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About this Journal

Somali Studies: *A Peer-Reviewed Academic Journal for Somali Studies* is a broad scope multidisciplinary academic journal devoted to Somali studies, published annually by the Institute for Somali Studies in print and online forms. The journal aims to promote a scholarly understanding of Somalia, the Horn of Africa and the Somali diaspora communities around the globe.

Somali Studies provides a forum for publishing academic articles covering diverse fields and disciplines in Somali studies, particularly focused on the social science and humanities. The journal welcomes papers exploring the historical background or navigating contemporary issues; special consideration will be given to issues critical to the recovery and rebuilding of Somalia, a country emerging from a devastating civil war.

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Editorial Note

Dear readers and colleagues,

Reconstructing a country post-conflict necessitates extensive consultations and in-depth studies to formulate laws and strategies that tackle deep-rooted challenges, taking all considerations and dynamics into account. Thus, adopting appropriate perspectives is crucial for effective management and sustainable reconstruction in Somalia. This volume presents a diverse range of articles providing valuable insights in this regard. Welcome to the 2023 issue, Volume Eight, of *'Somali Studies: A Peer-Reviewed Academic Journal for Somali Studies'*.

The first article, titled *'Theorizing Stability of the Somali State: In the Light of the Comprehensive Perspective of Somali Studies'*, delves into the challenges of Somali state-building. It underscores the correlation between contemporary state frameworks and traditional Somali society. The article criticizes prevailing perspectives and, instead, advocates for an alternative approach termed the *'Comprehensive Perspective'*, arguing that it will lead to a stability model for Somali state-building.

The second article, titled *'Methods and Tools of Unification of Somali Laws in Light of the Provisional Federal Constitution of Somalia'*, examines approaches to consolidating laws in Somalia within constitutional frameworks and highlights certain constitutional principles that guide the process of consolidation.

In recent years, Somalia has entered into numerous international treaties and conventions, requiring the domestication of these agreements. Given that international law grants each country autonomy in conducting the domestication process according to its constitution and internal laws, the third article examines this matter within the context of the Provisional Federal Constitution of 2012 and provides valuable recommendations.

Somalia has adopted a 'federal system' comprised of 'states'. However, no clear and agreed-upon boundaries exist between the regional states, or at least some of them, leading to contested borders that may result in conflicts. Therefore, it is essential to delineate state boundaries clearly to avoid inter-state boundary disputes. The fourth article explores the gaps, challenges, and legal frameworks involved in delineating the territorial boundaries of the Somalia Federal Member States.

Market fires have become frequent incidents in Somalia, resulting in significant financial losses and potential loss of lives, posing a serious threat to the country's fragile economy. The fifth article discusses the management of market fire outbreaks, using Bakara Market in Mogadishu as a case study. It identifies challenges and proposes recommendations for effective prevention of fire outbreaks and mitigating their effects.

The sixth article explores strategies to enhance bilateral ties between Somalia and Türkiye in agriculture and livestock sectors for mutual benefits. It emphasizes that continuous investment in these areas could strengthen economic growth and stability in Somalia.

Finally, the seventh article is about the Somali novel '*Aqoondarro waa u Nacab Jacayl - Ignorance is the Enemy of Love'* which reflects that oral poetry served as a powerful tool for expressing emotions and conveying thoughts in the daily life for centuries. By analyzing the oral poetry in the novel, this article explores the stylistic elements of poetry within fiction.

On this occasion, we express our appreciation to the authors, reviewers and editorial team for their contributions. Their dedication and hard work deserve acknowledgment and gratitude. Thank you to everyone involved!

Mustafa Feiruz
Editor-in-Chief

Theorizing Stability of Somali State: In the light of the Comprehensive Perspective of Somali Studies

✍Abdurahman Abdullahi 'Baadiyow'

Abstract

This essay addresses the Somali state-building challenges and emphasizes the need to explore the relationship between modern state structures and traditional Somali society. Critiquing existing perspectives such as the Anthropological, Marxist, and Revisionist approaches, the author proposes an alternative viewpoint called the "Comprehensive Perspective" (CP). The CP rejects exceptionalization, clannization, secularization, and patriarchization within Somali studies, advocating for an inclusive approach encompassing all elements of Somali society. The essay presents six scenarios representing the Somali mindset, highlighting the varying loyalties to Islam, nationalism, and clan, which pose significant challenges to state-building. The essay concludes that reconciliation between state and society requires reconciling political elites, restructuring traditional institutions, addressing past grievances, and establishing a foundation for a shared future. This process should be reflected in constitutional provisions and legal frameworks, and non-state actors should be integrated. This integration will lead to the development of a 'stability model for Somali state-building.

**Keywords:** Somali studies, Somali state, state building.

Introduction[1]

Somali studies is a multi-disciplinary academic term for studying the Somali people in the Horn of Africa, their diasporic communities, and their interactions with other peoples worldwide. The main fields in Somali studies are social science, humanities, and fine arts. Somali studies analyze the historical, social, economic, and political aspects and their interaction with local culture. It is rooted in the ancient history of the Horn of Africa. It draws from the chronicles and literature written by Greek, Jewish, Chinese, and Arab/Muslim geographers and explorers in the Middle Ages.[2] It is also embedded in the works of scholars of Islam who focused mainly on Islamic studies, memorized rich poetic literature, and travelogues of the European explorers of the nineteenth century.[3] Moreover, Somali studies hinge on colonial literature and archives and scholarly work produced by researchers and found in published books.[4] Furthermore, since the Somali people bridge Africa and the Middle East, Somali studies are influenced by African and Middle Eastern studies.[5] The term Somali studies was coined in 1978 with the establishment of the Somali Studies International Association, emulating other country studies that were booming during that period.[6]

Somali studies have witnessed steady growth since adopting the official orthography of the Somali language in 1972 and, then, making the Somali language an administrative language and medium of instruction and establishing or strengthening state institutions to promote arts, theatre, and culture.[7] Somali studies were booming with the growing trend of publishing books in Somali, English, Arabic, and other languages. In recent years, annual book fairs started throughout Somalia's big cities, and publishing houses and translation services are booming.[8] Moreover, the annual conferences of Somali Studies are conducted at many universities and institutes, such as Mogadishu, Jigjiga, SIMAD, Benaadir universities, and East African Association for Research and Development

(DAD) and Heritage Institute. Additionally, several specialized journals on Somali studies are being published.[9]

However, with all this progress in Somali studies, the fundamental question of why the Somali state collapsed within 30 years (1960-1991) and how to re-institute it remains disputed. Even worse, the military regimes' elite political culture and policies are recuperated in the new state-building processes.[10] Studies explaining the Somali state collapse and its causes could be summarized into three main categories. To simplify, let us compare the Somali state collapse to a crumbled building. What are the possible factors that can collapse this building? The first factor may be external, like tsunamis, artillery shells, or missiles hitting the building. The second factor may be the quality of the material that was incapable of bearing the burden of the structure. Hence, the building collapses due to engineering miscalculations or the poor quality of the building materials. The third factor may be the defective engineering of the building that, over time, collapses by itself.

Comparing the collapsed Somali state to the collapsed building, we can assert that the causes of the breakdown of the Somali state were multiple external factors (colonial legacy, war with Ethiopia, Cold War, etc.), defective engineering of state-building, and the low capacity of the political leadership. The flawed engineering mimics the state's inimical relation with its societal roots: Islam and the clan system. The poor quality of the construction materials is comparable to the political elites' low capacity and the society's poor cohesion. Fig 1 demonstrates the concept of state-society relations in which Islamic belief and the clan system are the basis while the modern state is the superstructure. The state-society conflict is like a foolish person representing the state's political elite who cut the tree's root where he sits on it (figure 2). Is there any doubt that this person should fall?
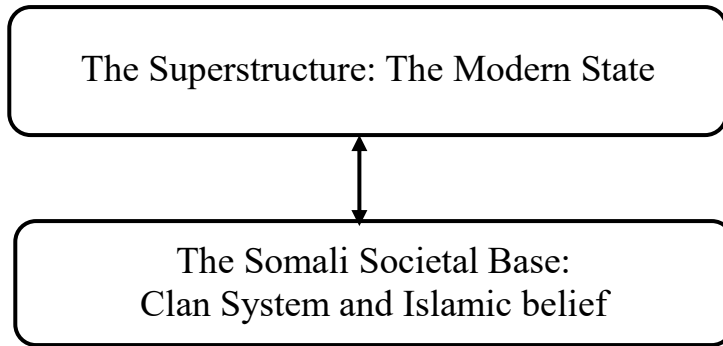
Figure 1. The Somali Societal Base and Superstructure
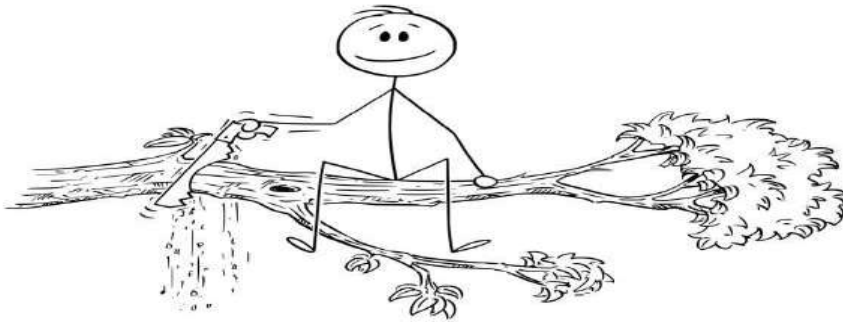
Figure 2. An example of the Somali political elites cutting the roots
of Somali society: Islam and the clan system

Even though this paper focuses on Somalia, its main thesis applies to other countries sharing Somalia being a postcolonial state in conflict with its traditional society. Such countries include Yemen, Libya, Sudan, Chad, Mauritania, and Afghanistan. These countries experienced a similar historical trajectory to Somalia, from weak postcolonial regimes to military dictatorships and civil wars that created instability and continuous state-society conflict. This paper briefly produces the theoretical backdrop of the three theories employed in this research. Moreover, the paper offers the critical challenges of Somali state-building that expound on the root cause of the current crisis and proceeds into the overview of the various perspectives of Somali Studies as a background

for developing the comprehensive perspective (CP). Finally, after exploring and categorizing the main Somali conflicts, this essay suggests the Inclusive Reconciliation Framework (IRF), which could be developed into the Stability Model (SM) for Somali state-building.

Theoretical Base of the Comprehensive Perspective

In theorizing the comprehensive perspective, this paper utilizes three theoretical frameworks: the theory of state-society relations, the elite theory, and the ibn-Khaldun's theory of solidarity. These three frameworks focus on the relationship between the state and society, which cuts across aspects of the theoretical borderlines, exploring how governance and society interact and influence one another. We will briefly produce an overview of these theories. Firstly, scholars in state-society relations agree that society provides crucial support for a state's effectiveness and that a state is critical to collective action in society.[11] The UK Department for International Development (DFID) defined state-society relations as 'interactions between state institutions and societal groups to negotiate how public authority is exercised and how people can influence it. They are focused on issues such as defining the mutual rights and obligations of the state and society, negotiating how public resources should be allocated, and establishing different modes of representation and accountability.''[12]

Earlier scholars of state-society relations considered strong traditional societies structured into tribal communities and religious groups in postcolonial countries an obstacle to modern development. However, in the later period, strong states and strong societies in collaboration were conjectured to offer a better prospect for development.[13] The challenging nature of Somali state relations with its society stems from the strangeness between the postcolonial form and character of the state and the underlying social, economic, and political configurations of Somali

society. The resulting tensions in state-society relations are directly attributable to the enduring influence of colonial legacy. [14] Thus, the independent Somali state (1960-1991) embarked on a policy of suppressing its strong society, and the reaction of society in encountering it caused the state to collapse in 1991. Additionally, the resilience of Somali society and its ability to survive and even develop more than 30 years of hardship is associated with its strong social networks, deep-rooted clan culture, strong Islamist groups, and relative networks. [15] Indeed, the state and society are not separate and wholly independent entities from one another since the state's top institutions are occupied by individuals representing the interests of various segments of society. Thus, state and society are interdependent, and while the state adopted modernization programs against traditional ethos, Somali clans hardly accepted the state's laws and programs and preserved their traditional customary laws and networks.

Secondly, the elite theory seeks to describe power relationships in contemporary society and posits that a small minority holds the most power. The central premise of the elite theory is as follows: 'No societies are governed by the people, by a majority; all societies, including societies called democratic, are ruled by a minority.' [16] Even when entire groups are supposedly excluded from the state's traditional power networks, elite theory recognizes that "counter-elites" frequently develop within such excluded groups. The elitist method permits the integration of the two levels of analysis: micro-systems studies by anthropology and macro-systems that fall in the domain of political science. [17]

In the Qur'an, the elite is synonymous with the Arabic term *al-Mala,* which means the great one, the chieftains, the leaders, the notables, the eminent, the dignitaries, the elders, and the ruling circle. [18] Being the ruling elites and the privileged class, the Qur'an characterized these elites as ardent refusers of the prophets' messages. This is so because the

prophets' message carried fundamental ideological change and a vision for the socio-economic reform of societies. As class theory postulates, political elites not only drive political power by owning economic resources. They acquire from 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. [19] 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. [20] The concept of the elite is someone with a community reputation and enjoys the best social, economic, political, and cultural levels.[21]

Thirdly, Ibn-Khaldun's theory of *Asabiyah* explains how conflicts develop in the tribal nomadic societies, what happens after their conquest of the urban centers, and how to mitigate their destructive culture. The *Muqaddimah* (prolegomena) to the Universal History, authored by Ibn-Khaldun, delves into the studies of the relations between civilizations and nomadic people. The societies of Ibn-Khaldun's subject of study were clans and tribes, and their religion was Islam. It explains the difficulties of resuscitating the collapsed state because nomads do not agree on one leadership, which prolongs the conflict. Moreover, Ibn-Khaldun connotes Asabiyah as "basically a social force which offers the ability for confrontation, whether that confrontation is [political] demands or defends [from threats]."[22] How the nomads behave when they conquer urban cities, Ibn Khaldun writes that "palaces that succumb to the Arabs [nomads] are quickly ruined."[23]

Furthermore, Ibn-Khaldun deals with mitigating the nomads' destructive behavior. This theory suggests that Asabiyah cannot be weakened without the intervention of a religious, moral standard that lessens its ferocity and

savageness with the teaching of universal values. Addressing this question, Ibn-Khaldun wrote: "Arabs [nomads] can obtain royal authority only by using some religious coloring such as prophecy, sainthood, or some great religious event in general."[24] "But when there is a religion [among them] through prophecy or sainthood, they have some restraining influence. The quality of haughtiness and jealousy leaves them. Then, it is easy for them to subordinate themselves and unite."[25]

In the post-colonial Somali state, the theory of state-society relations studies confrontations between the state and society because of the secular view of the state that disdained the culture and norms of the clan-based Muslim society. Secondly, the elite theory deals with the modern elites who were the product of the colonial education system and retained the political ideology and culture inherited from the colonial rulers. These elites acquired predatory elite political culture mixing colonial governance culture (top-down) with the local clan culture (clannism) that continued and even worsened after the collapse of the state in 1991. Finally, Ibn-Khaldun's theory of solidarity offers a remedy to the chaotic nature of clan-based societies by introducing Islamic ethics and charismatic leaders into the equation, calling for Islamic principles of brotherhood, peace, justice, and good governance.

Background One: The Key Challenges of Somali State-building

The main challenges of Somali state-building are its strategic geographic location, the division of the Somali territory among multiple colonial powers and the Somali aspiration for uniting them (Greater Somalia), and the Westernized state model in conflict with its society. The geography of Somalia connects Asia, Europe, and Africa, which attracted competition among the various colonial powers to dominate Somalia. Also, adjacent to the Suez Canal and the oil-rich Gulf region, Somalia became part of the Cold War theater by the 1950s. Moreover, Somalia was drawn to the river

Nile politics between Egypt and Ethiopia.[26] Furthermore, Somalia became a place where the double identity of Arabness and Africanness compete and conflict.[27] Presently, global terrorism designated Somalia as a suitable location to wage what they called global Jihad to restore the Islamic Caliphate. Finally, the renewed superpower rivalries between USA and China and rising regional powers like Turkey, the Gulf states, and neighboring countries pose new challenges for Somali state-building.

