is not mentioning the possibility of challenging the SFIB decision before Administrative Court which in Somalia is the Supreme Court.

8-2 Length between the receipt of application and notification of board decision is too long

The period between the receipt of application and notification of board which is 60 days is too long, in comparison with other laws for example, foreign investment law of Oman Requires to notify the investor within two weeks.

8-3 Silence about the status of foreign partnership company with Somali citizen

The law does not mention whether the foreign investor partnership with Somali Citizen requires Admission Procedure or considers Somali Project to be subject under other related commercial laws.

8-4 Duties of investors

In contrast with other foreign investment laws, the SFIL does not state clearly the duties in terms of giving priorities to the national employees, preserving the environment, and maintaining the interest of public and public order.[50]

8-5 The law is not dealing deeply and properly with issue of violations of the provisions of the law such as:

- conducting investment business without a license
- The breach of any other provision of the SFIL.
- How to conduct investigation related to unauthorized investment activities.
- The difference between foreign and national violators regarding violations of the SFIL
- The issue of withdrawing the license of the violator.

8-6 Jurisdiction of domestic court for foreign investment dispute

The SFIL does not clarify whether the Somali courts has a jurisdiction to foreign investment dispute.

Finally, the new Somali Foreign Investment Law is almost the copy-past of Law No: 19 of 9 may 1987 without making the necessary improvements to keep up with the new situation.

9- Conclusion

This article has explained the standards of investment protection in Somalia and provided a road map for foreign investors illustrating that it is necessary for Somalia to improve its legal regime in order to attract more foreign investors. Considering some points of ambiguity in the SFIL, some gaps in Somali's legal environment and a comparison with the laws of some other countries. Some of the weaknesses of Somali laws could be improved as follows:

1. The law should clearly state whether the decision of the Foreign Investment Board is final or need the approval of concerned minister. Furthermore, the law ought to mention whether the decision be challenged before Administrative Court which in Somalia is the Supreme Court.
2. The law has to deal deeply and properly with issue of violations of the provisions of the law, and the law must state clearly the duties of investors in terms giving priorities to the national employees, preserving the environment, and maintaining the interest of public and public order.
3. In terms of dispute settlement mechanism, the SFIL must clarify whether the Somali Courts has a jurisdiction to foreign investment dispute.

4. According to the Role of the Foreign Investment Board in terms of dispute settlement, it should be clarified under the SFIL in order to avoid any confusion concerning the real decisional authority in this regard. The SFIL grants the board a general competence in all matters related to investment but their role in dispute settlement is not regulated by the law.
5. For the proper implementation of this law, this paper recommends for the issuance of regulations indicated in article, which stipulates that the President of the Federal Republic of Somalia, at the proposal of the Board, and having heard the Minister of National Planning and the Council of Ministers, may issue regulations for the proper implementation of this law.
6. Somalia still lacks legislation regulating contractual relationships between foreign or even national investors and the Somali government. It is therefore recommended for Somalia to issue a legislation that regulates such contracts; such legislations may encourage foreign investors to establish more projects in Somalia.

Notes

[1] Abdin MJ (2014) Cluster Development for Inclusive and Sustainable Economic Growth, Professionals Center for Business Research

[2] http://www.mfa.gov.so/investment/investment-law/

[3] Chiara Giorgetti, Using International Law in Somalia's Post-Conflict Reconstruction, 53 Colum. J. Transnat'l L. 48 (2014)

[4] see Articles 11,26 and 126 of Somali Provisional Constitution

[5] See the Official Bulletin of the Somali Republic No.9/ 1 September 1987 P.761

[6] The Official Bulletin of the Somali Republic No. 8, 1 August 1986, p. 540.

[7] The Official Bulletin of the Somali Republic No. 2, 28 January 1984, p. 73

[8] The Official Bulletin of the Somali Republic No. 2, 28 January 1984, p. 74

[9] In Somalia there is no Commercial code, and both commercial and civil matters regulated by the Somali Civil Code

[10] The Official Bulletin of the Somali Republic No_ 6, 2 June 1973, p. 570.

[11] The Official Bulletin of the Somali Republic, No. 3 to No. 12 of 14 December 1966, p. 2.

[12] The Official Bulletin of the Somali Republic No. 10, 25 October 1972, p. 1, 114.

[13] The Official Bulletin of the Somali Republic No. 1 & 2 of 25 January 1955, p. 67.

[14] Ibid, p. 97.

[15] The Somali Democratic Republic was signed and ratified Convention for the Settlement of Investment Disputes between the State and Nationals of Other Countries (1965) on 27 September 1965.

[16] The Agreement for the Establishment of the Preferential Trade Area (PTA) for Eastern and Southern Africa was signed on 21 December 1981 and entered into force on 30 September 1982. The PTA was later replaced with the current Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA), which was signed on 5 November 1993 and ratified on 8 December 1994. The Vision of COMESA is "to have a fully integrated internationally competitive regional economic community with high standards of living for its entire people, ready to merge into the African Economic Community.

[17] The Treaty establishing the Preferential Trade Area for Eastern and Southern Africa was signed in December 1981.

[18] The Unified Agreement for the Investment of Arab Capital in the Arab States was signed on 26 November 1980 in Amman, Jordan, during the Eleventh Arab Summit Conference. It entered into force on 7 September 1981. The draft statutes of the Arab Investment Court came into force on 22 February 1988. The agreement has been ratified by all member States of the League except Algeria and the Comoros.

[19] The Agreement on Investment and Free Movement of Arab Capital among Arab Countries was signed on 29 August 1970 by the States members of the

Agreement of Arab Economic Unity. It entered into force on 29 August 1970. It was amended by resolution 648 of 3 December 1973.

[20] The Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference was approved and opened for signature by resolution 7/12-E of the Twelfth Islamic Conference of Foreign Ministers held in Baghdad, Iraq, on 1-5 June 1981. It entered into force on 23 September 1986.

[21] UNCTAD WID Country Profile: SOMALIA Page 11 of 13

[22] The Convention on establishment was adopted in June 1957, Cairo (Egypt), under Economic Unity Agreement between States of League of Arab States (LAS). Agreement entered into force on 30 May 1964, representing a multilateral framework for economic development on a regional basis.

[23] This bilateral investment treaty between the Somali Democratic Republic and the Federal Republic of Germany concerning the Encouragement and Reciprocal Protection of investment was signed 27/11/1981 and interred into the force on 15/2/201985.