The second challenge was dividing the Somali cultural nation into five parts among multiple colonial powers, which inspired Somali nationalists to struggle to unify all Somali territories. This venture positioned Somalia on a collision course with international conventions on the inviolability of the colonially inherited borders.[28] Moreover, it also embroiled Somalia in continuous conflict with its neighbors. Gradually, Somali nationalism began to decline with the defeat of Somalia in the war with Ethiopia in 1977/78 and the proclamation of the independent Republic of Djibouti in 1977. What is more, the repressive policy of the military regime and the armed opposition movements organized on a clan basis further weakened Somali nationalism.[29] Therefore, the centrifugal forces of Somali clannish particularism overwhelmed the centripetal forces of nationalism that were substantially weakened during long years of dictatorship (1969–1991), and the Somali state collapsed in 1991. Since then, Somalia has remained the emblem of the longest-collapsed state in modern history. Indeed, Somali nationalism never dies because it is organic and alive among all Somalis; however, it requires a new vision and interpretations that draw lessons from past experiences.

The third challenge is the postcolonial state built on the Westernized model, which failed to accommodate the Somali traditions (i.e., Islam and the clan system). Consequently, the pervasive state penetration in the society ineptly collided with a strong society based on the clan system and Islam, thus kindling a defense mechanism that provoked rebellious

confrontations. Therefore, strained state-society relations instigated the emergence of three competing ideologies: clannism, Islamism, and nationalism, even though these ideologies are dynamic, crosscurrent, and often overlap. [30] However, without a reconciliatory arrangement, the notion of their mutual exclusion prevailed. Indeed, the polarization of the society started manifestly with the enforced secular reforms of the military regime, which provoked the emergence of insurgencies under the banners of Islam and clan. Therefore, it is arguable that Somali society has been systematically radicalized since 1969.

1. Geographic challenges: Somali weakness and competition of foreign powers to dominate it.

2. Division of the Somalis into five parts and Somali nationalist project of Great Somalia (incomplete state)

3. Westernized and secular state in conflict with its traditional society: Islam and clan system (conflict and clash)
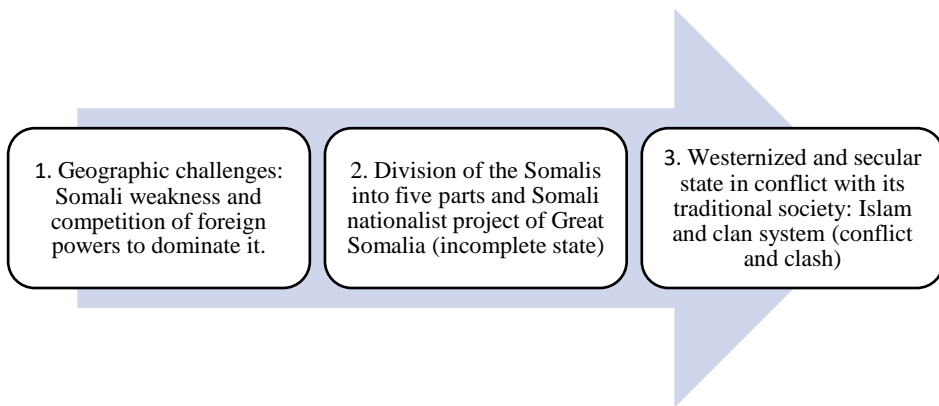
Figure 3. The three Key Successive Challenges of Somali State-building

The two challenges related to the strategic location that attracts foreign powers' competition and the division of Somalia into five parts are political realities that compel pragmatic handling. Dealing with foreign competition requires a prudent foreign policy safeguarding Somali national interests and mitigating foreign influence. Regarding Greater Somalia, reinterpreting its vision and adopting a new strategy based on regional integration resolves this case. The third challenge regarding the state-society conflict is where Somali scholars are required to critically analyze the past and develop a stable system of governance for Somalia. The Somali state's failure resulted from bankrupt ideas invented by foreign and Somali intellectuals and implemented by Somali politicians.

The following section examines these ideas that, after being internalized by the Somali politicians, caused the state's breakdown within three decades and still place obstacles in its re-instituting.

Background Two: Overview of the Perspectives of Somali Studies

Somali studies have been dominated by narratives rooted in sociocultural anthropology that focus on kinships and social organizations, religion, myths, symbols, values, and the relationship between traditional and modern structures. Some scholars argue that anthropology originated and developed as the study of "other cultures," both in terms of time (ancient times) and space (non-Western societies).[31] These scholars' viewpoints consider anthropology as a colonial intellectual tool developed for understanding colonized populations, which enables them to conquer, dominate and administer.[32] In addition, colonial scholars imbued with racial superiority produced debasing images and distorted descriptions of the colonized nations. These images permeated the various educational means and research methodologies in postcolonial knowledge production. For example, there is a persistent repetition of the clannish image of the Somali people in much of the academic literature, which tends to represent Somalis as exceptional and clannistic while dooming them to be fractious forever and incapable of building a viable state.[33] Scholars of anthropology make their assumptions on "the modernization metanarrative, which focuses on the transition from tradition to modernity. This theory is founded on the belief that traditional societies can be developed with the assistance of the developed countries along the same path taken by the more developed Western countries."[34] This theory draws from the ideas of Max Weber (1864–1920) on the role of rationality and irrationality in the transition from traditional to modern society, popularized later by Talcott Parsons (1902–1979). Many modernization theorists often saw traditions as obstacles to economic

growth and related democracy with modernization, taking national states as the unit of analysis.[35]

The above concept was ingrained in the minds of the Somali political elites. As a result, they espoused the idea of peripheralizing the traditional identities of Islam and the clan system. In doing so, they aspired to be modern and developed. The conception of modernity against tradition was the core ideology of Somali nationalism and the state that gained independence in 1960. The damaging impact of this perspective was that it created a rift between the national state and its societal base. In the first nine years of civilian rule (1960–69), the state-society conflict was mild and manageable; however, during the military regime (1969–1991), the ideological gap between the state and society had widened due to the adoption of scientific socialism and ruthless modernization programs of the totalitarian military regime.

The military regime followed, to a certain degree, the footsteps of Kemal Ataturk in adopting his principles, such as secularism, nationalism, statism, populism, and reform. [36] However, these principles were camouflaged with the rhetoric of scientific socialism and expressed in the secularization of the family law, abolishing the Diya system, the execution of scholars of Islam, forming the one-party system, and the persecution of the political opposition.[37] Somali studies reacted to the military regimes' policies and adoption of socialism with the emergence of the Marxist perspective. This perspective is founded on class analysis and historical materialism.[38] The Marxist analysis of the Somali studies criticized anthropological and modernization theories. Nonetheless, the military regime had been hybridizing the concepts of sociocultural anthropology and the ideology of socialism. Both perspectives shared a secular worldview and enmity toward the traditions of the societies. The oppressive nature of the military regime and its harsh policies against traditional values were confronted with the radicalization of clans and the

emergence of armed oppositions by the end of the 1970s. Moreover, the phenomenon of Islamism that appeared in the 1960s as part of the global rise of Islamist movements became more structured, and various organizations were instituted.[39] Indeed, during this period, the seeds of extremism in the name of Islam surfaced in reaction to the execution of the Ulama in 1975, who opposed secular family law.[40]

The negative impact of the marginalized Somali traditions paved the way for extreme state-society conflict, which gradually triggered a total breakdown of the state in 1991. With the end of the Cold War, the demise of the Soviet Union, and the collapse of the Somali state, the Marxist perspective reached a dead end, even though the theory of class analysis was sustained. Thus, proponents of the Marxist perspective reverted to accepting the need to reconcile modernity and traditions. This transformation was more evident in the thesis of Ahmed Samatar, who proposed the synthesis of modernity and tradition (clan [tol], customary law [Xeer], and Islamic law [Qaanuun]). [41] However, the practical integration of modernity and tradition remains the most significant unsolved challenge in Somalia and all Muslim states.

The collapsed state of Somalia in 1991 posed an unprecedented challenge to state-building. Professor Hassan Kaynan said, "Somalia has not been the only country to experience state failure, but the scale, magnitude, duration, and consequences of state disintegration have earned it the infamy of being the first and most enduring failed state."[42] During this long and traumatic period, a perspective of revisionism emerged strongly, expressing the historical marginalization of the southern semi-pastoral regions versus the northern and central nomadic areas of Somalia in "a more epistemologically holistic and pluralistic way of articulating Somali society."[43] Proponents of the revisionist perspective criticized the two other perspectives cited above for accepting the constructed myths and

utilizing the official narratives that contributed to the conceptualization of Somalia.

Scholars who adopted this new perspective demystified the conventional image of Somaliness as one constructed by idealistic Somali nationalists, colonial historiographers, and post-colonial political hegemonic clannists. Moreover, these scholars criticized made history as chauvinistic, focusing on northern pastoralists and excluding the southern agrarian population. The revisionists have re-examined conventional national symbols and myths such as racial homogeneity, linguistic unity, and shared historical experience. They advocated for comprehensive Somali Studies that do not exclude sociological minorities and marginalized communities. However, the revisionist perspective does not disagree with the anthropological and Marxist perspectives on the secular view. Indeed, their difference is confined to criticizing the marriage of power and knowledge that nomadic-rooted and camel culture national leaders promoted. [44] The objectives of the revisionist scholars have been partially achieved in the development of the constitutional provisions, which recognized linguistic diversity and minority rights, and the adoption of a federal system demanded by the *Hizbia Dastur Mustaqil al-Somalia* (HDMS) party, which represented the south/western clans of Digil and Mirifle, before the Somali independence in 1960.[45]
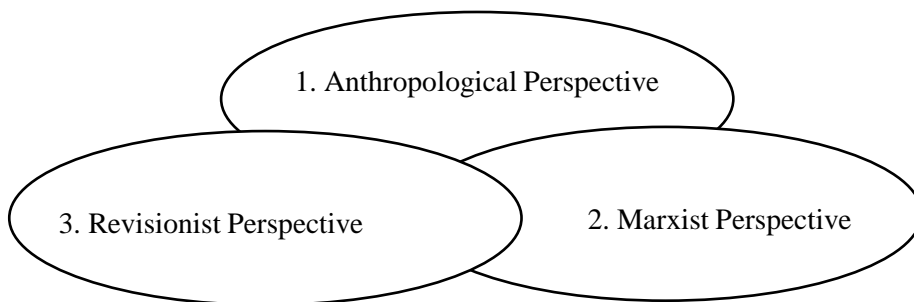
Figure 4. The three perspectives with overlapping secular views

The three above-stated perspectives are just two sides of the same coin regarding their belonging to secular philosophy and overlapping understanding of Somali society and its relationship with the modern state. Indeed, the ideology of the postcolonial Somali state in its two phases, civilian and military, was founded on the hybridization of anthropological, liberalism, and Marxist perspectives, which suffered failure as an intellectual framework for Somali state-building. The three above-stated perspectives are just two sides of the same coin and belong to secular philosophy. Nevertheless, they have an overlapping understanding of Somali society and its relationship with the modern state. Indeed, the ideology of the postcolonial Somali state in its two phases, civilian and military, was founded on the hybridization of anthropological, liberalism, and Marxist perspectives, which suffered abysmal failure as an intellectual framework for Somali state-building. On the other hand, the revisionist perspective contributed to addressing internal grievances among Somalis and criticizing the propensity of Somali studies to specific regions. Therefore, their central thesis was confined to demanding an inclusive approach to Somali studies. As a result, these three perspectives were criticized by this author, who proposed the 'Comprehensive Perspective' (CP) of Somali studies.

The Comprehensive Perspective of Somali Studies

The comprehensive perspective (CP) was founded to explore Somali studies since ancient times, periods of strength and weakness, the impact of Islam in framing societal culture and building states, the colonial intrusion and Somali reaction, the introduction of the modern state system, the rise and the fall of the Somali state, the civil war and reconciliations, the recovery of the Somali state in 2000, and all further occurrences from that period on. This perspective refutes four prevalent features of Somali studies: exceptionalization, clannization, secularization, and patriarchization. Historically, the initial idea behind

the CP was developed by this author as a critical approach in 1989 while a graduate student at the Islamic Institute at McGill University. Developing this Comprehensive perspective was gradually expanded since then. [46] The CP offers an alternative perspective and scholarly foundation for revisiting and reconstructing Somali studies. The CP offers an alternative perspective of Somali studies and provides the road map for resolving the Somali conflict and establishing a stable Somali state at peace with its society. CP does not only offer an alternative perspective of Somali studies but provides the road map for resolving the Somali conflict and establishing a stable Somali state in peace with its society.

The first premise of the CP is criticizing the other three perspectives in their adoption of the secular view in their analysis. In the Somali context, a secular view means that despite accepting Islam as the state religion, the colonially inherited legal system and elite political culture tend to separate religion from state affairs. As a result, the Somali state acquired a mixed legal system in which familial and financial disputes were adjuated in Sharia legal frameworks. At the same time, in other matters, secular laws took precedence. For example, during military rule, even the family laws were secularized, which provoked societal uproar and the execution of opposing Ulama. [47] Indeed, these three perspectives share these attributes in following methodologies that divorce Islam in their research or rarely mention the Sufi orders as part of society's presupposed declining traditional culture. [48] Conversely, CP calls for the inclusion of the role of Islam, Islamism, and Sufi orders in Somali studies as part of the Somali equation.

The second premise of the CP is to include women in historical research and not to confine the analysis to the patriarchal segment of society. This means that besides reaffirming the early marginalization of women in the decision-making of the pastoral/nomadic communities, contemporary Somali studies should not peripheralize women's crucial societal role and

give attention to their rich cultural contributions.[49] Moreover, women's social, political, and economic roles should be revised and restored. To do so, women should be liberated from the traditional clan bonds and extreme interpretation of Islam by ultra-conservative groups. Instead, women must be given the role articulated by the moderate scholars of Islam and enshrined in the Provisional National Constitution.[50]

The third premise of this critique is to avoid the exceptionalization of Somalia and to explore its shared features with African and Middle Eastern studies. Professor Cassanelli rightly said, "Somali Studies, as a collective enterprise, has been too insular, too unwilling to view Somalia as a variant of other societies."[51] He further observed that the sense of "Somali exceptionalism" prevents seeing Somalia as resembling other African and Muslim societies.[52] Moreover, it must be seen through its similarities with African and Middle Eastern Studies. Thus, Somalis share geography, culture, colonial legacy, religion, and postcolonial challenges with African people. African Studies began as part of the colonial project to understand the colonial subjects. On the other hand, Middle Eastern Studies extensively includes Islamic Studies due to the preponderance of the Muslims in the region. Somalia, being a member of the League of Arab States, shares many things with countries in the Middle East, including cultural traits, political culture, and the Islamic faith. Thus, Middle Eastern Studies have influenced Somali Studies, and many of their conclusions may apply to the Somali context.

The fourth premise is the clannization of Somali studies which leads to the clannization of Somali politics and conflict, the prevailing narrative of academic circles, and public perception. For instance, Ahmed Samatar quotes from David Laitin and Said Samatar, "For years, the eminent European anthropologist Enrico Cerulli and I.M. Lewis have been telling us that to understand Somali politics, it is necessary to understand Somali clanship and kinship ties."[53] Clannization of the conflict was intended to

divert individual responsibilities to the collective responsibility of the clans for crimes committed during the civil war and to offer impunity to the perpetrators of heinous crimes. This premise affirms the political elite's responsibility for the Somali conundrum, state failure, and collapse due to their inability to deal with state-building challenges. This failure resulted from the elite conflict between Islamists and non-Islamists on the nature of the state on the one hand and the conflict among non-Islamist elites on power and prestige on the other.[54] The clannization of the conflict led to failed reconciliations and conflict resolution processes and methods during the first ten years of the state collapse. Moreover, in 2000, even the power-sharing among the political elites, based on clan affiliation, failed to produce a functioning Somali state. Although the clan factor could not be utterly disregarded, its precarious practices must be managed and tamed through policies that confine it in its indispensable societal role.

Thus, understanding the dynamics of the four factors: exceptionalization, clannization, secularization, and patriarchization of Somali studies is crucial to deciphering Somali chronic state failure. Moreover, it enables us to develop new perspectives that offer a microscopic view of the root conflicts and fault lines underlying state-society relations, elite political conflict, the politicization of clan structures, the radicalization of national politics, and the misuse of Islam as a vehicle of violent extremism. Finally, the CP is not just a theoretical framework, but it also suggests an inclusive reconciliation framework.