[24] This bilateral investment treaty between the Somali Democratic Republic and the Egypt concerning the encouragement and protection of investment was signed 25/5/1982 and interred into the force 16/4/1983.

[25] In January 2015, the Minister of Foreign Affairs and International Cooperation of Somalia and a Turkish delegation signed a bilateral treaty on developmental projects in Somalia.

[26] See article one of SFIL

[27] Anna Joubin-Bret, "Admission and Establishment in the Context of Investment Protection' in August Reinisch (ed), Standards of Investment Protection (OUP 2008) 9.

[28] See Article 8 of Foreign Investment Law which governes the application of investors.

[29] Alam MS (2012) Foreign Direct Investment in Bangladesh: A Critical Analysis, South East Asian Journal of Contemporary Business, Economics and Law 1.

[30] See the article 6 of SFIL

[31] For more details refer to articles one, four and eight of SFIL

[32] See article 8 of SFIL

[33] Foreign Direct Investment in Bangladesh 1971-2010 (2010). The Board of Investment, Government of Bangladesh

[34] Anna Joubin-Bret, "Admission and Establishment in the Context of Investment Protection" in August Reinisch (ed), Standards of Investment Protection (OUP 2008) 9.

[35] See article 9 of SFIL

[36] See Article 7 of SFIL

[37] See article 10 of Somali Civil procedure Code, and articles 5 and 10 of Somali Law of Organization of Judiciary of 1962.

[38] See article 16 of SFIL

[39] See article 17 of SFIL and article 3 and 5 of Foreign Employment Act

[40] See article 12 of SFIL

[41] See article 18 of SFIL, article 16 of the Provisional constitution and 681 of Somali Civil Code

[42] See article 9 of Somali Foreign Investment Law and article 5 of Foreign Investment Law of Oman for comparison propose.

[43] See the article s16 and 17 of Body of laws on Direct Taxation.

[44] Alternative Dispute Resolution "ADR" refers to ways of resolving disputes outside of the courtroom. ADR procedures are usually less costly and more expeditious.

[45] http://www.somalilandlaw.com/foreign_investment_law_2004.htm

[46] See the Article 19 of Somali Foreign investment Law

[47] Amel Abdallah, A Critical Analysis of Foreign Capital Investment Law in Oman, the journal of world investment & trade 16 (2015) 506-531

[48] See the Article 23 of SFIL

[49] Mohammed Dahir Ahmed, Somaliland: Foreign Investment Law Analysis, April 25/2017, http://africabusiness.com/2017/04/25/somaliland-10/ and also see the article 21 of Somali Foreign Investment

[50] For Comparison purpose see article 13 of Kuwait Foreign Investment Law of 1999., which explains the duties of foreign investors in Kuwait.

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Somali Civil Procedure Code of 1974.

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Somali Studies: *A Peer-Reviewed Academic Journal for Somali Studies, Volume 5, 2020, pp. 142-176*

"Pen to Poet Is Weapon"—the Political in Abdirahman Mirreh's Poetry (1976-1994)

 Helmi Ben Meriem

Abstract

This paper examines the political themes in three collections of poetry by Abdirahman Gaileh Mirreh (1942-2000). Motivated by what he witnessed in his native Somalia, Mirreh's poetry is driven by his belief in democracy, freedom, and human rights. This paper explores how Mirreh's call for a change in the Horn is rooted in his belief that stability and progress in Somalia can only be achieved by moving from dictatorship to democracy, from a focus on self-interests to an emphasis on collective prosperity, and from clannish to patriotic politics. Even when he was forced out of Somalia, Mirreh's democratic convictions never waned and were strengthened by the effects of democracy that he witnessed in the West. This paper highlights how Mirreh's political poetry can be perceived as a roadmap for the betterment of the political scene in the Horn.

Keywords: Abdirahman Mirreh, Somali Poetry, Political Poetry.

"Where is the pregnant quarry
From whom young builders fetch stones
To construct their own huts?
Where are those volcanic ideas
Which erupt like molten lava
When they were thought extinct?
Where is the tiger
Whose quiet eyes
House piercing vision
No ordinary balls
Can decipher?
Why the Silence!!"

(Chinua Achebe,
"Questions for a Silent Writer" 86)

Introduction

Examining three collections of Abdirahman Mirreh's poetry, this essay explores Mirreh's representation of Somalia in the late 1970s and early 1990s, focusing on the general themes of dictatorship, democracy, war, and the ever sought-after peace.[1] In this respect, Mirreh's pen is still his weapon as it was when he advocated for his pastoral ideals.[2] In fact, as if responding to Achebe's chastising reflection "Why the Silence," Mirreh's poems shatter the wall of silence by voicing a "piercing vision" for an egalitarian country where an inclusive and democratic future is what matters, not clannish politics.

Abdirahman Mirreh's poetry is a call to all Somalis to persevere on this arduous yet utterly rewarding path because it is the only way forward if Somalis are ever to peacefully inhabit and develop their homeland and live collective prosperity.

From Political Dictatorship to Political Violence

It is of significance here that Mirreh had to leave his native land due to the outbreak of the civil war that was essentially the outcome of the obstinacy of the tyrannical régime of Barre and its refusal to relinquish power. It is also worth noting that Mirreh's poetry, which was written prior to the civil war and the collapse of Barre's régime, did tackle the political dysfunction in Mogadishu, stressing his unyielding belief in democracy. Even though Mirreh describes the fear of being thrown into one of Barre's detention centers for political dissenters in his poem "Frozen Feet/Hargeisa," which tells of the infamous 3 am knock on the door (75)[3], his faith in democracy outweighs his fears.

In "The Wadi Run Red," Mirreh describes how the color of sand in "the wadi// had turned from//white to red" (54). The *wadi*, meaning a stream, changes color due to the blood that is mixing with the white sand, overpowering the white color and indicating the high number of people being killed by Barre's forces. As the poem progresses, Mirreh laments the loss of not only people but also of what made life enjoyable:

> We left the green
> hills we loved
> behind the citrus
> garden and fled. (54)

In this stanza, Mirreh juxtaposes two sets of colors: one is explicit and one is implicit. The first set of colors is bright and colorful: green, bright yellow, and orange, among others. The green hills and the citrus will continue to exist amid the red sand of the *wadi*, but only for a short period of time; they will give a counterbalance to the gloomy reality that surrounds them. Nonetheless, even the green hills and the colorful citrus will lose their lovely colors when no one tends to them, when no one

waters them, and when all that is left is the blood of those that cared for them once. Hence, the implicit set of colors is that of black, and grey, that is, the colors that would take over the area when it is deserted by its own people fleeing the violence.

The theme of death is further depicted in Mirreh's "The Horses Are Not Whinnying" which includes an apocalyptic depiction of life during war whereby symbols of life are subverted and made into marks of death and destruction: "The wadi ran red// it rained and rained// dusk to dawn" (55)—emphasizing the image in "The Wadi Run Red." At first reading, one is rather puzzled by the two dictions: red, synonymous with death as previously studied, and rain, traditionally a sign of life and prosperity—as will be subsequently studied in the section on nomadic life. It is not until the second stanza that one can fully appreciate the first stanza:

> It rained and rained
> it rained bullets
> and bombs [.] I
> didn't hear the
> horses whinnying. (55)

The rain is not that of water-feeding plants and streams, preserving the colorful gardens, and quenching the thirst of those whose "mouths [were] dry" ("The Wadi Run Red" 54). This rain is one of death that drops on the heads of Somalis trying to seek safety and refuge. Bullets and bombs fall from the sky from "dusk to dawn" as airplanes release their loads and as snipers on nearby hills take aim at those running away from them. As this apocalyptic rain continues, the soft neighing of horses ceases to be heard and their natural sounds are replaced by the artificial thuds and echoes of bombs. The new reality gets even more disturbing:

I heard them scream
and I thought the
earth's face was being
torn. (55)

As the bombs keep falling, the soft neighing of horses is replaced by screams, indicating, among many other things, the shift from peacefulness to violence, and from life to death. Acting as a sort of a barometer for what it is to come, and for what will cease to be, the loud screams, which come to replace the soft neighing, are like an earthquake that shatters the persona's existence and his surroundings. The earth's face being torn can be seen to symbolize the lives of Somalis as they are torn away from their homeland or as they are torn between staying amid the killing or seeking refuge somewhere else.

Foreign Powers' Role in Violence

In this respect, when Mirreh ventures on writing about the violence, he does not only criticize the régime per se but also directs his attacks on the powers that either directly or indirectly supported the régime. For example in his April 1989 poem, Mirreh observes:

Let's hope that no
weapon-delivery to
my country
and yours. ("Perestroika from the Past" 46).

This stanza is preceded by two other stanzas in which Mirreh express his desire for the Russians and the Americans to leave Somalia "in the cold" ("Perestroika from the Past" 46) which in essence means the act of not interfering in Somali internal affairs. It is here that the third and last

stanza of the poem is a call for no armament by any foreign power of any of the warring factions in Somalia.

Furthermore, in "America," Mirreh directs his criticism specifically at the American government for its role in the civil war, in the bloodshed that befell the country, and, in the refugee crisis. In "Industrial World—an Eye Witness," Mirreh points an accusing finger at developed countries in general for selling weapons to the General (70). In the first stanza of "America," a comparison is set between the trees as they were prior to the war and during it: "The trees that once// bore juicy fruits// are now oozing blood" (87). By juxtaposing two diametrically-opposite semantic fields, the poem further emphasizes, as one finds in the following stanzas, how the American government was partially responsible for replacing life—seen in juicy fruits—with death and blood.[4]

The description of the war invokes the agony of the individuals, "innocent women//and children" (87), who were afflicted by "your [USA]//bullets and bombs" (87), and whose blood "dried in the//African sun" (87) leaving a constant reminder of the effects of American arms. From 1977 until 1989, the US government offered the Somali government around $1 billion in US military and economic aid, third of which was devoted to arms transfer (Hartung 2); those arms were later used "to repress and kill Somali citizens with great embarrassment to the Reagan administration in 1988" (Qassim Ali 546).

It is because the Somalis' blood is on the hands of foreign powers, including the Soviet Union and the US, that "America" expresses the desire that the blood of Somali victims "flow[s]" to the "doors of Capitol Hill," to "the White House," and to the "Congress steps" (87); the citation of the executive and legislative branches of the US government asserts that both branches of the government were involved in the war and deaths in Somalia and that the legislative branch did not fulfill its duty of balance

and check. The argument is taken even further by emphasizing the wish for the blood to flow:

> To the doorsteps
> of every house,
> so that all you in America
> could smell the
> stench. (87)

The poem affirms that the American citizens are to be blamed just as their government should be because they did not stop military aid to Somalia early enough. When they "could see what [their]// aid has done" (87), they would urge their government to cease its aid to Somali régime and any other similar régimes[5]. Mirreh's inculpating of citizens in the ill doings of their government is consistent with his vision of the world, that every individual has a responsibility in the protection of others regardless of origins, race, religion, or any other demarcation—as will be examined in the following part on Mirreh's philosophy about life[6].

A Call for Action to all Somalis

Yet despite the ravages of war, there is still a deep sense of belonging to the land and an emotional connection that transcends borders and time. For instance, in "In Love with Grass," the persona refuses to leave his motherland despite the war: "Why should I run away//and leave you naked//for the greedy General . . ." (39). The idea of nakedness is both literal and metaphorical. Without those defending it, Somalia becomes unprotected and exposed to those who wish it ill. By staying in Somalia, the persona desires to shield Somalia from any harm that might be lurking around; in juxtaposing the nakedness of Somalia with the greediness of the General, the scene becomes evocative of rape, Somalia as being defiled and violated by a hunger and lust for power.[7]

In the following stanzas, the persona directs his attack against those who left Somalia prey to the General, war, and destruction, criticizing the "weakling [who] deserted" Somalia and "the cowards [who] refused" to stay and resist (39). His main criticism is linked to the fact that those Somalis did not choose to face and "tame the storm" of war (39) but rather opted to flee to safety leaving their motherland falling apart. It is here that one of the main criticisms leveled by Mirreh is explored, in what Nuruddin Farah called, "blamocracy." In *Yesterday, Tomorrow: Voices from the Somali Diaspora*, Farah observes that "being blamocrats par excellence, Somalis do not locate themselves, as individuals, within the geography of the collective collapse, but outside of it" (188); in his "The Last Ride," Mirreh explores blamocracy in Somalia:

> The citizens wait too long,
> for the redeemer or ancestral ghost
> to arrive or appear in the night
> but neither comes. (64)

Instead of pro-actively engaging in countering dictatorship and violence, a number of Somalis, as the persona indicates, opted for passiveness and relied on supernatural powers to alleviate their misery. When those supernatural powers did not materialize, those Somalis left the country, not realizing the consequences of not resisting the elements of war and not trying to create bridges between warring factions. Afterwards, those same Somalis lamented the fall of the country, the destruction that befell towns and cities, and the rule of disorder rather than law and order; Mirreh insists that one of the most crucial steps towards stabilizing the country is, as put by Ahmed Qassim Ali, to admit that "the responsibility for the present tragedy lies in the first place on Somalis themselves [and which was exacerbated by] foreign governments" (537)[8].