To simplify, the explanation of the basic premises of the CP will refer to the theory of mind in psychology, which refers to understanding thoughts in people's minds (mental states).[55] I will analyze the state of mind of Somali individuals by illustrating the six possible scenarios of the state of mind represented in the following six circles that show hierarchies of loyalties to clan, Islam, and nationalism. The objective of analyzing the

minds of Somali individuals is to realize the appropriate hierarchy of loyalties at the individual level. This is the first step towards Inclusive Reconciliation. Let us imagine dissecting the mind of the various Somali individuals horizontally to watch their belief system and the hierarchies of their loyalties to the Somali equation: clan system, Islam, and modern state. Eventually, we will see the reconfiguration of the individual's state of mind in one of the following six figures (see Figure 5)

Type 1 shows the map of the mind of extreme clannists, in which Islam comes the lowest in the hierarchy of loyalties while nationalism comes second after clannism. Type 2 shows the map of a traditionalist where clan comes first, the traditional conception of Islam (Sufism) comes second, and nationalism acquires the smallest loyalty. This type of mind is prevalent in most Somali populations who practice general Islamic obligations but are mainly apolitical. Type 3 demonstrates the mind of an extreme secular nationalist who first gives his loyalty to nationalism, followed by his clan, with Islam being the smallest in his hierarchy of loyalties. This form of mind tolerates clannism but opposes and oppresses activists aspiring to apply sharia. It is the mind of the secular absolutists experienced in Somalia during the military rule. Type 4 demonstrates the mind of moderate nationalists, where the hierarchy of loyalty to nationalism comes first, with Islam to follow and clannism of the lowest priority. Type 5 shows the properly organized mind of a Muslim individual in whom loyalty to Islam comes first, nationalism second, and clannism the lowest rank. However, the realization of this model based on the inclusivity and prioritization of three elements of the Somali equation is yet to be developed. This form of mind belongs to the moderate Islamists who aspire to transform their society through peaceful and democratic means while advocating Islamic principles and values in the state and society.[56] Type 6 shows the mind of an extreme Islamist who does not recognize the modern state system and nationalism. Instead, he aspires to realize international order based on the historical Muslim state

(Caliphate) through violence. [57] This mind hardly swings to another ideology like the other five mindsets. This extremism in the name of Islam is apparent in Al-Shabab, Daish, and similar organizations.
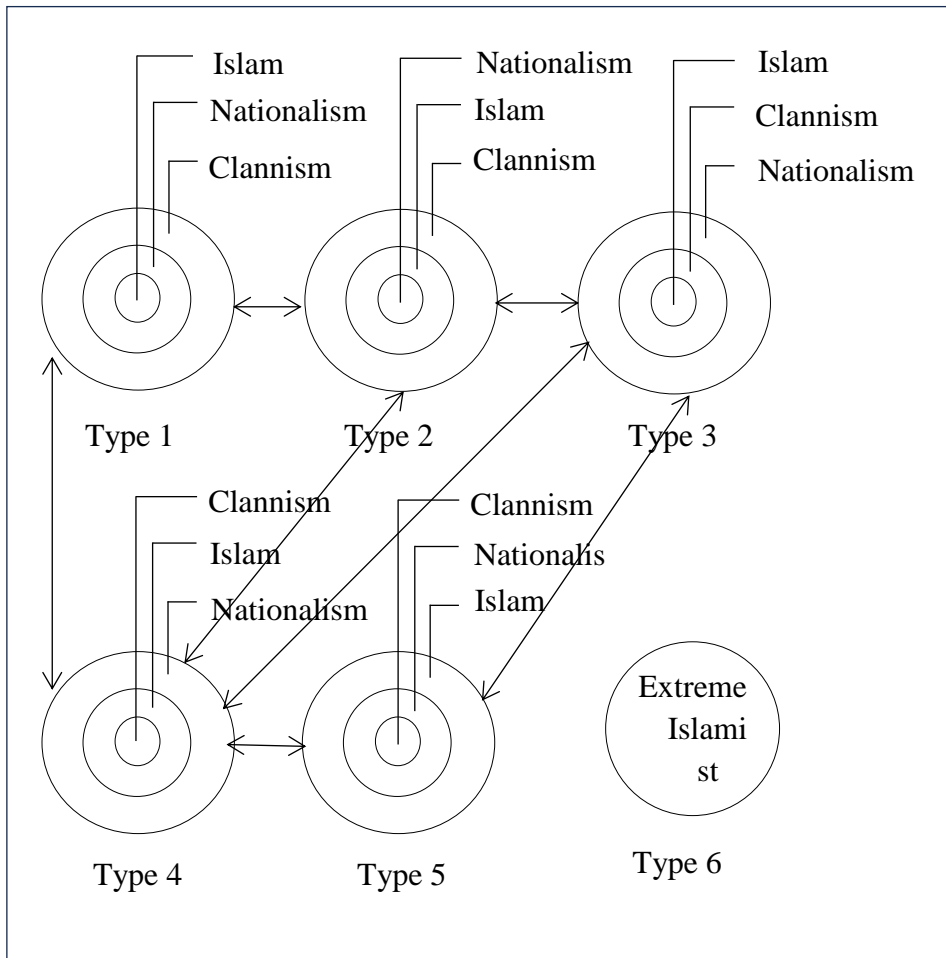
Figure 5. The Six Types of Minds Showing Their Process of Fluctuations.

These six types of minds among Somali individuals are extreme clannists, moderate clannists, extreme secular nationalists, moderate nationalists, moderate Islamists, and extreme Islamists. The three extreme loyalties do not tolerate each other and believe in the total exclusion of the others: a zero-sum game. On the other hand, moderates are tolerant of each other

and open to mutual interactions, dialogue, and peaceful conflict resolutions. Indeed, the biggest challenge of Somali cosmology is fluctuating the hierarchy of loyalties to the Somali equation and the delusions of each element. Accordingly, it is common to see an individual offering his loyalty to Islam in one circumstance, his clan on another occasion, and his nation in another period. It is all circumstantial, and even concurrent loyalties may occur occasionally. Fluctuating loyalties poses the biggest obstacle to developing a strategy to deal with the crisis of loyalties and creating an environment of reconciliation. Fluctuating loyalties is like a civil war taking place in the minds of every individual, where various loyalties contest each other for dominance. Unquestionably, this continuous contestation of loyalties generates traumatic syndrome, identity crises, and disordered thinking and delusions. An adequately organized hierarchy of loyalties of the individuals in putting Islam first and nationalism second while clannism takes third space is the goal of the inclusive reconciliation framework of Somalia. In this approach, the position of Islam supersedes nationalism, contrary to the current secular Muslim regimes. Indeed, secular nationalism has failed in most Muslim countries and cannot sustain in the foreseeable future.

The second illustration of the basic premise of the CP is to examine the reconfiguration of the structure and relations of the Somali elite. This analysis aims to understand the elite conflict needed to develop an inclusive reconciliation framework. It is an appropriate tool for analyzing state-society relations. The elitist analysis method is applicable in the political analysis of Muslim countries where the impact of kinship in politics is still dominant. Figure 5 shows the four main categories of the Somali elites, divided into traditional elites (traditional Ulama and traditional clan elders) belonging to the micro-level analysis and modern elites (Islamists and non-Islamists) belonging to the macro-level analysis.[58] We use non-Islamist, a Muslim who practices Islam and does

not deny its principles but does not advocate its application as an Islamist does. Most people belong to this category. These four elite categories are illustrated in Figure 6.
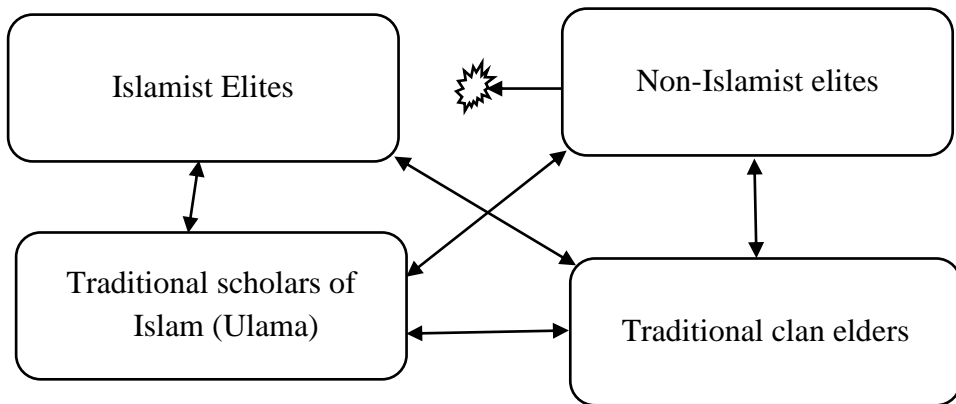
Figure 6. The Somali Elite Structure and Their Relations

Here, we will examine these four elite categories' horizontal and vertical relations. The relationship between clan elders and traditional ulama is complementary because their community authorities are well divided. Clan elders have the power to manage the day-to-day affairs of the clan and make peace and war. At the same time, the role of Ulama is mainly confined to religious activities and reconciliation.[59] Their relations are generally courteous and friendly, creating an environment of stability and solidarity in their community.[60] Often, they became relatives through family marriages, which even solidified their affinities and cooperations. Contrary to the traditional elites, relations between the modern elites are confrontational because of their different political views and agenda. They disagree on the nature and ideology of the state. Whereas moderate Islamists aspire to transform the modern state into one that applies Islamic laws and follows principles and values, non-Islamist elites cling to the form of the state inherited from the colonial powers. The postcolonial state was generally secular in its legal, economic, and cultural values.
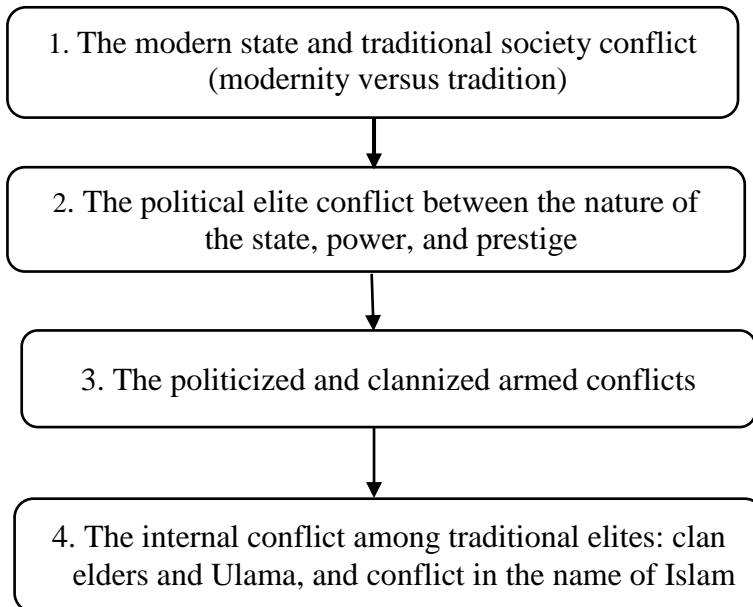
On the other hand, the relations between the traditional Ulama and the modern Islamists are somehow suspicious because Islamists aspire to a political agenda, whereas most traditional Ulama are apolitical. Moreover, modern Islamists compete with traditional Ulama on the religious authority in society. Indeed, different groups of modern Islamists deal with traditional Ulama differently. For example, Salafia groups' relations with traditional Ulama are more intolerant than the Muslim Brotherhood's persuasions.[61] Moreover, the relationship between traditional clan elders and non-Islamist elites is courteous and primarily rooted in next-of-kin empathy. In addition, traditional clan elders and modern elites are, to a certain degree, linked to each other through relative networks. Indeed, the role of clan elders changed significantly after the adoption of clan-power sharing in 2000 and since their empowerment to select members of the parliament. In this circumstance, all politicians must cultivate closer relations with their clan elders. Finally, the relations between Islamists and traditional clan elders and between non-Islamists and traditional Ulama are generally courteous and based on respect.

The Comprehensive Perspective and the Inclusive Reconciliation Framework

The comprehensive critical perspective aims to explore and offer a new interpretation for Somali studies and suggests a framework for resolving the Somali crisis. Having seen the configuration of the Somali mind and elite structure and their relations, we understood the nature and hierarchies of the Somali conflicts at individual and collective levels. As such, this perspective is called the 'inclusive reconciliation framework' (IRF). The IRF aims to set a new direction in resolving the four levels of Somali conflicts: the modern state and traditional Somali society, the elite political conflict for power, the politicized and clannized armed conflict, and internal conflicts among traditional elites and conflicts in the name of Islam. These conflicts exclude traditional clan conflicts for posture, land,

water, and other factors, which are quickly resolved through traditional conflict resolution mechanisms. These four levels of conflict are shown in Figure 7 below.

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┌──────────────────────────────────────────────┐
│  1. The modern state and traditional society  │
│      conflict (modernity versus tradition)     │
└──────────────────────────────────────────────┘
                        │
                        ▼
┌──────────────────────────────────────────────┐
│  2. The political elite conflict between the   │
│      nature of the state, power, and prestige  │
└──────────────────────────────────────────────┘
                        │
                        ▼
┌──────────────────────────────────────────────┐
│  3. The politicized and clannized armed        │
│      conflicts                                 │
└──────────────────────────────────────────────┘
                        │
                        ▼
┌──────────────────────────────────────────────┐
│  4. The internal conflict among traditional    │
│      elites: clan elders and Ulama, and        │
│      conflict in the name of Islam             │
└──────────────────────────────────────────────┘
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Figure7. The four layers of Somali conflicts

Having grasped the four levels of conflict, let us begin to address their reconciliation. The first level of IRF is the state-society conflict, the root cause, and the father and mother of all other conflicts. However, before proceeding further, we must grasp the historical approaches to state-building and their relationship with the traditional system. There were initially two models of Somali state-building with divergent state-society relations. The first approach was exercised during the two phases of the state-building approaches: the democratic system (1960–69) and the military dictatorship (1969–91).

In this approach, the state-building process was based on Westernization, secularization, and despising traditions. Its concept was based on moving society to the Western system of governance by indoctrinating society to

accept and adopt this system. However, this system failed to sustain itself because of suppressing traditions on which oppositions organized their armed supporters and toppled the regime and the state in 1991. To exemplify this process, let us consider the state as a house where people compete to enter because their livelihood depends on it. However, the design of the house is not fit to accommodate these people's features and way of life. As a result, the people were overcrowded outside of the house and forcefully rushed at once to enter it. No guides or supervisory bodies showed the people the systematic way each had a chance to enter the house, nor the culture of a queueing system or "first come, first served." Through this process, the house falls apart, and the people are either killed or injured, with only some of them able to save themselves by escaping the collapsing house. This phenomenon is precisely what happened in Somalia in 1991.

The second approach was developed during the Somali Peace and Reconciliation Conference in Djibouti in 2000, which was based on indigenization while keeping features of the Western structure of the state.[62] Indigenization was the power-sharing based on clan quotas of 4.5 and giving clan elders the authority to select and nominate members of the parliament from their clans. In addition, Islam was accepted as the ultimate reference of all laws, and since then, this provision has been included in the Provisional Constitution. On the other hand, the established state system kept the features of the Western system of governance, such as the design of governance inherited from the colonial powers in 1960.[63] Moreover, the Somali state adopted a federal system of governance in 2004. Both clan power-sharing and federalism were necessary decisions to recover the state. Nonetheless, these new approaches were abused by the political elites who were infused with a toxic elite political culture.[64] Nevertheless, this approach failed to produce a functioning Somali state for over two decades. This approach was founded on moving the state to the society and building the state on the

traditional structure. Both approaches were extremes in employing either Westernization or indigenization. Therefore, the IRF suggests moving the state and society towards each other at the middle ground where the state and society's main features are preserved. Of course, this requires re-engineering the system of governance in Somalia and reorganizing the design of traditional authority damaged during the civil war.
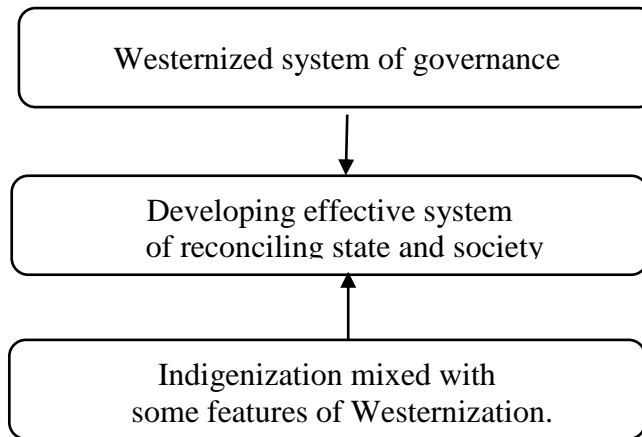
Figure 8. The process of the ideal model of reconciling state and society in Somalia.