Losing Home: From Citizens to Refugees

The war's effects are not limited to Somalia proper but also affect Somalis who have chosen to escape it; as warring factions battled over power, refugees took to the borders and were forced into the four corners of the world.[9] The issue of refugees and asylum seekers in Mirreh's poetry reflects on how and why Somalis were not helped and assisted by other Muslim countries especially richer ones such as Saudi Arabia. In "False Claim," which Mirreh partially wrote in 1991 in *Harta Sheikha* Refugee Camp (Southeast of Jijiga, the Somali Region, Ethiopia), he sharply criticizes the Saudis for their passiveness vis-à-vis the Somali crisis:

> The Kingdom of Saudi Arabia
> is a Moslem land
> 'it is the guardian
> of the Islamic shrine'.
> Moslem refugees are being killed
> day after day
> by bullets, hunger and diseases. (38)

The two opening stanzas contrast two facets of the Saudi Kingdom: being the custodian of the sites holy to all Muslims and being supine in the face of the plight of Muslim refugees. If Saudi Arabia is to be true to its duties towards Muslims, it would have helped Muslims in needs and not stand by as they suffer and die. Prophet Mohammed said: "A Muslim is a brother to a Muslim. He should neither deceive him nor lie to him, nor leave him without assistance…" [At-Tirmidhi] (Al Nawawi, 97, my translation). Instead of following the ordinances of the Prophet of Islam by assisting and relieving the anguish of fellow Muslims, "Saudi's billions are lying in America's banks//the Emirs are enjoying champagne and//women in their villas in Egypt and Spain" (Mirreh, "False Claim"

38): along the same lines, Nuruddin Farah writes in "Praise the Marines? I Suppose So": "I will spare you my outrage at the Arab, the Muslim and the non-aligned league of which Somalia is a member. They are not worth my bother" (qtd. in Qassim Ali 550).

Indeed Mirreh's condemnation of Muslim countries and Farah's outrage at them in general and Saudi Arabia in particular are genuine and justifiable because Saudi Arabia not only failed its duty in helping Muslims in need but also knowingly assisted the tyranny regime in Mogadishu that kills its own people. In fact, it was reported that, Siad Barre's regime received $70m provided by Saudi Arabia for the war effort "to ensure that Barre did not side with Iraq" (Drysdale "Forward" 4).

Moreover, the Saudis not only financially assisted Barre, but also were the cause of the death of a number of persons as recounted by Mohamud Ege: "One poor group of Somalilanders who had been deported from Saudi Arabia at the height of the civil war were butchered with knives in cold blood at Berbera Airport by the government forces" (61). According to "Article 33" of *Convention Relating to the Status of Refugees*, refuges shall not be expelled "to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (UNCHR, np). Though Saudi Arabia is not a contracting state, knowing the danger, to which it was putting these individuals, it should have been the guiding line in dealing with any them.

Compared with the manner with which Mirreh describes the Saudis' treatment of Somalis, Mirreh's "The Greens Hills of Diri Dawa" stresses how any action of benevolence is appreciated—no matter how small it might seem; upon arriving in the Ethiopian town of Dire Dawa, the persona, who was "tired, sick//and frail" (19), expresses his gratitude for

the individuals who "nursed [him] through the nights// to health and hope" and who enabled him to "enjoy a cup of tea or two" (19).

In "The Naked Hills of Djibouti/Six Hundred and Fifty Kilometers," Mirreh reflects on how Djibouti became a beacon of safety for those fleeing the war, especially in the northern regions: "I was relieved and//sighed as I saw Djibouti//lying before my eyes" (25); even though the landscape is "naked and barren" (25) and although the "volcanic rocks [,on which the refugees walked, were] sharper than// butchers' knifes" causing "the feet [to] bleed" ("Fleeing"[10] 21), Djibouti's plainness and ruggedness are still welcomed as an escape from death on the other side of the border. In this respect, it is estimated that "at the end of 1990 [Djibouti] was host to as many as 65,000 Somali refugees" (Bureau 14). Nonetheless, physical safety being guaranteed within the borders of Djibouti did not necessarily entail food security as Mirreh writes in "A Loaf of Bread": "I walked the streets of //Djibouti not able//to buy a loaf of bread"[11] (83); Mirreh reiterates the same idea in "Just a Piece of Bread": "yet there is a child on your earth [addressing the moon]//screaming in the night//for a piece of bread" (78)[12].

Furthermore, to quote Afdhere Jama's "Refugee," "Fear guiding us ahead somewhere// We don't care where we go" (15); instead of being a haven, Somalia becomes, as Warsan Shire describes it in "Home," "the mouth of a shark" from which "you only run for the border" (n.p.). It is this fear of country turned against its own people that also made Djibouti a haven for Somali women who could at last be "breathing the morning//air fearing no rape" (Mirreh, "Naked Hills of Djibouti" 25). As with many conflicts, "women have become war causalities and rape has, unfortunately, become a common weapon of war" (Mohamed 438) and "rape was employed as a weapon by militias to humiliate and do away with opponents through attacking and dishonoring their women" (Haji Ingiriis, "Blessing in Disguise," 318). The trauma of being raped and then being

rejected by family were part of the life of a number of Somali women as told by, for instance, Farhida and Maryan who were both raped while their family members sat helplessly by as gunman threatened to shoot everyone dead (Sheikh 80). As it is with many cases where the victim is blamed for what happens to them, Farhida was divorced the next morning because her husband blamed her for "accept[ing]" to be raped (Sheikh 80); thus, with the rise of rape cases, Somali women found life inside their country unbearable and some of them chose to become refugees—if only to escape being raped. Nonetheless, despite Mirreh's assertion that Somali women feared no rape outside of Somalia, there were indeed cases of rape against Somali women in, for example, Kenyan refugee camps where 794 cases were reported between 1993 and 1999 (Sheikh 83). Nonetheless, as Miriam, one of the victims of sexual assault, asserts: "I pray for peace in Somalia so I can return to my home and to my parents. They will love me like before" (qtd. in Sheikh 82); which tells of a strong and unbreakable connection with the homeland that transcends personal trauma.

Adding Insult to Injury: Refugees Facing Racism

A number of Somalis opted for asylum-seeking and refugee-resettlement in European countries and other Western nations—Mirreh is a good example of this trend. In "Dear Friend," which he wrote as a response to a question by his friend Norris, Mirreh criticizes Westerners for not accepting refugees, akin to his criticism of the Saudis. Through this poem, the persona takes the reader through a twelve-line journey of peaceful and war-torn Somalia, and the refugee crisis.

The first stanza tells of times when the persona "lived in [his] country//freely like a sparrow[13]" (14)—a bird wholeheartedly exploring its environment unhinged by any fear; the sparrow's peacefulness was abruptly interrupted when "you [Westerns nations] gave cannons//and

tanks to the//generals" (14). As with other poems, Mirreh affirms the role played by the West in the destruction of Somalia and other nations alike, through supplying arms to régimes intent on holding to power regardless of the human cost. Hence, the persona, a refugee in Norway, denounces the Westerners' refusal of refugees: "Don't ask why//I came" (14); he, like many Somali refugees, was forced out of the country because of the West involvement in the displacement of Somalis only to be not accepted in the Western world or being reprimanded for coming north. In her "Borders," Shirin Ramzanali Fazel reflects on how Syrian refugees escaped "shelled homes//scattered limbs//and burnt fields" only "to reach, barbed-wired fences//where soldiers hold guns//to defend the border" from those seeking safety (45-6)[14].

In "Out of Africa," Mirreh continues his criticism of Westerners, more specifically, those he calls "the Norwegian friends" (23); the persona is employed as a janitor "cleaning toilets where//they piss on//the floor" (23). Given that a number of the refugees, Mirreh included, held university degrees, Mirreh seems to allude to a perception held by some Westerners that refugees can only do menial and low-paying jobs. In "The White Man," the persona thinks that "at last [he]//reached the haven//of peace and democracy" (58); but to his dismay:

> Racism is haunting
> me on your streets,
> buses and trains.
> The looks and
> the insulting words[15]. (58)

The main semantic field in these lines is that of the public sphere—streets, buses and trains—where an immigrant, especially from Sub-Saharan Africa, is more easily recognized as the other when compared, for instance, with a refugee from another European country. Marja

Tiilikainen asserts, in relation to her study of the experience of Somali women in Finland, that "they experience marginalization, unfriendliness, racism, unemployment, and also loneliness[16]" (272); it is worth noting here that the racism experienced by the persona was experienced by other Somalis in Europe as early as 1919 as Ibrahim Ismail writes in *The Life and Adventures of a Somali*[17]: "Fortune is the European: Wherever he goes he finds friendly stations where he can feel at home; but woe to the poor African [. . .] everywhere he goes he is despised and distrusted because of his color" (381)[18].

Furthermore, a Somali woman, especially one who observes the Islamic garb, is doubly marginalized as the result of "Islamophobia" and "Afrophobia" (Haga 45). Also, in relation to Islam and being a refugee the host country, Mirreh reflects on practicing Islam and celebrating Islamic religious festivities in his poem "Alienated Ramadan," in which "the muezzin is forbidden//in the very same country to say//Allah is great" (57); compared with "A Ramadan Evening—Lover and Father," one notices how celebrating Ramadan in the native country is linked to "be[ing]//at the mosque breaking//the fast" (1) and to certain traditions—such as serving special victuals, including "tropical fruits" and congregating with the family—with which Ramadan is devoid of its time-honored associations.[19]

In fact, Mirreh reflects on the disorientation suffered by refugees in the West in "Hiding Place," which describes "a moslem man who owned a shop//selling the Koran-Kitab" as "he sipped his glass of beer//in a dark corner of the pub" (49). The persona, who immediately feels "so sorry for disturbing the enjoyment" (49), realizes that alcohol is a temporary solution to cope with negative and discriminatory experiences in the host country. It is due to the cultural confusion and the existential dilemma that "a large number of Somalis has sought to the bottle as the only alternative to drown their miseries" (Utteh 452). In brief, Mirreh's poetry

encapsulates, what Asha Hagi Mohamoud told Nuruddin Farah, "a refugee is a person who is a country worse off" (qtd. in Farah, *Yesterday* 105).

Against all Odds: Building a Better Future

Despite all the challenges faced by Somalis, one of the main ideas in Mirreh's poetry is his strong and unyielding belief in Somalis being in charge of rebuilding their country, regardless of assistance, or lack of it, from any other country. In this respect, "In Love with Grass," though at one point criticizes those leaving and betraying Somalia, still celebrates those who chose to stay and save their land: "And until death knocks at my door//I'll stay and adore you" (39). The poem also condemns those who left asking: "who should move you [Somalia] forward?" (39); Mirreh stresses the symbiotic relationship that connects Somali individuals and Somalia, and also the duty of Somalis to care for and assist in the rehabilitation of their country.

In "Mother," the persona details the actions that he should embark on in order to help his country. It is worth noting that he links "fight[ing] the tyrant" to "fight[ing] injustice in the world" (51) which indicates that local Somali freedom and democracy is part and parcel of the global inclination to embrace such values[20]. His endeavors can be categorized into two sets of actions: idealistic and practical. One of the schemes by which Mirreh desires to bring change is through his poetry as he expresses in "Remembering the Ugly General":

> I shall be rebellious [. . .] then with words
> with the brain and tongue God
> bestowed upon me
> with the ink and the pen I possess. (41)

Using his poetic craft, Mirreh perceives in his words a sword of sorts with which to counter dictatorship and war[21]; Mirreh's words are reminiscent of Safi Abdi's "Mahmoud Darwish, a Tribute", in which "pen to poet is [his] weapon" of rebellion (100). In this respect, Mirreh's emphasis on peaceful means—words, ink and pen—qualifies him as someone whose "passive resistance is only marking time, awaiting the kind of cataclysmic turn of events" (Bulhan 27). In other words, peaceful forms of resistance, such as protesting or poetry, are to be commended insofar as they can be productive and successful; if not, then, as will be subsequently examined, a cataclysmic event, such as mass killings and bombing, will push even pacifists into armed resistance.