The second level of the IRF is elite political reconciliation. There are two approaches to completing this phase. The first is the reconciliation process between Islamists and non-Islamists on the nature of the state.[65] This phase was reached through the Transitional Charter of 2000 and its subsequent constitutional provisions. For instance, the Somali Provisional Constitution stipulates that Islam is the ultimate reference of all state laws. Article 3.1 states, "The Constitution of the Federal Republic of Somalia is based on the foundations of the Holy Quran and the Sunna of our prophet Mohamed (PBUH) and protects the higher objectives of sharia and social justice." Moreover, Article 2.3 states, "No law can be enacted that is not compliant with the general principles and objectives of Sharia." This phase of the IRF was achieved generally. The second

approach to elite reconciliation entails creating an inclusive political system, not only one that is democratic but also sensitive enough to accommodate all segments of society, including women and minorities. The inclusion of women is well articulated in the Somali Provisional Constitution. Article 3:5 states, "Women must be included, effectively, in all national institutions, in particular all elected and appointed positions across the three branches of government and in independent national commissions." In traditional societies, political processes based on winners and losers or a majoritarian system breed sectarianism, exclusions, and conflict. Therefore, developing an appropriate political system, election model, and effective public institutions are all necessary preconditions for a successful elite reconciliation. The best example of creating consensus and cohesion in a clannish society was the story of the Black Stone when the Quraish sub-clans disputed who would position the Black Stone in its place after reconstructing the Ka'ba. They agreed to accept the judgment of the first person who entered the house of Ka'ba, and the person was young Muhammad (the Prophet). He placed the Black stone on a sheet and requested all the leaders of the tribes to hold the sheet and lift the stone together to the Ka'ba. This story shows that clan prestige is critical; therefore, creating collective leadership and a sense of shared ownership is vital for the stability of the state.[66]

The third level of the IRF deals with the politicized and clannized conflict. This entails addressing past grievances and gross human rights violations by adopting transitional justice mechanisms that suit Somali culture and religion. Islam and traditional culture have crafted the tools to resolve prolonged human rights violations after the civil war. For example, the practical transitional justice approach and tool in Islam could be derived from the conquering of Mecca by the Muslims after eight years of their forced migration to Medina and 13 years of subjugation in Mecca.[67] On the other hand, some grievances of the politicized clan conflict could be resolved through traditional means.

Clannization of the Somali conflict deflects individual responsibility for the committed crimes and depicts it as the collective culpability of a clan. Transitional justice in Somalia is a neglected field that the CRF strongly advocates for.[68]
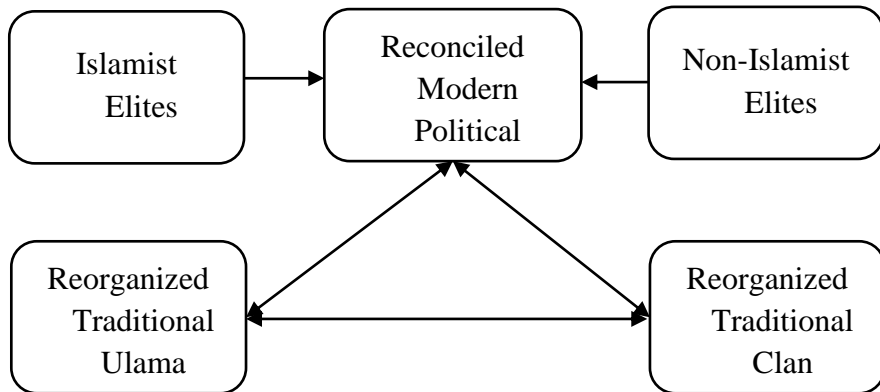
Figure 9. Comprehensive Reconciliation Framework Triangle

The fourth level of IRF calls for reorganizing traditional authorities, which have been corrupted and lost their authoritative powers. Traditional institutions of clan elders and the Ulama religious authority have drastically deteriorated. Therefore, it is necessary to revise the structures of the clan elders who have been chaotically divided and ruined their authorities' inter-clan cohesion and hierarchy.[69] The fragmentation of clan elders took a high stake since the collapse of the state in 1991, during the civil war, and the empowerment of clan elders as custodians of authority to select members of the parliament. The politicization of the clan elders ruined clan cohesion and stability of clans. On the other hand, the IRF advocates for establishing a unified system of meaning of Islam agreed upon by the prominent Ulama and officially accepted by the state. This approach creates an environment of minimizing conflicts on the issues of Islam. Currently, the Ulama are highly fragmented, and various groups adhere to their different interpretations. Establishing a commission of Ulama belonging to the multiple persuasions should be the first step

towards the practical unification of understanding Islam in Somali society. The following figure shows the reconciled modern political elite and properly reorganized traditional elders and Ulama.

Realizing the state-society and elite conflicts (modern and traditional elite), as demonstrated in the two figures 8&9, will eventually resolve the other conflicts (clannized political conflict, internal conflicts among clan elders, or conflict in the name of Islam.

The Comprehensive Perspective and Stability Model of the Somali State

Adopting the triangle of the IRF is enough to create an environment of stability in Somalia. Since the collapse of the state, Somali civil society (CS) emerged strongly. The traditional elders, Ulama, and modern civil society organizations filled the vacuum of the state. These organizations were engaged in the public service provision in education, the health sector, charities, peace, and reconciliation and networked with international organizations. These CS organizations are networked nationally and are becoming more organized.

In addition, the business community is also robust and plays an essential role in all development sectors. Business personalities are very crucial in making peace and war among clans. The stability of the state necessarily entails cooperating with non-state actors, including the CS and business communities.

There are six scenarios of civil society/state relations. These are CS, apart from the state (mosque committees, sports clubs); politicized CS in opposition to the state (civil society toppling dictatorial regimes through peaceful means); CS in continuous dialogue with the state (criticizing when the state deviates from the public good and support when they do good); CS in support of the state (the supports civil society and promotes its ideals); CS in a partnership or substitute to the state (in case the state is weak like

Somalia, civil society substitutes the state); and CS beyond the state as a global phenomenon (international NGOs advocating for global issues).[70]
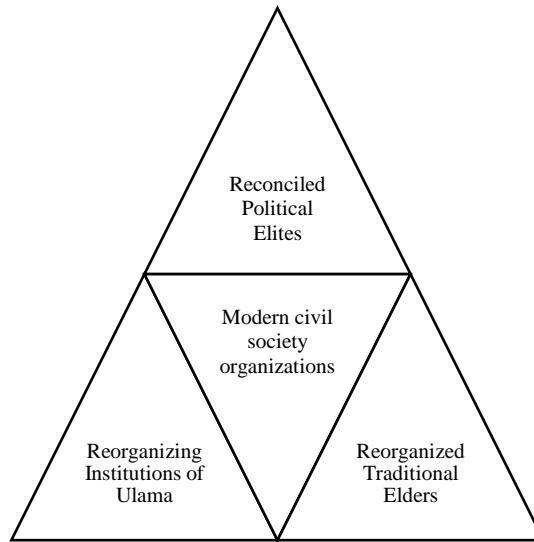
Figure 10. Stability Model of Somali State-building

The role of the Somali CS in rebuilding the state must be to engage in continuous dialogue with the state and avoid its politicization. They must criticize and dialogue with the state when it deviates from the constitution and undertakes policies not in the public's interest. They also have to support the policies and programs of the state when the state is doing beneficial programs such as promoting public education, improving human rights, fighting Al-Shabab, and so on. This concept agrees with the Islamic notion of rejecting the mischievous (Munkar) and supporting the virtuous (Macruuf).[71] The organized nationwide civil society, including all sectors, is the agent of stability of the state and an element of a new re-engineering of the stability model of Somalia.

Conclusion

This essay has exposed the challenges posed to the Somali state-building process and depicted modern state relations with the traditional Somali

society as one of the main challenges that Somali studies still need to address. After criticizing three main perspectives: Anthropological, Marxist, and Revisionist, this author suggested an alternative perspective named the "Comprehensive Perspective." This perspective refutes Somali studies' exceptionalization, clannization, secularization, and patriarchization. It offers an inclusive approach that combines all elements of the Somali equation into Somali studies. To simplify the concept of the CP, the six scenarios of a Somali mind were illustrated in which the rightly organized mind places Islam first, nationalism second, and clan third. However, it was discovered that these loyalties fluctuate with the changing situations that exhibit significant challenges to the Somali state-building process. Moreover, the classification of the Somali elites into traditional and modern and their relations were also exposed and examined. CP is an alternative perspective for Somali studies and a solution for the inclusive reconciliation framework (IRF).

The inclusive reconciliation framework is based on understanding the four levels of Somali conflict: the state-society conflict, elite political conflict, clannized political conflict, internal conflicts within traditional elites, and conflicts in the name of Islam. It also hinges on understanding the two previously used approaches to state-society relations. The first approach was Westernization, which was based on moving the people to accept the inherited state model from the colonial powers. The second approach was indigenization, founded on moving the state model to the people through clan power-sharing. Thus, the first IRF reconciles the state and society by moving them to a middle space that recognizes the separate spaces and roles of the state and society. The second IRF concerns reconciling the political elites on the nature of the state and practicing democratic values sensitive to the Somali culture and belief system. The third IRF calls to address the human rights violation of the clannized political conflict during the civil war through transitional justice mechanisms rooted in Somali culture and Islam. Finally, the fourth IRF involves reorganizing the

fragmented traditional institutions during the civil war, politicizing the clans, and elimination of extremism in the name of Islam.

Finally, reconciling state and society entails reconciling political elites, reorganizing traditional institutions, addressing previous grievances, and laying the foundation for a shared future is the only way to institute a viable Somali state. Reorganizing and reconciling Somali society should be expressed through constitutional provisions and legal frameworks. Moreover, non-state actors, such as civil society organizations and business communities, must be given cooperative roles in the Somali state-building to bolster this new structure. Assigning a role to the non-state actors offers the final design that produces the "stability model for Somali state-building."

Notes

[1] This paper was presented at the 2nd Annual East Africa Development Forum organized by the East Africa Association for Research and Development on July 22-23, 2023, in Mogadishu, Somalia.

[2] The Chinese explorers were Tuan Chéng-Sbib, Chou Ju-Hua, Zheng. The Arab explorers and geographers were Ibnu Said al-Magribi, Mohammad al-Idrisi, and Ibn Battuta. In addition, there was also a Jewish traveler, Benjamin of Tudela.

[3] The European explorers of Somalia were mainly Italians, including Luigi Robecchi-Bricchetti, Vittorio Bottego, and Prince Luigi Amedeo, Duke of the Abruzzi. They focused their trips on southern Somalia. On the other hand, the British explorer who visited northern Somalia was Richard Burton.

[4] Most notable books on Somali Studies developed from the Ph.D. thesis were authored by Lee Cassanelli, Saadia Touval, Ahmed Samatar, Abdi Samatar, Said Samatar, Abdi Sheikh Abdi, Afyare Abdi Elmi, Robert Hees, Virginia Lulling, Mohamed Nuh, Abdirahman Ahmed Noor, Scott Rees, Mary Hope Schwoebel, Abdurahman Baadiyow, Abdislam Salwe, and others.

[5] Abdurahman Abdullahi, "Revisiting Somali historiography: critique and idea of comprehensive perspective," *Journal of Somali Studies: Research on Somalia and the Greater Horn of African Countries* 5, no. 1–2, 2018, 31–59, 32.

[6] Lee Cassanelli, "The Somali Studies International Association: A Brief History," *Bildhaan* 1, 2001, 1–10.

[7] These institutions include the establishment of the Somali Academy of Arts and Sciences in 1973, the national theatre in 1967, and the National Museum in 1933.

[8] See "Bandhigyada Buugta: Madal Aqooneed Mudan Kobcin iyo Tabantaabo" https://wardheernews.com/bandhigyada-buugta-madal-aqooneed-mudan-kobcin-iyo-tabantaabo/ (Retrieved 26 June 2023. Also, see "Somaliland Standard," Retrieved 26 April 2023. Also, see Mogadishu Book Fair. https://qz.com/africa/740313/somalias-new-love-affair-with-books-ramps-up-as-safety-returns-to-the-country (accessed on 27 April 2023).

[9] The most famous specialized journals on Somali studies are *'Bildhaan'*, *'Somali Studies: A Peer-Reviewed Academic Journal for Somali Studies',* and *'Journal of Somali Studies'*.

[10] Abdurahman Abdullahi, "The Somali Elite Political Culture: Conceptions, Structures, and Historical Evolution." Available from https://mu.edu.so/somali-elite-political-culture/ (accessed on 26 April 2013).

[11] Atul Kohli, "State, Society, and Development." In *Political Science: The State of the Discipline*, ed. Ira Katznelson and Helen Milner (eds.). New York: Norton, 2002, 84-117; Joel Migdal, *State in Society: Studying How States and Societies Transform and Constitute Each Other* (New York: Cambridge University Press, 2001); Peter Evans, *Embedded Autonomy* (Princeton: Princeton University Press, 1995); Stephen Haggard, *Pathways from the Periphery* (Ithaca, NY: Cornell University Press, 1990).

[12] *Building Peaceful States and Societies: A DFID Practice Paper* (London: Department for International Development, 2010), 15.

[13] Spalding, Nancy Jackson. "State-Society Relations in Africa: An Exploration of the Tanzanian Experience." *Polity*, vol. 29, no. 1, 1996, pp. 65–96. Also, for the definition of the development see Dr. Reem Abuiyada, Traditional Development Theories have failed to Address the Needs of the majority of

People at Grassroots Levels with Reference to GAD. Social Sciences Department Dhofar University Salalah, Sultanate of Oman. International Journal of Business and Social Science Vol. 9, No. 9. September 2018.

[14] Shaheen Mozaffar, Dimensions of state-society Relations in Africa. African Studies Center, 1985, 1.

[15] Islamist organizations played an important role in mitigating conflicts, spreading Islamic values, creating formal and informal education programs, establishing business pan-clan networks, establishing charities, etc.

[16] James Burnham, The Machiavellians: Defenders of Freedom (The John Day Company, 1943), 165.

[17] Asaf Hussein, Political Perspectives on the Muslim World (New York: Praeger, 1981), 81.

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

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

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

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

[22] Ibid., 257.

[23] Ibn-Khaldun, *The Muqaddimah: An Introduction to History* (Princeton University Press, 1980), 302.

[24] Ibid., 305.

[25] Ibid.

[26] Osman Abdullahi, "The Role of Egypt, Ethiopia the Blue Nile in the Failure of the Somali Conflict Resolutions: A Zero-Sum Game" (paper presented at the annual meeting of the International Studies Association, Hilton Hawaiian Village, Honolulu, Hawaii, March 2005).

[27] See Ibrahim Farah, "Foreign Policy and Conflict in Somalia, 1960-1990" (Ph.D. diss., University of Nairobi, 2009), 187.

[28] Somalia did not endorse the declaration of the Organization of African Unity on the sanctity of the borders in Cairo, 1964; Saadia Touval, "The Organization of African Unity and Borders," *International Organization* 21, no. 1 (1967): 102–27.

[29] The Armed opposition movements established with the support of Ethiopia were Somali Salvation Democratic Front (SSDF), Somali National Movement (SNM), United Somali Congress (USC), and Somali Patriotic Movement (SPM).

[30] Abdurahman Abdullahi, *Tribalism, Nationalism, and Islam*.

[31] Prem Poddar and David Johnson (eds.), *A Historical Companion to Postcolonial Thought in English* (Colombia University Press, 2007); Also, David Johnson (ed.), *A Historical Companion to Postcolonial Literatures – Continental Europe and its Empires* (Edinburgh University Press, 2008).

[32] Maxwell Owusu, *Colonial and Postcolonial Anthropology of Africa: Scholarship or Sentiment?* (De Gruyter Mouton, 1979).

[33] Ahmed Samatar. "The Curse of Allah: Civic Disembowelment and the Collapse of the State in Somalia." In Ahmed Samatar (ed.), *The Somali Challenge: From Catastrophe to Renewal?* (Boulder, CO: Lynne Rienner, 1994), 110.

[34] Abdullahi, *Revisiting Somali Historiography*, 36.

[35] Dean Tipps, "Modernization Theory and Comparative Study of the Societies: A Critical Perspective." *Comparative Study of Society and History* 15, no. 2 (1973), 199–226.

[36] Seyfettin Aslan, *Historical background and Principles of Kemalism* (NWSA– Social Sciences, 2013).

[37] Ozlem Demirtas Bagdons, *A Poststructuralist Approach to Ideology and Foreign Policy: Kemalism in the Turkish Foreign Policy Discourse* (Ph.D. thesis, Central European University, Hungary, 2008), 26–29. Available from file:///C:/Users/Dr.%20Baadiyow/Downloads/iphdeo01.pdf (accessed on 25 April 2023).