Notwithstanding, as with many romantic and utopic individuals, the persona indicates: "I tried to change the system// from within" ("Mother" 51); similar to the persona in "Mother," in his recollections of life under Barre's rule, Somali doctor and politician Mohamed Aden Sheikh writes: "Many of us worked with and tried to take advantage of what we used to call the 'revolutionary process' in order to contrive new approaches and show new paths for development and growth to our deprived people" (15). Also, in his memoir entitled *The Cost of Dictatorship*, Jama Mohamed Ghalib relates how Ahmed Mohamed 'Silanyo,' Minister of Commerce, and Ali Khalif Galayd, Minister of Industries, "objected to the award of a fuel import contract to Abdi Hosh, considering his bid was far from the best offer" (138). In both cases, Barre "preempted most of [the] good intentions and the creative perspectives" that officials working for positive change from within aimed to enforce" (Aden Sheikh 15).

Thus, if those who are within the ranks of power, who are preselected by Barre, cannot bring change to the system, one can only wonder if and how a low-ranking civil servant can bring positive change to the corrupt system. Such actions and similar ones stress that the desire to change the system from within is plausible, but, as "Mother" indicates, change from

within is not an easy or always-applicable option for those wishing a better governance: "I know what happened//to Adan, Ahmed and//Osman" (51). Like the persona, Adan, Ahmed, Osman, Mohamed Aden Sheikh, and the two Ministers were either "dropped" from the government (Ghalib 138), "torture[d]" (Mirreh, "Mother" 51), or "periodic[ally] purge[d]" (A. Jama 241).

Despite knowing the fate of those who voice their opposition to the régime, the persona asserts that "I have to start where//they were stopped" (51) where the persona's struggle is depicted as a point on a continuum that started with now-deceased activists and that would probably continue with future freedom fighters. The persona also stipulates that, since they "died for us" and "for peace [and] freedom" (51-2), he cannot but "follow//their steps" in an everlasting quest for freedom (52).

For instance, in "Mujahid," Mirreh expresses the same idea: "And we shall pick up our guns" and go "to the fields// fighting again" (44); there is continuity in the struggle for freedom and death only stresses the need to persist in the struggle. For Mirreh, martyrs for freedom are like "a spark that//set the forest aflame" ("A Northern Man", 27) and that "ignited the whole" tyranny and cruelty of Barre's régime ("A Northern Man", 27); in fact, Mirreh's image of the spark corresponds to another Somali poem with the same image: "I am the blazing fire//lighting your way//even as I burn to ashes"[22] (qtd. in Bulhan 27). It is of paramount importance here to stress that Mirreh's call for armed struggle is addressed to those who believe in the ideals of freedom and democracy; Mirreh, in the words of Mohamed Haji Ingiriis, opposes "arms without idea [which have] led to anarchy and atrocity" (*Suicidal* 221) and believes in armed struggle for a just cause—democracy for all and freedom regardless of clan-affiliation. For Mirreh, freedom fighting does not exclude members of Barre's clan because "not all of them were involved" and thus some of them can be part of struggle for freedom ("An African

Fascism" 11)—emphasizing his refusal of blanket accusations of any segment of the political scene in Somalia.

Nonetheless, it is because of Mirreh's call for no arms to be delivered to Somalia that Mirreh's advocacy for armed struggle against Barre seems to be an oddity in the general non-violence doctrine that imprints his poetry. Still, Mirreh only supports taking to arms as both the last resort and only in self-defense. For instance, in "Remembering the Ugly General," there is a call for a reversal of roles:

> With the guns you [the West] give to the general
> I shall strengthen my rebellion
> when I take the guns you give
> to the general. (41)

This stanza locates the speaker in a continuum centered on a developing principle that takes its initial point in his Mirreh's early poetry. "Remembering the Ugly General" does not call on arms to be flown into Somalia but rather calls on appropriating the arms that are already in Somalia and on using those arms to counter the tyrannical régime—that is, turning the gun's barrel to the other direction. Thus, Mirreh's rejection of Western arms being exported to Somalia is not in conflict with using the arms that already exist inside the country to fight the oppressive régime.

The Question of Democracy

Mirreh's poetry not only dissects the war, its causes, and effects, but it also calls for democracy, one that is native and not imposed by foreign nations; Mirreh locates the question of democracy in Somalia within a framework that takes its start with the European colonization of Somalia. In "The White Man," he condemns the colonizer's destruction of the

colonies, stealing "the wealth" including "diamonds, gold, silver" (47) and also denounces how the White Man "built churches" even as he "forbade [the natives] //to worship [their] gods]" (46). Mohamud Togane expresses the same ideas in "White Man No fool" in which the persona deplores how the White Man "took away the best land" while preaching to the natives "Blessed are the meek: for they shall inherit the earth" (20).

In addition to stealing the natives' wealth and forcing a new religion on them, the White Man also denied that the colonized had any culture prior to his arrival: "You told me I had no culture" (Mirreh, "The White Man" 46); similarly, Nuruddin Farah writes: "In their homeland, the Somalis were seen as subhuman by the colonists"—lacking culture in the European archetype[23] (*Yesterday* 62). Nonetheless, while denying that the natives had any culture, the White Man still "exhibited [their] achievements//in [his] museums" (Mirreh, "The White Man" 46) as examples of how primitive the natives are; in his poem "Of Historical Ages" (1965), Ismael Hurreh also denounces reducing the natives and their history into museum artifacts: "The stigmata of historical ages//My head has become a museum piece//Sold in hard cash and stored//In London" (16).

This criticism of the White Man's erasing of the natives' culture is essential in understanding Mirreh's conceptualization of democracy; in other words, as Abdirahman Osman-Shuke, Former Minister of Education, asserts, "during the colonial administration, the traditional leaders had also lost the political power and respect they previously enjoyed" (148), and traditional institutions were replaced by Western ones. The colonizers' suppression of the traditional systems can be related to the colonizers' sense of supremacy over the colonized, assuming that the colonized had no culture, as Mirreh indicates, and thus no formal or informal 'justice system'. It is this "introduction of colonial system and

application of laws based on foreign cultures" not native to the Somali setting (Osman-Shuke 148) that Mirreh rejects in "Roots/Democracy":

> Democracy we had
> before the white man
> came.
> . . . . . .
> No force was used
> to settle a dispute
> persuasion was the
> rule.
> And now . . .? (84)

The poem affirms that the natives had their own democratic procedures that, though unrecognized by the White man, were functional and practical in solving internal issues; in fact, the persona's celebration of Somali political traditions is also "partly as a result of Western disparagement of Africa as 'a continent with no history'" (Mazuri 205). The persona in Mirreh's poem is the epitome of what Somali historian Jaamac Cumar Ciise advocates for: "Publicize the good qualities which you have and the shortcomings they have [. . .] After that they will look upon you with admiration" (qtd. in Andrzejewski 108); by drawing attention to Somali traditional forms of governing, the persona publicizes and highlights positive elements of his culture that the colonizer ignored and judged as primitive.