[38] Erik Wright, *Approaches to Class Analysis* (Cambridge: Cambridge University Press, 2005).

[39] Abdurahman Abdullahi, *The Islamic Movement in Somalia: A Case Study of Islah Movement (1950-2000)* (London: Adonis & Abbey, 2015), 141-170.

[40] Abdurahman Abdullahi, "Women, Islamists, and Military Regime in Somalia: The New Family Law and Its Implications." In M.V. Hoehne, and V. Luling (eds.), *Milk and Peace, Drought, and War: Somali Culture and Politics* (London: Hurst, 2010), 137–60. The first radical reaction was Takfir group that emerged at the end of the 1970s, and the current al-Shabaab and Daish are rooted in the same ideology but reformed to adopt a violent approach.

[41] Ahmed Samatar, "The Curse of Allah: Civic Disembowelment and the Collapse of the State in Somalia," 95–133, 138.

[42] Notes of Professor Hassan Kaynan on the Concept Note of the Workshop on the Somali Equation Framework to be held in June 2023.

[43] Abdullahi, *Revisiting Somali Historiography*, 42. Interview with Professor Abdi Kusow, one of the prominent scholars from the revisionist perspective, in 2018.

[44] It is noteworthy that all presidents and Prime Ministers of Somalia since the independence in 1960 were rooted in the pastoral nomadic regions. As a result, the nomadic culture became dominant in Somali studies, educational curricula, and mass media.

[45] Digil & Mirifle clan family is one of Somalia's prominent four clan families, which were given equal quota with Hawiye, Darood, and Dir in the 4.5 clan power-sharing. This clan family is concentrated in the South/Western state of Somalia. See Somali Provisional Constitution, Article (31:3) states, "The state shall promote the cultural practices and local dialects of minorities." Also, see Elmi, Afyare. *Decentralization options for Somalia: Paper for the Heritage Institute for Policy Studies* (2014). http://www.heritageinstitute.org/wp-content/uploads/2014/01/Decentralization_Options_for_Somalia-ENGLISH.pdf (accessed on May 10, 2023)

[46] The initial idea was expressed in the MA thesis submitted to the Islamic Institute, McGill University, titled "Tribalism, Nationalism, and Islam: The Crisis of Political Loyalties in Somalia." Since then, this author published four books and several papers and articles in the spirit of this perspective. See

https://mogadishuuniversity.academia.edu/AbdurahmanAbdullahibaadiyow (accessed on 16 May 20123)

[47] On 23 January 1975, ten leading scholars of Islam were executed because they opposed secularized family law. See Abdurahman Abdullahi, *Women, Islamists and Military Regime in Somalia.*

[48] The academic literature on Islam in English mainly focuses on Sufi Orders. They include Mohamed Mukhtar, "Islam in the Somali History: Fact and Fiction," in Ali Jumale (ed.), *The Invention of Somalia* (Red Sed Sea Press, 1995), 1–29. Mohamed M. Kassim, "Aspects of Banadir Cultural History: The Case of Baravan Ulama," in Ali Jumale (ed.), *The Invention of Somalia* (Red Sea Press, 1995), 29-43. Christine Choi Ahmed, "God, Anti-Colonialism and Drums: Sheikh Uways and the Uwaysiyya"; B.G. Martin, "Shaykh Uways Bin Mouhammad Al-Barawi: A Traditional Somali Sufi." Scott Rees., *Urban Woes and Pious Remedies: Sufism in Nineteenth Century Banaadir (Somalia)* (Indiana: Indiana University Press, 1999); Said Samatar, "Sheikh Uways Muhammad of Baraawe, 1847–1909: Mystic and Reformer in East Africa," in Said S. Samatar (ed.), *The Shadows of Conquest: Islam in Colonial Northeast Africa* (Trenton, NJ: The Red Sea Press, 1992), 48–74. After 9/11, western academia began to study modern Islamic movements as part of security studies. Currently, there is an overflow of literature on al-Shabaab.

[49] The literature on Somali women and their role in politics, economics, and civil society has grown, with several noteworthy publications authored by Dr. Hamdi Sheikh Mohamed, a book chapter by Christine Choi Ahmed, Judith Gardner, and Judy El Bushra, and many others.

[50] See Yusuf al-Qaradawi, *The Status of Women in Islam*. Available from https://www.centuryassociation.org/download/marriage_2016/books/The_Status_of_Women_in_Islam__by_Yusuf_al_Qaradawi.pdf (accessed on 17 May 2023); Hiam Salah EI-din Ali el-Gousi, "Women's Rights in Islam and Contemporary Ulama: Limitations and Constraints. (Egypt as Case Study)" (Ph.D. thesis, The University of Leeds, 2010). Available from https://etheses.whiterose.ac.uk/15221/1/535101.pdf (accessed on 15 May 2023), 91–103.

[51] Cassanelli, "The Somali Studies International Association: A Brief History," 8.

[52] Ibid., 8.

[53] Samatar, A. I. "Somali Studies: Towards an Alternative Epistemology." *Northeast African Studies* 11, no. 1 (1989): 3–17. http://www.jstor.org/stable/43660258. David Laitin and Said Samatar, *Somalia: In search of a state*. (Boulder, Westview Press), 1987, 198. Also, Ahmed Samatar, Samatar on Lewis: "A Modern History of Somali: Nation and State in the Horn of Africa" H-Africa, 2003. Available from https://networks.h-net.org/node/28765/reviews/32825/samatar-lewis-modern-history-somali-nation-and-state-horn-africa (Accessed on 22 May 2023)

[54] Due to elite conflict for power, specific clans were mobilized to support the regime, while others supported their opposition political elites. In the process, Somali society was polarized in line with clan belonging.

[55] Ian A. Apperly and Butterfill, Stephen A. "Do humans have two systems to track beliefs and belief-like states?". *Psychological Review*. 116 (4), 2009, 953–970.

[56] Organized moderate Islamists generally belong to the Muslim Brotherhood persuasions organizationally or ideologically. In Somalia, Muslim Brotherhood persuasion includes the Islah Movement, Aala-Sheikh, and other smaller entities.

[57] Dan Josef and Harun Maruf, Inside Al-Shabaab: The Secret History of al-Qaida's Most Powerful Ally. Indiana University Press, 2021. Also, Abdi said M.A. The Al-Shabaab Al-Mujahidiin: A Profile of the First Somali Terrorist Organisation. Available from https://www.files.ethz.ch/isn/55851/AlShabaab.pdf (accessed on 25 April 2023), 3.

[58] This model was developed in 1991 during my MA program at the Islamic Institute, McGill University. See Abdullahi, Tribalism, Nationalism and Islam, 92.

[59] Abdurahman Abdullahi, *The Islamic Movement in Somalia*.

[60] Ibid.

[61] Abdurahman Abdullahi, "The Conception of Islam in Somalia: Consensus and Controversy," *Bildhaan* 21 (2023), 79–98, 87–90. Available from https://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1240&context=bildhaan (accessed on 25 April 2023)

[62] The system was built on clan power-sharing and selecting members of the parliament by the clan elders. However, the outcome of the process was the

structure of the modern state system constituting a legislative assembly, executive branch, judiciary branch, and the presidency.

[63] The system was a parliamentarian who was alike to the Somali governance system of 1960.

[64] Abdurahman Abdullahi, The Somali Elite Political Culture: Conceptions, Structures, and Historical Evolution. Somali Studies: A Peer-Reviewed Academic Journal for Somali Studies, Volume 5, 2020, 30-92.

[65] Islamists are individuals and groups who advocate the application of Sharia in society and the state. They are activists and organizers. On the other hand, non-Islamists are most Muslims who, though they believe in the supremacy of Allah's laws, do not advocate for its application.

[66] Muhammad Husayn Haykal, Life of Muhammad, translated by Isma'il Al-Faruqi. Available from https://muqith.files.wordpress.com/2010/10/ muhammadbyhaykal.pdf (accessed on 17 May 2023),128.

[67] Abdurahman Abdullahi, *Recovering the Somali state: The Role of Islam, Islamism, and Transitional Justice* (Adonis and Abbey Publishers, 2017), 123.

[68] Abdurahman Abdullahi, "Conceptions of Transitional Justice in Somalia: Findings of Field Research in Mogadishu," *North African Studies, Michigan State University Press* 14, no. 2 (2014), 7–43.

[69] Abdurahman Abdullahi and Ibrahim Farah, *Reconciling the State, and Society: Reordering the Islamic work and Clan System*. Available from https://www.scribd.com/document/15327358/Reconciling-the-State-and-Society-in-Somalia# (accessed on 26 April 2023)

[70] See Abdurahman Abdullahi, Making Sense of Somali History, vol. 2, Adonis & Abbey, 2018, 67–70.

[71] See "Let there arise out of you a group of people inviting to all that is good, enjoying al-Ma'roof and forbidding al-Munkar." Quranic verse, "(al-Imran, 3: 104). Also, see the verse, "You are the best of peoples ever raised up for mankind; you enjoin al-Ma'roof and forbid Al-Munkar, and you believe in Allah (Aal Imran, 3: 110).

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Methods and Tools of Unification of Somali Laws
in Light of the Provisional Federal Constitution of Somalia

✎ Salim Said Salim

Abstract

This study explores methods for unifying laws in Somalia in light of the constitutional frameworks. It does so by offering a comparative analysis of methods of unification in the federal systems, discussing the experience of Somalia in unification and analyzing methods and tools for unification as provided in the Provisional Federal Constitution of 2012. According to the study findings, there are several constitutionally established institutions with unification mandates, such as the Upper House, the NCC, and the Constitutional Court. It also notes some constitutional guiding principles for unification.

To achieve economic integration with the regional and international communities, attract foreign investment and uphold the rule of law, the paper recommends the unification of laws based on a cooperative legislative model which assigns the central government the responsibility to develop laws.

Keywords: Law unification, Somali laws, federal constitution, Somalia.

1.0 Introduction

Somalia officially became a federal republic in 2012 by adopting the Provisional Federal Constitution (PFC) on August 1, 2012. The constitution designates the country as a federal republic based on self-rule and shared rule principles. The current Federation of Somalia comprises five Federal Member States (FMS): Puntland, Hirshabelle, Galmudug, South West and Jubbaland. The federation also includes the Regional Administration of Banadir or Mogadishu, the national capital, which serves in practice as a federal district, but its status is yet to be agreed upon as the PFC commands. There is also Somaliland, which declared its unilateral secession from the rest of Somalia and has not yet gained international recognition and is thus considered de jure state of the Somali federation.

The adopted federal system does not mean delegation of power from the centre to the regions as is the case in devolved systems; rather, each level of government is imbued with its own powers by the constitution (Anderson, 2008). In this sense, the states do not derive their rights and existence from the centre but from the constitution that creates them both, and the centre cannot unilaterally change, abolish, or modify the covenant that creates the federal polity. But it does not mean confederation but autonomy and self-rule as federalism scholars agree that despite the autonomy to be exercised by the states as required by the federal constitution, states should still be considered "as a level of government subordinate to the federal centre".

Vural and Adan (2021)postulate that Somali federalism emerged from balkanization caused by authoritarian unitarization and prolonged civil war and was adopted to serve as a process for conflict resolution and state-building.[1] As a result, both writers contend that Somali federalism has been characterized by a state of "incomplete or emerging federalism,

as none have so far fulfilled the federal institutional design commanded by their constitutions" (Ibid: p. 5). Somali federalism is, therefore, built on the holding-together model of federalism to protect territorial integrity while accommodating the diverse interests of competing regions and communities. Additionally, the Somali federation was constructed partly by the union of formerly established states, such as the Puntland State of Somalia, which had its governance structure and constitution before the establishment of the federal government and its provisional constitution.

As a manifestation of state fragility, Somali federalism is confronted with the reality of multiple sources of law, including laws made by the central government as well as laws made by the states. Each of the five FMS has its own constitution, which is not fully compatible with the provisions of the PFC and consequently contains some provisions in contravention of the federal constitution. State courts apply laws enacted by state legislatures as well as laws inherited from the former central government, with no federal judicial review process. In view of this complete fragmentation and incoherence in the constitutions, legislations, and courts, the need for harmonization and a mechanism for resolving legal conflicts within the Somali federal system becomes evident.

Diversity of laws is indeed inevitable in the new Somali federal state, in particular, in functions falling under the jurisdiction of the states. Yet, such legal variations, especially in commerce and trade, create frictions not only for national and foreign investors who seek to operate in more than one state of Somalia but also for Somalia's efforts to achieve regional integrations because it requires countries to remove legal barriers that may impede the flow of goods, services, capital, people and ideas. In this sense, Somalia needs to ensure legal uniformity and certainty in its legal and judiciary system if it is to be active in regional economic integrations.

It is against this backdrop that this paper, through comparative and doctrinal legal research analysis and methods, discusses the unification of federal and state laws in the context of Somalia in the light of the PFC with comparative consideration in order to inform potential methods that could be integrated into the ongoing review of the Somali Federal Constitution.

2.0 Concept and Methods of Legal Unification
2.1 Concept of Unification of Law

According to Kamali (2007; 392), the term "unification of laws" refers to "the process whereby two or more different legal provisions or systems are supplanted by a single provision or system: it creates an identity of legal provisions or systems".[2] In this sense, unification is a process by which different laws from two or more legal traditions are replaced by a single rule that governs a legal transaction.[3] In this study, we mean unification as a process in which different laws within Somalia are unified in one unified legal system so as to achieve uniformity and certainty in the application of law across the country. This contrasts with the process of harmonization, which is unifying different legal systems from different countries to eliminate the diversity of laws in international or inter-jurisdictional transactions as much as possible. To put it another way, harmonization preserves the individuality of laws, while unification combines them into a single legal system.[4]

2.2 Methods of Unification of Laws in Federal Countries

Federal systems worldwide are confronted with the reality of multiple sources of law, including laws made by the central government, laws made by the regions, as well as laws made by local authorities. This raises the need for unification of laws within the federal system through formal and informal inter-federal institutions in order to satisfy the need for

unification without losing power to the central level.[5] The need for unification may be to expedite transactions, lower transaction costs, and ensure uniformity and certainty in the application of law across the country.[6] It could also be the reason for safeguarding national unity. However, there is no uniformity in mechanisms of inter-federal legal unification in federal states as they unify laws in accordance with the complexity of federal design (cooperative vs. dualistic). Some federal countries achieve legal unification through centrally controlled mechanisms, as in the majority of federations, while others use more integrative or cooperative legal unification approaches.[7]

2.2.1 The Top-Down Model

This model employs central legal unification methods, which the federal governments carry out to unify laws. These methods include the following:

- **Supreme federal constitutional rules,** by allocating certain law-making rights for the central government through the federal constitutions. This is the case in several federal countries, including Austria, Belgium, Canada, Germany, India, Italy, Mexico, Spain, South Africa, and the United States.[8]
- **Central legislation,** which usually creates directly applicable norms which are thus per se uniform throughout the system. This is true in some federations, including Brazil, Germany, Italy, Malaysia, Russia, and Venezuela.[9]
- **Central courts jurisprudence,** by striking down constitutionally out-of-bounds legislation, reversing judicial decisions that violate the constitution, or by interpreting the law to conform to established constitutional principles. This is undoubtedly the case in the United States, where the US Supreme Court's rulings have

a significant guiding influence, as well as in Germany, India, Italy, Mexico, Russia, and Switzerland.[10]

- Other centrally controlled methods include **"establishing law reform commissions"** as means of unification of law, as the case in many common law countries and professionally staffed ministries (of justice) in many civil law countries.[11]

2.2.2   The Cooperative/Integrative Legal Unification Mode

This model results from the voluntary cooperation among the member units of the federation and is, thus, in a sense, a bottom-up model. It uses several methods, including the ones described below:

- **Cooperation at the Legislative Level**: Under this model, states achieve unification of laws through joint legislative committees as with the United States Uniform Law Commission and Australia's joint legislative committees comprising both houses.[12]
- **State judiciaries coordination** through which federal member state judiciaries consider other member state courts' decisions. This model is used as a unifying factor not only in federal countries with common law systems, such as Australia, Canada, the United Kingdom, and the United States, but also in civil law countries like Brazil, Germany, and Switzerland, where court judgements are not deemed as legally from *de jure* perspective but have widespread de *facto* application.[13]
- **Executive-based   inter-governmental   conferences:** Under this method, the executive branches of the federal member units have platforms to ensure coordination and cooperation in relation to the unification of laws. Examples are the executive intergovernmental conferences in Germany and Austria. The highest level of coordination takes place at the governors'

conferences in Germany, and Australia also applies similar unifying methods.[14]

- **Unification through non-state actors:** Under this tool, non-government groups and organizations may contribute to the unification of laws through lobby and advocacy. This method is only used as a unifying factor in a small number of federal countries, namely, the United States through (Restatements), the European Union and Mexico.[15]

- **Unification through International conventions.** The ratification of the federal state of a mandatory international convention has an effect on the uniformity of laws of the state parties either through direct application of the international convention or domestication of it in its national laws. An example is the international human rights, which always guide the bill of rights enshrined in federal constitutions.[16] Other examples are the Geneva Convention on uniform laws for Bills of Exchange and the other Geneva Law on adopting of uniform law on international sale of goods.[17]

- **Unification through regional economic integrations:** Regulation on a Common European Sales Law is the most recent outcome of this process. Following the European trend, harmonization initiatives have been launched in other regions of the world. Thus, in Africa, the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA), with seventeen member states, has adopted ten uniform acts in different subjects of private law and is working on the drafting of a Uniform Act in the Law of Contract. More recently, a group of East Asian academics have established a research team for the drafting of the Principles of Asian Contract Law.[18]

3.0 Somali's Past Experience in Legal Unification

In the 1960s, after gaining independence in 1960 from Italy, which colonized the southern region and Britain, which colonized the northern region, Somalia embarked on a journey to consolidate its laws. The new post-colonial state inherited almost four legal systems: Islam and Xeer on one hand and the Italian civil and British common legal systems on the other. In this case, unlike other colonized African countries, Somalia had the peculiarity of inheriting two colonial legal legacies.[19] Because of these different colonial legacies, the new unified independent Somali republic inherited different laws, different court systems, as well as different institutions such as different currencies, different taxation and customs regimes, different arms and police, and different civil service conditions. In Italian colonized southern regions, the civil law legal system was in force, while English common law and statutes were in effect in the British protectorate of northern regions.

To achieve integration of legal and institutional divergences in the new unified state, the framing of the Constitution of Unity in 1960 was agreed upon, which enshrined a single Somali republic in its first article. The constitution, as the supreme law of the country and the hallmark of the new state's legal and institutional unification, provided for a single legislative, executive, and judicial branch based on popular sovereignty, constitutionalism, equal citizenship rights, and the rule of law.[20]

At the laws and courts level, by forming a consultative commission on integrating laws in October 1960, the post-independent state took steps to unify the laws in the South and North. Consequently, several key laws are being integrated by enacting unified laws, including the Citizenship Law of 1962, the Penal Code of 1962, the Code of Criminal Procedure of 1963, and the Law on Public Order of 1963, as well as other major laws and regulations affecting public financial management, trade, and banking

in 1963. The Law of Organization of the Judiciary of 1962 provided a framework for unifying different court systems. The law integrated the courts of Northern and Southern Somalia into a four-tiered system: the Supreme Court, courts of appeal, regional courts, and district courts. According to the law, sharia would still be applied in family, inheritance, and minor civil matters, while the Xeer remained the accepted legal system for resolving societal disputes. Regardless of this unification at a national level, local authorities in the North often still based their rulings on common law principles, including precedents, and kept applying their local legal systems, which led to disputes about the court's jurisdiction and the applicable laws and procedures.[21]

The similarity between the past harmonization in the post-colonial situation in the 1960s and the current endeavour towards unification of laws under the federal government is that Somalia, in both situations, needed to establish and assert its unity at the national level, to pull its people together into one nation, and to ensure that the new national legal systems mirror the fact of uniformity and certainty in the application of laws. In light of this, there is much to learn from the previous experiment. However, the post-colonial government's harmonization aimed to unify two different legal systems under a unitary state system with stable politics. In contrast, the current unification of laws aims to unify different laws within Somalia under a post-conflict federation characterized by competing poly-centric institutions.

4.0 Constitutional Basis and Methods for Legal Unification
4.1 Constitutional Basis for Unification

The federal provisional constitution provides two levels of government (the Federal Government level and the Federal Member State level of government, comprising the local and Federal Member State governments) (Article 48). It assigns powers between the Federal

Government of Somalia (FGS) and the FMS. Such specific allocation of powers and responsibilities is subject to further negotiations regarding all matters, except those relating to Foreign Affairs, National Defense, Citizenship and Immigration, and Monetary Policy, which shall be part of the remit of the Federal Governance (Article 54). In this sense, the federal government is confined to passing laws in those areas where Article 54 grants its authority. Article 52 of the constitution provides concurrent powers, such as education, health, the development of agriculture, environmental protection, and the development of water resources, albeit with ambiguity over who has the power to legislate those functions. Furthermore, Article 120 further grants the FMS the right to adopt a constitution establishing executive and legislative bodies without specifying the scope of law-making powers to be exercised by the FMS.[22]

The PFC, however, enshrines the subsidiarity principle in Article 50 that could serve as a guide in the allocation of law-making powers by implying that the two federal tiers share the responsibility for passing laws in areas where each level is most competent to do so.[23] In Article 4, the PFC provides supremacy over the federal Constitution or the PFC over the state constitutions, commanding in Article 121 harmonization between the FMS Constitution and the federal Constitution to achieve constitutional homogeneity in the federal system. The PFC, therefore, requires what was coined by Palermo and Kössler (2017) as homogeneity clauses. This constitutional provision, as Article 121 of the PFC, requires member states to make their constitutions comply "with the foundational principles and overall sprit of the national constitution" (Ibid: 134).[24]

4.2 Constitutionally Based Methods for Unification

Although the constitution lacks a clear definition of powers between the centre and the periphery and does not provide a clear framework for the unification of laws, the PFC establishes both top-down and bottom-up

institutions with a mandate to contribute to unifying inter-federal laws, as discussed in the following sections.

4.2.1 Unification through the National Consultative Council (NCC)

Article 51(3) of the Constitution requires the executive heads of the federal government and member states to meet annually to discuss and agree on the issues of national significance, including national unity, security and peace, common market policies, and socio-economic development. In the implementation of this constitution provision, for the first time in 2015, then the regular meetings continued; the meeting was chaired by the president of the Federal Government and attended by the heads of the five FMS and the governor of Banadir Regional Administration. Although the position and authority of the Council have yet to be formalized in primary legislation, it has been acting as the highest executive inter-federal platform in Somalia; and has successfully convened and reached agreements on several exigent and contentious issues. Since its inception, the NCC has concluded several agreements involving the allocation of power between the centre and the periphery in such a way as to be the basis for the finalization of the constitutional review and the harmonization of laws. Yet, the NCC seems more focused on inter-governmental political deals and bargains than legal unification.

4.2.2 Unification Through the Upper House

The PFC establishes a bicameral legislature on the basis of the separation of powers principle, with the upper chamber representing the interests of the states and acting as the guardian of the federal system.[25] The upper house, in accordance with articles 79, 82, and 83 of the PFC, has a role in making all laws, including those affecting the competence of both federal and state members.[26] As a result, the House has an important role in the inter-federal legal unification process. Furthermore, the Upper House has

the power to veto laws adopted by the House of the People. But, in accordance with Article 83 of the Constitution, the House of the People may, through a two-thirds majority vote, overrule the rejection or amendment of draft laws by the Upper House. Because of this, the veto powers of the Upper House are not absolute. The PFC also, does not outline how the upper house would ensure that the federal member states are effectively and meaningfully involved in the national legislative process. For example, there is no explicit guidance on how the upper house consults with the FMS legislative bodies while considering federal bills that may affect the states.

Since its inception in 2016, the Upper House has approved legislation directly impacting the federal member states (FMS), such as enacting laws on the establishment of several independent commissions and legislation, including those that significantly impact how intergovernmental functions are implemented. For instance, the House of the People enacted the Public Financial Management (PFM) Act 2019 and the Revenue Administration Law in 2018. Both laws are relevant to federal fiscal management.[27] The upper house approved some federal laws despite the opposition of some lawmakers. For instance, the two houses enacted the petroleum law in 2020, despite the opposition of Puntland State on the grounds that the provisions of the law were outside the contents agreed in the Baidoa intergovernmental agreement on natural resource sharing. In this view, the fact that some FMS continued to oppose various federal bills even after both houses of parliament had approved them implies that they do not have confidence in the upper chamber to safeguard their interests.

4.2.3 Unification Through the Central Courts Systems

According to Article 120 of the PFC, the legislative and executive branches of the FMS are established through their constitutions without

reference to the judiciary branch. Article 108 of the PFC, however, establishes three levels of national courts: the Constitutional Court, the Federal Government Level Court, and the Federal Member State Level Court. The Federal High Court shall be the highest court at the federal government level, and the Federal Member State High Court shall be the highest court at the federal member state level. The constitution, however, is silent on the interaction or precise jurisdiction of the courts, leaving that to an act of parliament.[28] As a result, it is unclear how the federal and state courts can contribute to legal unification under the federal setting.

According to the current context in Somalia, the Federal judiciary has the supreme court as an apex court with a seat in Mogadishu and jurisdiction to conduct a final judicial review of the cases appealed from the courts of the Mogadishu capital, the Banadir Region, without having practical judicial review beyond the courts of the capital, Mogadishu. The Banadir courts consist of a three-tier court system: the district, the regional and the appeal court. Yet, there is no federal judiciary service commission, and the powers of the commission's recruitment, dismissal, promotion and other administrative duties are carried out by the Supreme Court.

At the state level, every state has a separate court system in line with its state constitution. Each state has its own separate judicial commission, except for Hirshabelle and Galmudug, whose judicial commissions have yet to be formed, until the moment of preparing this article. The Supreme Court is the highest court in each state, with final judicial review of all cases appealed from lower state courts, district, regional, and appeal courts. In this case, the current federal and state court systems have little to do with the unification of interpretation and application of laws as they work in a fully fragmented setting amid a lack of vertical and horizontal judiciary collaboration and interactions in the harmonization of court decisions, interpretation, and application of laws.

4.2.4 Unification Through the Federal Constitutional Court

According to Article 109B of the PFC, there is an established federal constitutional court as an apex court with final judicial review over matters relating to the compatibility of legislation with the federal constitution, the constitutionality of laws passed by the parliament, and issues of interpretation of the constitution. Given its final judicial review power, such a court has a crucial role in legal unification by ensuring legal uniformity throughout the federal system to keep the law within constitutional boundaries in line with the provisions of Article 4 of the PFC on the supremacy of the federal constitution. In Somalia, however, such a court is yet to be formed; thus, such a unifying factor is absent.

4.2.5 Unification through the Islamic Law

Under Article 2 of the PFC, there is an important method for legal unification as it clearly recognizes Islam as the religion of the state, and consequently, every law that contravenes Islamic principles and objectives shall be deemed null and void. This supremacy of Sharia may serve as a unifying force, as all federal and state laws should comply with it. However, except for an order issued by the Transitional Federal Government cabinet in 2009, which called for the formalization of Sharia within the state justice system, no concrete measures have been taken so far to enforce Sharia.[29]

4.2.6 Unification Through Inter-State Cooperation

Horizontal inter-governmental agreements, as tools for inter-state cooperation, are enshrined in article 52(2) of the PFC by stating: "Federal Member States may enter cooperative agreements amongst themselves or with the Federal Government, which shall not contradict the national Constitution and the constitutions of the Federal Member States

concerned and may not be legally binding." Therefore, the PFC advocates inter-state agreements as one of the mechanisms to coordinate and promote inter-governmental cooperative relations in issues of mutual concern for the FMS. Such cooperative interactions could include the development of some model laws, some of which could eventually be adopted by all states. However, the experience of Somalia's evolving federalism shows that, while there have been evolving vertical intergovernmental interactions led by the NCC during the past years, there was no effective inter-state cooperation. The Council of Inter-state Cooperation (CIC) was established in October 2017 with the purpose of strengthening the federal system and inter-state cooperation. Still, it remained dysfunctional and not more than a bargaining tool against the FGs. The council did not perform as an effective platform to provide direction, when appropriate, on matters of concern to the council, including the unification of laws.

4.2.7 Unification Through the International Law

The PFC does not specify the status of international law.[30] Nevertheless, the Constitution expressly sets out the sources of law which may be considered in the judiciary's interpretation and application of the law. Thus, when interpreting bills of rights enshrined in Chapter 2 of the Provisional Constitution, a court shall consider the relevance of the Constitution and make its decisions compatible with these provisions, as far as possible. In interpreting the rights provided by the Constitution, the court may consider several sources, including international law and decisions of courts in other countries. However, it is not bound to enforce these decisions.[31]

Building on the past and present practice in Somalia, the relationship between domestic and international law is determined in the Somali Federal Government's legal system based on the dualist theory, which

treats international law and national law as two distinct legal systems and requires the incorporation of international law provisions into national laws through a legislative act before they are applied in the national courts**.** In this respect, once Somalia joins an international convention, such a document does not have the force of law unless it is domesticated through a parliamentary act.[32] As result, Somalia is not directly open to employing international law as q unifying factor until such international norms is domesticated.

4.2.8 Unification Through Regional Organizations

Somalia is currently part of various regional organizations, including the Arab League and the African Union. Moreover, it is already a member of the 1983 Riyadh Arab Agreement for Judicial Cooperation, which, in Article 1, mandates participating states to adapt their legislative texts and align their legal systems to accommodate the unique needs of each party.

Furthermore, Somalia is actively pursuing membership in the East African Community (EAC). If accepted, this membership will come with the obligation to harmonize its laws. Article 126(2)(b) of the EAC Treaty provides that in order to achieve the objectives of the Community, the Partner States shall through their appropriate national institutions take all necessary steps to harmonize all their national laws pertaining to the Community. In this context, Somalia's prospective membership in the East African Community (EAC) stands as a powerful impetus for harmonizing its legal framework with EAC standards. The persistence of varying laws within the Somali federal state would be incongruent with the EAC's overarching goal of fostering uniformity and seamless integration among its member states.

5.0 Concluding Remarks

The study observes that there is a lack of uniformity in the mechanisms for inter-federal legal unification within federal systems. Typically, two distinct models for legal unification exist in federal systems: the top-down, or central legal unification model, and the bottom-up, or cooperative unification model. The choice of model adopted by a federal state, or integrating both into its law unification process, depends on various factors, including the state's political character, structure, and social composition.

In the case of Somalia, despite the absence of an explicit definition of powers, including law-making competence between the Federal Government and Federal Member States, the Provisional Federal Constitution provides a significant framework for unifying laws within the emerging Somali federal system. This framework establishes several institutions with unification mandates, including the Upper House, the National Consultative Council, and the Constitutional Court. Moreover, it enshrines guiding principles for unification, notably the subsidiarity principle, the supremacy of Islamic Sharia, the supremacy of the Federal Constitution, and the constitutional homogeneity clauses.

The paper further highlighted that the practical contributions of the Upper House and the National Consultative Council to the unification process have been limited. Additionally, the absence of an integrated court system and the lack of a federal constitutional court pose significant challenges to achieving the unification of inter-federal laws in Somalia.

To achieve political stability, uphold the rule of law, attract foreign investment, and foster economic integration with regional and international communities, there is a need for clearer delineation of powers, improved inter-governmental cooperation, the formation of

essential institutions like the Federal Constitutional Court, and greater commitment to harmonizing laws at both the federal and state levels. Achieving legal unification is essential for Somalia's stability, governance, and participation in regional and international frameworks.

Notes

[1] - VURAL, Hasan Sayim, and Mohamed Ahmed ADAN. "Post-Unitary Federalization in Somalia." *Avrasya Etüdleri* 60 (2021): 29-52.

[2] Kamali, M. H. (2007). Sharīah and Civil Law: Towards a Methodology of Harmonization. Islamic Law and Society, 14(3), 391-420.

[3] Rosett, A. (1992). Unification, Harmonization, Restatement, Codification, and Reform in International Commercial Law. Am. j. Comp. L., 40, 683.

[4] Waller, supra note 1, at 558 n.1 (quoting Martin Boodman, The Myth of Harmonization of Laws, 39 AM.J. COMp. L. 699, 702 (1991)).

[5] -Klafki, Anika. "Legal Harmonization Through Inter-Federal Cooperation: A Comparison of the Inter-federal Harmonization of Law Through Uniform Law Conferences and Executive Intergovernmental Conferences." German Law Journal 19, no. 6 (2018): 1437-1460.

[6] Ibid

[7] - Halberstam, Daniel, and Mathias Reimann. *Federalism and Legal Unification*. Springer Science, 2014.

[8] Ibid

[9] Ibid

[10] Ibid

[11] Ibid

[12] Karpen, Ulrich. "Comparative Law: Perspectives of Legislation." *Legisprudence* 6, no. 2 (2012): 149-189.

[13] Halberstam, Daniel, and Mathias Reimann. *Federalism and Legal Unification*. Springer Science, 2014.