The poem furthermore denounces the introduction of alien concepts such as "jails" and "police" (84) which imposed new forms on interactions amongst the natives and between the natives and the colonizers. "Force," which is implemented through jails and police officers, was absent from any problem-solving until the arrival of the White Man; to solve a dispute, the natives would resort to the *xeer*, a set of customary oral laws,

which was seen as part and parcel of the natives' lifestyle. Ali Jimale Ahmed stresses the same point in his "Annealed Symmetry": "In times gone, under the shade of the *Yaaq* or *Muki* tree,// Word and action were annealed in symmetry//After a meandering verbiage has run its course" (30); verbiage, that is the art of conversing and persuasion, was the tool to solve a dispute—not force . It is worth noting here that the *xeer*, through its "decentralized polities" (Adam 219), addresses the issues at hand in a more "flexible" manner that "varies from place to place depending on circumstances and situations" (Osman-Shuke 159). Instead of a top-down procedure, whereby rules made in faraway places, are implemented regardless of the uniqueness of every situation, Mirreh celebrates the "localized" (Osman-Shuke) traditional pastoral democracy as more genuine and authentic to the Somali experience[24].

In this respect, there are similarities between Mirreh's "Roots/Democracy" and Ali Jimale Ahmed's "A Proclivity for Suing" (1988). In Ahmed's story, as a result of many visits to "the colonial courts," Aw Maalin, though not "understand[ing] the language in use," became "greatly fascinated with the procedures he witnessed" and "soon after that, he developed a proclivity for suing other people" (140); he would sue anyone for the slightest of injuries or offences and, even on his deathbed, he pleaded with his offspring to pursue his case against Geedi. In replacing native "persuasion" in settling disputes with alien colonial courts, Aw Maalin represents a segment of the colonized population that Mirreh fears it becoming the norm. As a matter of fact, Aw Maalin did not "refrain from practicing this alien tradition [even when] its propagators left this country for good" (142) because, as Jaamac Cumar Ciise writes, "the Western people colonized the Eastern people by power, but power does not endure [. . .] it is the colonization of thought that endures"—what Ciise calls "*Alistiamar Alfikri*, Intellectual Colonization" (qtd. in Andrzejewski 108); in order to contest intellectual colonization, as with Aw Maalin, "the colonized's liberation must be carried out

through a recovery of self and of autonomous dignity" (Memmi 172) which is akin to what Mirreh advocated for.

In fact, the last line in "Roots/Democracy" alludes to what happened with the fall of Barre's régime—a political system based on European notions of governance, if only in theory; "And now . . .?" is more of a consuming agony than it is a question waiting an answer. In other words, since "the successive Somali governments (1960-1990) continued the same policies and structures as the colonial administration" of neglecting or abandoning the *xeer* (Osman-Shuke 148) and since the Western model of governance failed, the poem ponders about the fate of the management of internal and external affairs of the country[25]. "And now. . .?" can also be read in light of the anti-Westernization sentiments that a number of colonized countries witnessed; indeed, Mirreh's rejection of the European system and his praise of the Somali *xeer* can be linked to, for example, the Yemeni poet Mohamed AlZubair who wrote: "Behold Japan and what it achieved, neither emulating the West nor imitating it// Will the West be content with us [Muslim world] only when we shed our souls in his worship" (qtd. in Elchadli 172, my translation). Both Mirreh and Alzubair believe in the preservation of the native culture and traditions and can be described as being part of the "indigenous intelligentsia," whose "world view is founded on indigenous culture [combined with] their open hostility toward Westernization" (Bulhan 26).

Conclusion

Abdirahman Mirreh's poetry is driven by the poet's deep conviction in democracy and the eradication of tyranny in Somalia. In the words of Abdulqadir Hersi Siyad, Mirreh can be seen as one of "the intellectuals given their analysis" and, "with knowledge," fighting the "atrocities" of Barre's dictatorship and the civil war (4). In his "analysis" of Barre's dictatorship, the ensuing war and the hope for democracy,

Mirreh traces the root causes of the "trauma" and the "atrocities," in order to create a road map for a future of "goodness"—and that is one of the key goals of Mirreh's poetry. Mirreh's poetry is like the light at the end of the tunnel, foretelling of a future where equality, justice, respect of human rights and democracy are the foundation for the good governance of the Horn.

Notes

[1] Abdirahman Mirreh (1942-2000) was a native of Hargeisa, who published four collections of poetry, poetry—*Songs of a Nomad Son (1990), Songs of a Nomad Son, a Galool Tree Named Desire: A Collection of Poetry, 1990-1993 (1994), A Gob Tree: Beside the Hargeisa Wadi (1995),* and *From an Acacia Landscape (1996)*— and two scholarly works—*Nomadens Stemme: Fabler Og Eventyr FraSomalifolket (1996)* and *DieSozioökonomischen Verhältnisse der NomadischenBevölkerung im Norden der Demokratischen Republik Somalia (1978). The present essay is a continuation to "'Pen to Poet Is Weapon' — the Pastoral in Abdirahman Mirreh's Poetry (1976-1994)"* (2019) [*Somali* ***Studies:*** *A Peer-Reviewed Academic Journal for Somali Studies, Volume 4, 2019*, pp. 117-135] and "Further Thoughts on Abdirahman Mirreh's Pastoral Poetry (1976-1994)" (2020) [*Journal of the Anglo-Somali Society, Issue No. 67 Spring 2020*, pp. 36-42].

[2] "Pen to poet is weapon" is a quote from Safi Abdi`s "Mahmoud Darwish, a Tribute" (100).

[3] Mohamoud Afrah describes the knock on the door as "the much anticipated customary 'Three o'clock knock' at [the] doors by the NSS [National Security Service] agents" (10).

[4] Shirin Ramzanali Fazel stresses the same idea in "Mare Nostrum": "We [the West] have got amnesia no memory of yesterday// [. . .] Today we export 'democracy'//The reality we use dictators//When we do not need them// We bomb them and their whole country//We make money selling obsolete weapons// [. . .] We create death agony displacement//Justified collateral damage" (56).