[14] Klafki, Anika. "Legal Harmonization Through Inter-Federal Cooperation: A Comparison of the Inter-federal Harmonization of Law Through Uniform Law Conferences and Executive Intergovernmental Conferences." German Law Journal 19, no. 6 (2018): 1437-1460.

[15] Halberstam, Daniel, and Mathias Reimann. *Federalism and Legal Unification*. Springer Science, 2014.

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[17] - See Suy, Erik. "Achievements of the United Nations Commission on International Trade Law." In *Int'l L.*, vol. 15, p. 139. 1981.

[18] - Momberg, Rodrigo. "Harmonization of contract law in Latin America: past and present initiatives." Uniform Law Review 19, no. 3 (2014): 411-428.

[19] Contini, Paolo. The Somali Republic: an Experiment in Legal Integration. Routledge, 1969.

[20] Contini, Paolo. "Integration of Legal Systems in the Somali Republic." *International & Comparative Law Quarterly* 16, no. 4 (1967): 1088-1105.

[21] Ibid

[22] In several federal countries, legislating residual falls within the autonomous spheres of states. The German and Austrian constitutions grant the residual powers to the regions. Article 70 of the German Basic Law provides that 'the regions have the right to legislate insofar as this constitution does not confer legislative power on the federation'. Similarly, Article 15 of the Austrian constitution states that "in so far as a matter is not expressly assigned by the federal constitution to the federation for legislation or also execution it remains within the regions' autonomous sphere of competence."

[23] In many federal countries, like Germany, states may legislate concurrent powers, but where the federal law and state law conflict, the dictum "federal law breaks regional law) applies.

[24] Palermo, Francesco, and Karl Kössler. Comparative Federalism: Constitutional Arrangements and Case Law. Vol. 19 Bloomsbury Publishing, 2017. At 134.

[25] Article 61(3)

[26] In some federal states, such as Nigeria, Argentina and the United States, the second chamber or the upper house is involved in making of all laws. In Germany, the second chamber is, in principle, involved in making of all laws. Nevertheless, ultimate approval by the second chamber is only necessary if the Constitution explicitly requires such approval, effectively creating an absolute veto right of the second chamber.

[27] Although the two laws were enacted by the House of People, signed by the president, and subsequently promulgated in the official gazette, the Upper Chamber did not endorse the laws, and thereby some of the regional states rejected the legality of the laws, as reaffirmed by Puntland State of Somalia in 2020.

[28] Article 109(A)

[29] Gundel, Joakim, Louis-Alexandre Berg, and Yahya Ibrahim. *Political Economy of Justice in Somalia*. Working Paper. Justice, Security and Development Series, 2016.

[30] Similarly, constitutions in 1960, 1979, and 1990s lack clear guidelines for the status of international law. Article 6 of the 1962 constitution, however, provides a kind of guideline for the domestication process of international which Somalia is part by expressing that the generally accepted rules of international law and international treaties duly concluded by the Republic of Somalia and published in the manner prescribed for legislative acts shall have the force of law. In this regard, the first constitution of Somalia established a dualistic nature of enforcing international laws. At the same time, they remained according to the process in Article 6 of the first post-independence constitution.

[31] Article 40

[32] Osman, A. Khayre (2021). International law and its applicability in the Somalian legal systems, available at https://thelawbrigade.com/wp-content/uploads/2021/09/Ahmed-Kheir-Osman-IJLDAI.pdf (accessed 5th January 2023).

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Domestication of International Treaties in the Somali Constitutional Framework

✍ Hassan Nur Halane

Abstract

The domestication of treaties varies across jurisdictions and is contingent upon constitutional requirements. The international law grants each country the autonomy to conduct this process in accordance with its internal laws. In accordance with the Provisional Federal Constitution of 2012, the responsibility for domestication and ratification of international treaties is exclusively vested in the Federal Government. Moreover, Article 90(q) of this Constitution acknowledges the role of the House of People in the treaty ratification process, excluding the Upper House of the Federal Parliament. Therefore, the paper advocates for a limitation on the power of domestication and ratification, emphasizing the role of the Federal Government. Additionally, it recommends granting treaty ratification authority to the Upper House of the Federal Parliament as the sole representative and agent of federal member states (FMS). Furthermore, the paper suggests that non-politically sensitive issues to be concluded by the Federal Government with no parliamentary approval for flexibility and simplicity purpose.

Keywords: Domestication, international treaties, Provisional Federal Constitution, legal harmonization, Somalia.

1. Introduction

Every State is responsible for respecting its commitments and obligations arising from international treaties and agreements. The responsibility of states towards fulfilling treaty obligations is enshrined in article 26 of 1969 of the Vienna Convention on the Law of Treaties, known as (VCLT).[1] Article 26 of the VCLT reads: "*Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*"[2] This provision codifies the internationally recognized principle of "*Pacta sunt servanda.*" which is loosely translated as "agreements must be kept") and it is arguably the oldest principle of international Law. What could be derived from article 26 is that states should perform their treaty obligations in good faith and make them enforceable in their territories.[3] That means all state organs, especially state legislatures, executives, and judiciary, must observe and apply treaties to domesticate and incorporate them into the national legal system. Domestication of international treaties and agreements in any jurisdiction goes through the rigorous and hectic domestic procedure to make international law part of internal legislation. Domestication is essential because not all state organs are instantly aware of what treaties the executive organ sign or commit, especially the judiciary arm of the Government, without domestication. States should also ensure treaties align with domestic legislation and not violate treaties' obligations based on any pretext or excuse. Article 24 of the VCLT prohibits the State from invoking treaty violations to justify domestic law non-compliance.[4] Of course, the domestic and constitutional legal framework is district from one State to another regardless of the complexity and diversity of domestic legal systems worldwide. The legal framework and how its structured will inform the State of the domestication of treaties and their integration into the State's internal legal system. Therefore, this study adopts doctrinal qualitative legal method analyzing the constitutional framework governing the

domestication of treaties concerning the relevant provisions in the current Provisional Federal Constitution adopted on August 1, 2012.

2. Overview of the Treaty-Making Process

Usually, when involving multilateral and bilateral agreements, states have specific guidelines to facilitate the smooth conclusion of treaties and ensure compliance with domestic requirements. The VCLT provides a general guideline for every treaty and international agreement to fulfill domestic legislation demands.[5] Nevertheless, the VCLT guidelines do not prevent states from adopting internal processes by accommodating all relevant state institutions and agencies to participate in treaty domestication based on their capacity. A general overview of these processes is explained below.

a) Negotiation

Negotiation is the starting point of international engagements, either multilateral or bilateral, and there is no treaty or international agreement without negotiation in one way or another. The VCLT does not categorize the negotiation phase as part of the treaty concluding process; instead, it is considered a pre-treaty-making process.

In Somalia, according to article 54 of the Provisional Federal Constitution, the powers and responsibilities of engaging in international affairs and negotiations on behave of Somalia lie exclusively with the Federal Government. In other words, the treaty-making conclusion falls under international affairs, which the Federal Government exclusively manages as the highest executive organ responsible for international negotiations.[6] Somalia is a federal state, and Federal Member States (FMS) participate in the negotiation as per the Constitution, and we will talk in detail about that later. Usually, subject-matter ministers (the lead

ministry) involve negotiation the Foreign Affairs Committee of the House of People of the Federal Parliament.

b) Role of Subject Matter Ministry

The subject matter ministry means the ministry in charge of the public interest the treaty deals with. In Somalia, the Ministry of Foreign Affairs is in charge of international affairs. The Ministry of Foreign Affairs, as the subject matter ministry, will be responsible for ensuring the domestic compatibility of any treaty before submitting it to the Federal Council of Ministries and House of People of the Federal Parliament, respectively. The House of Peoples of the Federal Parliament ensures all submitted treaties are compatible and align with the domestic legal system before ratifying them.

Different countries adopt different ways to examine the compatibility and appropriateness of treaties. For countries like New Zealand, the subject matter agency carries out National Interest Analyzes (NIA) for compatibility purposes which will be reviewed by the Legal Adviser for International Treaties at the New Zealand Ministry of Foreign Affairs and Trade(MFAT). [7] In Somalia, the lead ministry ensures appropriate consultation is undertaken and conducted with relevant government agencies and offices, such as the International Law And Treaty Section at the Ministry of Foreign Affairs.[8]

c) Federal Council of Ministers Treaty Deliberation

Federal Council of Ministries discusses treaties submitted by the lead ministry. To give a relevant background, the Federal Council of Ministers (the cabinet) is divided into four sub-committees: Economic Development, Inclusive Politics, Security and Justice, and Social Affairs Development. [9] Based on this structure, ministerial committees are aligned according to their closeness of portfolio of responsibilities to

facilitate comprehensiveness and common objective. Thus, treaties are discussed by respective cabinet committees before tabling at the main cabinet meeting. The purpose of this arrangement is to accommodate the views of the relevant ministerial committees after the lead ministry submits the treaty. There is no legal timeframe for the matter to be concluded by the Council of Ministries, but political urgency and necessities dictate its finalization and submission to the Federal Parliament.

d)   Treaty Ratification

The House of People of the Federal Parliament must ratify all bilateral and multilateral treaties signed by the Federal Council of Ministers as per article 90(q) of the Provisional Federal Constitution promulgated on August 1, 2012. All treaties and international agreements must be approved by the House and assented to by the Present of the Federal Republic of Somalia and published in National Gazette. As the Parliament of Somalia consists of two chambers, only the House of People of the Parliament is constitutionally entrusted to ratify treaties and international agreements. Several steps need to be fulfilled before the House of People approves treaties. When the House of People receives a draft of a treaty proposal from the Federal Council of Ministries, the speakers of the House invite the lead and the subject ministry to brief the House on the main objectives of the treaty and also prove treaty compatibility to the national legal system following article 110 of the Internal Procedures of the House of People of the Federal Parliament adopted on December 31, 2022.[10] After the briefing, the House of People will assign the draft to the House's Foreign Affairs Committee, which the relevant committee to review it. After a thorough study, the Committee will submit a detailed report to the House plenary meeting, including provisions subject to reservation. The House Plenary debates the committee report and votes for the treaty after the exhaustion of administrative and procedural steps of the House. If the House accepts the treaty, the President will assent to

it through a presidential decree and published in the National Gazette. After the approval, ratification documents are usually exchanged to bring the treaty into force for Somalia.

3. Treaty Domestication Theoretical Framework

In this section, we will discuss theories relating to the domestication of treaties at the national level. These theories reflect different schools of thought by international scholars on the domestication of treaties, and that goes back to the relationship between the international and domestic legal systems. Most jurisdictions in the world are monists, dualists, or mixed countries, and they select relevant approach based on legal tradition or homogeneity with their constitutional and organizational structure.

a) Monist Theory

Monist theory propagates uniformity of domestic and international Law and considers both laws a single legal system. It believes treaties, once concluded, directly form part of the national legal system following the country's Constitution. The theory also advocates the supremacy of international Law over municipal Law in case of conflict.

No parliamentary legislation is required, especially when the treaty is self-executing. A treaty is self-executing when no legislation is required from the Parliament to domesticate. France and Germany are countries with monist constitutions even though they have special matters - according to their respective constitutions- that require legislation. Under article 90(q) of the Provisional Federal Constitution of Somalia, international agreements and treaties require the approval of the House People of the Federal Parliament of Somalia. The Provisional Federal Constitution did not expressly state whether the legal system of Somalia is monist or dualist. However, article 110(8) of the Internal Procedures of

the House of People adopted on 31 December, 2022 obliges the House to issue a resolution to domesticate treaty. The resolution is assented, published and gazette in the National Gazette.

b) Dualist Theory

Under a dualist approach, there is a dichotomy relationship between international and municipal legal systems. The theory proponents argue that these two systems are distinct and operate in two different spheres. According to them, international Law regulates interactions of international law subjects, while municipal Law deals with domestic relations. Dualist constitutions do not implement treaties and international agreements until they are domesticated and incorporated into the national legal system. The United Kingdom and the United States are dualist forefronts, whereby most treaties require domestication through legislation. [11] According to article 4 of the Provisional Federal Constitution, Somalia applies constitutional supremacy. It says: *"After the Shari'ah, the Constitution of the Federal Republic of Somalia is the country's supreme Law." It binds the Government and guides policy initiatives and decisions in all sections of government".*[12]

The supremacy of the Constitution makes national law to prevail over international law and accords no room for treaties and international agreements that contradict or conflict with the provisions of the Constitution. As also discussed, the Constitution obliges subject-minsters submit all treaties and agreements concluded by them to the federal cabinet in the form draft bill (translated into the local language) annexed with the original version of the treaty for deliberation. After cabinet approval, treaties undergo scrutiny, debate, and discussions by the House of People of the Federal Parliament like any other legislative bill. Therefore, The House can reject treaties for non-consistence or approve them through issuing resolutions as already indicated. Such resolutions

are forwarded for presidential signature and officially published in the national gazettes.[13] There has also been a practice for the last ten years all treaties and agreements concluded by the executive to be officially proclaimed through a presidential decree. The preliminary ratification of treaties put Somalia under the dualism category since all treaties and international agreements require implementing legislation. From that point of view, the paper is in the opinion of dualism practice because having legislation is crucial for Somalia because it puts the national judiciary fully on board to facilitate the smooth implementation of treaties. It will be an obstacle for the judges to digest treaties concluded due to technical or language barriers unless they are domesticated and translated into the local language. Thus, parliamentary approval without legislation might hinder the full implementation of treaties at the domestic level, and it will be subjected to limited public scrutiny and information.

4. Some Important Constitutional Issues Relating Domestication of Treaties

This heading is devoted to deeply discussing constitutional issues relating functional scope of the Federal Government and Federal Member States in concluding treaties as well as treaty domestication of the Federal Parliament. This kind of discussion will indeed facilitate and contribute implementation and full domestication of treaties in Somalia.

a) Scope of Power of the Federal Government's Executive Branch in Concluding Treaties

We know from the fact that the executive arm of any nation maintains international relations with other counties and other subjects of international Law. Such relationships include engaging and concluding treaties and international agreements. However, concluding treaties is regulated not only under international Law but also subject to a domestic

and constitutional exercise. State constitutions usually clarify to what extent the executive can exercise treaty-making power and whether all treaties should obtain state legislature. Some constitutions express certain treaties whereby the executive should seek state legislature's approval, while others are directly implemented and applied before national courts without parliamentary approval. Constitutionally, a treaty that is directly executed before national courts of Law without the legislature's approval is called a self-executing treaty. On the contrary when a treaty demands the legislature's approval is a non-self-executing treaty.[14] For example, in the French Constitution, treaties relating to peace, trade, and international organizations will not be implemented without the approval of the French National Assembly and Senate.[15] In Somalia, the executive branch is responsible for treaty initiation according to article 90(q) of the Federal Provisional Constitution.

Unfortunately, there are no express self-executing constitutional provisions in the Provisional Federal Constitution of Somalia, paragraph (q) under article 90 of the Provisional Federal Constitution seems to restrict the power of the executive to the treaty-making. The executive cannot initiate treaties without the consent of the House of the People of the Federal Parliament. It could be interpreted that even small-scale and less important political matters must be approved by the House of the People of the Federal Parliament before being implemented and constitute part of the domestic legal system.

b) Participation of Federal Member States in Concluding Treaties

Somalia is a federal state with two layers of Government: the Federal Government acts as the central layer of the Government, and Federal Member States (FMS) operate at the state level. The Constitution defines the powers of each layer of the Government. Article 54 of the Provisional Federal Constitution makes foreign affairs, along with three other issues

(national defense, citizenship, and monetary policy), within the powers and jurisdiction of the Federal Government. Article 54 says: "*The allocation of powers and resources shall be negotiated and agreed upon by the Federal Government and the Federal Member States (pending the formation of Federal Member States), except in matters concerning (A) Foreign Affairs; (B) National Defense; (C) Citizenship and Immigration; (D) Monetary Policy, which shall be within the powers and responsibilities of the federal government*." It is understood that foreign affairs, including treaties and international agreements, are under the Federal Government's jurisdiction. However, the preceding article 53 of the same Constitution makes exceptions to article 54 of the Constitution. It gives a constitutional avenue for FMS to be consulted by the Federal Government on matters concerning *aid, trade, treaties, or other significant issues related to international agreements*. Furthermore, paragraph 2 of article 53 of the Constitution demands full participation of FMS in treaty negotiations if negotiations directly affect their interest. The FMS, whose interests are affected, will have a delegate alongside federal ministries at the negotiating table.