[5] Other poems that explore the same theme are "Children's game, Hargeisa," "The General/The Donor/ The drought/ The Nomad," "Lonely Old lady," and "Industrial World—an Eye Witness".

[6] In a different context, Mirreh also criticizes Western citizens for being oblivious to the effects of their consumerism on individuals in developing nations: "Tropical fruits on the stand//the buyer doesn't know how//they grew, or he doesn't care.// Sweat and blood are smeared//on the skin, yet the taste is//sweet" ("Bananas on a Tray" 67).

[7] Shirin Ramzanali Fazel reiterates the same idea in her poem "Mother: "Mother [i.e. Somalia]//I look at you//You are shaped//Like a womb//You are warm//loving//Generous//You are been chained//raped//exploited// [. . .] You are the endless pot//where greedy fingers//dig for more" (57).

[8] In a 1965 article, Yousuf Duhul addresses the issue of blamocracy in post-independence Somalia: "We tend to blame foreigners for a lot of our problems [. . .] The final decisions always rest with Somalia. Criticism should really be directed at the responsible Somalis" (10).

[9] For stories of Somali refugees, refer to *A Camel for the Son* (2001), which tells the stories of refugees in Kenya; *Somalia to Europe: Stories from the Somali Diaspora* (2011), which narrates the experiences of refugees and asylum seekers in Europe; and *Teenage Refugees from Somalia Speaks out* (1997), in which young Somali refugees and asylum seekers in North America tell their own stories.

[10] "Fleeing" was republished in a different format in *The Silver Throat of the Moon: Writing in Exile* (2005).

[11] In "Permanent Ramadan," the persona bemoans how hunger becomes the fate of many Africans: "Nowadays we fast not//only a month but it became//a lifestyle.// . . . // who ordered us//in Africa//to fast hundreds of years" (63); the persona contrasts the act of voluntarily fasting for religious purposes with the act of involuntarily being starved.

[12] In "Just a Piece of Bread," the persona criticizes Man's twisted logic and how Man is blinded by a desire for grandeur from seeing and addressing suffering on earth: "How much money he spent//to let his feet touch your soil?" when people are starving on earth (78).

[13] Interestingly, the persona describes himself as one of "the thousand dead//shadows" (14) which can be contrasted with the image of the free sparrow in the first stanza. "The thousand dead shadows" could be a reference to all those who were killed in Somalia and who are embodied in the persona, the one who survived the killings. For more on the image of birds in Somalia as it is interlinked with ancient Egypt, refer to Ahmed Ibrahim Awale's *The Mystery of the Land of Punt Unravelled* (61).

[14] In "Hunger at Their Heels. . .," Somali-Djiboutian poet William Farah Joseph Syad (1930-1993) reflects on how the grandchildren of Somalis, who fought and died on the side of the Free Forces, were subsequently denied access to European countries: "In South of France//The battle of the Point de Grave//The Somali battalion//Honoured the Free Forces// . . .//What in return//have received//The children of those//who enjoy the Everlasting sleep//. . .// Deportation//awaits them//in every sea port" (65-6).

[15] Shirin Ramzanali Fazel also reflects on refugees being subject to racism: "We bring you friendship,//our human values, our culture with many dialects,//music, dance and strong, spicy food//like our character// In exchange we receive your hostile sneers" ("Rainbow" 1).

[16] Ladan Affi reiterates the same idea in relation to the Canadian setting: "Somalis are increasingly facing individual and systematic racism which has made their integration much more difficult. In many cases, Somalis have been physically attacked and injured" (447). For more on this subject, refer to Abdi Kusow's "Stigma and Social Identities: The Process of Identity Work Among Somali Immigrants in Canada" and Fadumo Warsame Halane's "Somalis Living in Sweden: Forty Years of Ups and Downs."

[17] *The Life and Adventures of a* Somali is the memoir of Ibrahim Ismail. It is the first known text written by a Somali in a European language. It describes the life of Ibrahim Ismail, a Somali sailor, as he journeys across the world travelling to India, Yemen, Britain, South America, Tunisia, and France . . .

[18] In "El Negro," Mirreh stresses the equality between white and black people: "If the white man//thinks he is the//day//You should think//you are the night.//How could the day//be born without//the night?" (61).

[19] In addition to the feeling of cultural loss, the Somali refugee, especially the parents, is faced with "estrangement" as it related to "different child-rearing

habits" (Tiilikainen 272) and different expectations from the parents and the offspring alike. In Mirreh's "Ungrateful—A Daughter in Europe," he reflects on how much care the father had invested in bringing up his children only for them to "laugh at him//because he is old [and]//bald" (15). In her short story entitled "The Story of Us," Hannah Ali examines how the house in the West represents an extension of Somali culture and traditions and how that creates tension between the parents and the offspring: "When I step out of the house, I am no longer in *Soomaaliya*" (48).

[20] In his "The Fuhrer's Ghost," Mirreh writes: "1939 it started with the Jews//1993 it is starting with the Turks//the Slavs are the next// the bomb for the rest" (88). In "Mutual Trade," Mirreh reiterates the same idea: "The truth is, we never learned//a single thing from the first//and the second war.// The truth is, we never learned//from Vietnam" (62).

[21] In his "Thoughts in a Night," Mirreh stresses that the function of the painter and the poet, among other artists, is to "tell the//world there should//be no more wars" (15), that is to speak truth to power.

[22] Dr. Hussein Abdilahi Bulhan translates the full poem from Somali into English but without specifying the identity of the poet. The poem starts as follows: "Poetry is my wealth,//song is my nourishment.//My brain is prosperity,//dedicated to you, my people" (27).

[23] Mirreh also condemns the White Man's destruction of Tasmania native heritage in his poem "Once There Was a Tasmanian": "As the white man wiped out//the Tasmanian race// [. . .]// the white man is responsible//for the extermination of this race" (87). Also, in "Thoughts of a Dying Man," Mirreh laments the obliteration of the Tasmanian people and their heritage: "the Tasmanian//man is gone his//ancestors' graves//we can never find" (44).

[24] For a study of a localized and self-governed community, refer to Richard Ford and Adan Abokor's research into the village of Daraaweyne, 35 kms northeast of Hargeisa. "Participatory Tools for Peace Building: New Models for African Governance" (341-66) in *War Destroys, Peace Nurtures: Somali Reconciliation and Development* (2004).

[25] For a study on the viability of the *xeer* to address modern issues in Somalia, refer to Ali Moussa Iye's "The Issa Xeer: Traditional Democratic System with the Potential to Meet some Modern Challenges."

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