If you analyze the wording of the above provisions, FMS states have a say in negotiating and concluding international treaties and agreements that connote the respective State's interest. Making FMS on board is a positive step because it contributes and re-enforces collaboration between the two national structures. On the other hand, it may affect the smooth exercise and cohesion of Somali foreign affairs, especially when the two structures are not on good terms. At this juncture, the FMS share competence with the Federal Government in the competences elaborated above but foreign affairs are the federal Government's sole responsibility under the Constitution. FMS states have no authority under the current Constitution to independently enter treaties and international agreements. Some Federal constitutions, like Germany, allow their federation units to

enter agreements on specific matters with the Federal Government's prior approval.

C) Federal Parliament Treaty Domestication

The Federal Parliament of Somalia consists of two houses: the two houses of People and the Upper House. They perform shared responsibilities, although each House has some specific tasks individually. Treaty domestication is one of the specific duties of the House of People as enshrined under Article 90(q) of the Provisional federal Constitution. Excluding the Upper House, Paragraph (q) of the Provisional federal Constitution requires the House of People's approval of the treaties and international agreements proposed by the Federal cabinet. In other bicameral jurisdictions like Germany and South Africa, treaty domestication is a joint responsibility of both houses if treaties fall under non-self-executing treaties.[16] What is peculiar here in Somalia is that the Upper House is out of the picture constitutionally when it comes to the domestication(ratification) of treaties entered by the executive branch. Constitutionally, the Upper House of Somalia is important as it represents "*the interests of the Federal Member State that the member represents and safeguards the federal system while acting in the spirit of inter-governmental cooperation.*"As an agent and guardian of the FMS' interest, the Upper House is supposed to co-domesticate and co-ratify on matters with political importance that affect FMS without exception. FMS involvement in the treaty negotiation could be considered a serious matter and challenge, but the ultimate decision lies with the House of People, which the Upper House has no role to play at this stage.

All three constitutional issues discussed above require attention and consideration during the constitutional review. The national constitutional review committees should address issues relating to the type of treaties

that need parliament approval, the scope of FMS participation in treaty negotiation, and the Upper House's role in the ratification of treaties.

5.   Conclusion

Domestication of international treaties is a necessary step for the implementation of international treaties. Such domestication represents state commitment to fulfilling international obligations and making them enforceable before national courts. Although the domestication of international treaties and agreements attracted different theoretical debates that revolve around the best approach to be considered, the paper analyzed the process of treaty domestication in Somalia at the federal and State levels with reference to provisions of the current Provisional Federal Constitution.

As discussed, there are underlined problems concerning the conclusion of treaties by the Federal Government, the role of FMS federating states in negotiating treaties, and the exclusive jurisdiction of the House of People of the Federal Parliament in treaty domestication. Therefore, it is recommended that all these issues be emphasized and clearly explained in the Constitution to avoid confusion. The paper further suggests that a similar treaty ratification authority should be given to the Upper House of the Federal Parliament as the Upper House represents FMS federating states. A constitutional clarification is also needed in relation to the conclusion of treaties by leaving technical and non-politically sensitive issues to be concluded by the Federal Government with no parliamentary approval.

Notes

[1] See Vienna Convention of the Law of Treaties accessed January 10, 2023, https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01.pdf.

[2] Vienna Convention on the Law of Treaties (1969),*"* article 26

[3] *"*Vienna Convention on the Law of Treaties (1969),*"* article 49.

[4] *"*Vienna Convention on the Law of Treaties (1969),*"* article 24.

[5] *"*Vienna Convention on the Law of Treaties (1969)*",* artciles9,10,11,12,13,14,15,16.

[6] *"*Somalia-Constitution2012.Pdf,*"*http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf. Accessed October 11, 2022.

[7] *"I*nternational-Treaty-Making-Guide-2021.Pdf,*" h*ttps://www.mfat.govt.nz/assets. Accessed October 11, 2022.

[8] https://www.mfa.gov.so/home/departments/ Accessed September 24,2023.

[9] "Roadmaps – Office of the Prime Minister of Somalia," https://opm.gov.so/en/q/roadmaps.Accessed October 28, 2022,

[10] *"*Somali House of People Internal Procedure*"* pdfhttps://www.google.com. Accessed October 11, 2022.

[11] Ibid.

[12] See article 4 of Provisional Federal Constitution of Somalia,2012.

[13] "Somali House of People Internal Procedure - Google Search*,*" 106.

[14] Damos Dumoli Agusman, s*elf-executing, and non-self-executing treaties. What does it mean*? (*Indonesian Journal of International Law* 11, 2014), 321, https://doi.org/10.17304/ijil.vol11.3.501.

[15] "Modern Treaty Law, ibid, 183.

[16] Ferreira, Gerrit, and Anel Ferreira-Snyman. "The incorporation of public international law into municipal law and regional law against the background of the dichotomy between monism and dualism.*"* Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad 17, no. 4 (2014): 1470-14. F, https://doi.org/10.4314/pelj.v17i4.08.

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Drawing the Territorial Boundaries of the Somalia Federal Member States: Gaps, Challenges and Legal Frameworks

Arafat Ali Mohamed

Abstract

Somalia adopted a federal system in 2012, after more than fifty years of centralized government since 1960. Four regional states were formed amid legal and political controversy between 2013 and 2016. This study examines how the federal government sets state boundaries. It does so by qualitatively analyzing legal documents, interviews, policy papers, official documents, academic materials, and publications of international organizations on Somalia's regional state formation. The study concludes that it is difficult to clearly define regional state boundaries due to an insufficient legal framework, a lack of political will, and a lack of credible commitment to the rule of law. Consequently, regional states have contested borders, which can lead to conflicts over competing interests and affect the resolution of national issues such as Somaliland. Thus, to reduce state-to-state disputes, the Federal Supreme Constitution should be finalized, and the final federal constitution should clearly define new state criteria and procedures.

Keywords: Somalia, federal system, boundaries, constituent units, Somalia Provisional Constitution, federal government.

Part One: Introduction

1.1. Background of the Study

Somalia is a country in the most eastern part of Africa that was formed in 1960 by the unification of two parts: British Somaliland (northwest part), which was a British protectorate, and Italian Somaliland (south-central part), which was an Italian colony. From these different experiences, the new state was formed under a unitary constitution ratified by a public referendum in 1961. The Constitution established a multiparty democracy with a centralized government.[1] A civilian government with a popular elected legislative assembly had run the country for nearly a decade until the military took control of the government in a bloodless coup d'état in 1969 after the president was assassinated just days before the coup occurred. The military, led by Mohamed Siad Barre, ran the country for 21 years, adopted socialism as the ideology of the system, and crafted a constitution in 1979 that established a socialist government run by the working class and directed the government to implement socialist programs.[2] The military maintained the centralized system of government but in a single-party democracy.

After 30 years of functioning government, the central government collapsed in 1991, resulting in a civil war in nearly every part of the country. The Somali society then drew back the shape of the pre-state residency, which was fair due to their safety following the collapse of the central government. Because they lacked trust, each tribe returned to its former residences because the people were mistrusted, and each clan could only trust its territory.[3]

Following the collapse of the government, all attempts by neighboring, sisterly, and international organizations to reestablish a constitutional government in the country failed over the next decade, and the Northwest

Territory (Somaliland) declared its independence from the country. The Arta Peace Conference, which took place in Arta, Djibouti, in 2000, resulted in the adoption of a federal system in the country, which eventually led to the adoption of the Provisional Constitution in August 2012, nearly two decades after the country had been without both a constitution and a functioning government. For the first time in Somalia's history, the new constitution establishes a federal state structure with a two-tiered federal system consisting of national (federal) and regional (states) levels, reversing the country's previous unitary system.[4] While the Constitution lays the groundwork for state formation, including the formation of subnational states, it was adopted in the absence of a fully functional central government capable of defending and implementing the new constitution. The constitution is provisional in nature, requiring a public referendum after the federal government and states agree on the final version, allowing for revision and finalization. Moreover, the Constitution contains gaps in its definition of the federal system, including the absence of principles, a mandate, and a process for establishing member states, the division of financial powers and management of national resources, and impropriety in the political power sharing between the federal and state governments.[5]

1.2. Statement of the Problem

One of the distinguishing features of the federal system is the existence of two or more levels of government, with a written constitution providing for the establishment of subnational units to allow citizens to participate in determining their self-rule and have access to public services in their respective areas. When federalizing a country, system designers should be clear on the configuration of subnational units, including their size, boundaries, and requirements. This is not difficult for federations formed by the union of previously existing units coming together in a single polity. Still, it is more difficult for unitary systems that want to devolve

their system into several centers of authority and create subnational units. The latter necessitates revising a country's political map in an inclusive process. According to George Anderson, who studied more than 20 federal and quasi-federal countries in defining their constituent units, delimiting the new constituent units can be politically contentious and even an impediment to achieving federalism when previously unitary countries, such as Somalia, begin the constitutional transformation to federalism.[6]

When the Somali Provisional Constitution was adopted in 2012, only Somaliland (unilaterally declared independence) and Puntland (semi-autonomous) were existing and functioning administrations. Other parts of the country were under fragmented local administrations or unorganized. According to Article 49 (6) of the Provisional Constitution, at least two regions—previously existing administrative regions—or more can form a regional state, the number and boundaries of which will be decided by the House of People of the Federal Parliament (lower house) based on the recommendations of the boundaries and federalization commission.[7] In that context, the Federal Government started organizing the country in order to establish new states (other than Somaliland and Puntland). From 2013 to 2016, four regional states were formed in a process heavily laden with controversy. These Regional States were formed without clearly delineating their borders, at least some of them. These are the challenges that the newly established states face. There are no clear and agreed-upon boundaries between the current regional states, including Puntland and Somaliland, which resulted in conflicts over political inclusion, power control, and revenue generation.

The Federal Parliament has the final decision on boundary delimitation based on the recommendations of the Boundaries and Federalism Commission, to which this research intends to contribute useful advice on how to determine regional state boundaries.[8]

1.3. Research Questions

The study's primary question is: How are regional state boundaries determined in Somalia's federal system, and what role does the Federal Government play in defining regional state boundaries? The study seeks answers to the following subsidiary questions in order to get an answer to the primary question:

- How are constituent unit boundaries organized in the federal systems?
- What are Somalia's constitutional and legal frameworks for defining regional state boundaries?
- What role does the Somali Federal Government play in determining the boundaries of regional states?

1.4. Research Methodology

The study employs qualitative strategies in a case study approach involving primary and secondary data. Interviews, journal articles, policy papers, online articles, book reports, official documents, and publications from international organizations that are related to and issued on the subject matter topic are used to collect data. Content analysis is used to analyze data in order to provide a specific outlet for analyzing theories and identifying core consistencies addressed in the study.

1.5. Organization of the Study

Apart from this introduction, the study is divided into three parts that address the topic in depth. The second part, lays the groundwork by defining the study's underlying concepts and theoretical framework. The third part will go into greater detail about Somalia's constitutional and legal framework for establishing regional states and the mandate to determine federal member states' boundaries. Chapter four contains the research's conclusion and recommendations.

Part Two: The Framework on the Formation of Constituent Units in Federations

Federal is a system that divides government authority into multiple centers through various mechanisms and approaches. Countries choose it for political, security, economic, and cultural reasons. One of the main features that set this system apart from others is the presence of two levels of government. The formation of the federation's subnational units is one of the many challenges that federalizing countries face in their implementation. This will be related to the formation of the federation and the various factors that led to the adoption of the federal system. This chapter will look into the two concepts mentioned above, 'federalism' and 'constituent units,' which serve as the foundation for this research. 'Federalism' and 'constituent units' are two terms that will be used frequently in this research.

2.1. Understanding Federalism

The term "federal" is "derived from the Latin 'foedus,' which means an agreement, treaty, compact, or covenant."[9] It became popular after it was used in the formation of the United States of America (1776-1787), with the term "federal union" referring to the union treaty.[10] Despite this, there is no agreed definition of federalism among scholars because of the nature of the idea that denotes to distinct values and its practical application to various purposes. K.C. Wheare defines it as a mechanism of power sharing between central and regional governments[11], while William Samuel Livingston sees it as a reflection of the federal qualities of the society articulated and protected. The form of federalism is shaped by sociological elements such as culture, economy, and political viewpoint. If a society is territorially organized, it is a federal society; otherwise, it cannot be called a federal society.[12] From these definitions, it is safe to conclude that federalism is a political system influenced by the

sociological structure of a given society, which is true for countries that have adopted federalism, such as the United States and Switzerland, India, Brazil, Germany, and Mexico, each has its own distinct federal system. Despite the lack of an agreed-upon definition of "federalism," Daniel Elazar's definition, "combination of self-rule and shared rule,"[13]Seems to have a broad sense in which distinct ideas, including those mentioned above, can be applied. That is to say, while distinct in many ways, federations share some characteristics, such as the existence of at least two orders of government, which are firmly entrenched in a written constitution and subject to specific amendment procedures and judicial review. Typically, a particular type of second chamber in a federal system offers constituent unit representation in national institutions, alongside an intergovernmental process and institutions.[14]

2.2. Demarcating Constituent Unit's Boundaries

Constituent units are the components of any federation. One of the primary structural characteristics of the federal system that distinguishes it from other forms of government is the existence of subnational units with constitutionally guaranteed self-rule autonomy. These constituent units have been referred to different nomenclatures [15] in different federations such as: "states" in Australia, Belau, Brazil, Ethiopia, India, Malaysia, Mexico, Micronesia, Nigeria, the United States, Somalia[16], and Venezuela; "provinces" in Argentina, Canada, Pakistan, and South Africa; "Länder" in Austria and Germany; "cantons" in Switzerland; "Autonomous Communities" in Spain; "Regions" and "Communities" in Belgium; "subjects" in Russia.[17]

In coming together, federations such as the United States (1787), Switzerland (1848), Canada (1867), and Australia (1900) were all composed of various units "coming together" to form a new federal country. In the new states, provinces, or cantons (in Canada's case,

Quebec and Ontario had existed as separate political units prior to 1840 and were reinstated at the time of federation), the boundaries of previously independent states are accepted without variation. In contrast, in holding together federations such as Ethiopia (1995), Nigeria (1960), and Somalia (2012), the boundaries of the new subnational units shall be demarcated according to negotiations and peace treaties.[18] The latter has no predefined entities prior to the union, but a single entity wishes to decentralize power into subunits through a process of devolution. In both cases, as federations continue to last for some time, the founding factors may change, and a new group of other causes may emerge, whereby reorganizing constituent units and developing new building blocks may be established on criteria other than those in the first time of union. In addition to W.H. Riker's earlier factors of 'significant external or internal threat or a significant opportunity for aggression,' desire for economic welfare and drive for a larger market, accommodation of socio-cultural diversity (such as ethnicity, language, religion, tribe, and clan), historical boundaries, and geographic factors are all incentives for regional state proliferation.[19]

Part Three: Legal Framework for Determining the Boundaries of Somalia's Regional States

According to the Provisional Constitution, two or more regions may merge to form a regional state, with the Federal Parliament having the final say on determining the boundaries of the regional states and declaring their accession to the Somali Federal Republic. Except for Somaliland, the Somali Republic now consists of the Federal Government and five Regional States. Between 2013 and 2016, four of these Regional States were formed: Jubaland (2013), South West (2014), Galmudug (2015), and Hirshabelle (2016). In this context, this chapter goes into greater detail about how Regional States' boundaries are determined. The goal is to investigate the constitutional and legal frameworks that govern the formation of Regional States boundaries.

3.1. The Constitutional Framework and Structure of the State

The Provisional Constitution adopted the principles of horizontal separation of government powers into legislative, executive, and judicial branches. Those government organs shall exist at each level of the federal and state structures. Article 3 (4) reads, "The Constitution of the Federal Republic of Somalia promotes human rights, the rule of law, general standards of international law, justice, participatory consultative and inclusive government, and the separation of powers between the legislature, executive and an independent judiciary, in order to ensure accountability, efficiency and responsiveness to the interests of the people." The Provisional Constitution defines only federal government organs and leaves state government organs to be defined by state constitutions, without providing guiding principles for their establishment and interaction. The only exception is the judiciary, where the constitution establishes some principles governing judicial independence, adjudication procedure, proceedings, and the administration of constitutionality review issues.[20] These principles are applicable to both federal and state courts. The legislative and executive branches of the states, as well as other state institutions, shall be determined by their constitutions, which they may organize however they see fit, and which may differ from the structure of the federal organs.[21] The PC only requires that they be divided into three branches: legislative, executive, and independent judiciary.[22] Currently, all existing regional states have unicameral assemblies that are supposed to be elected by citizens living in the states' respective territories.

3.2. Principles and Criteria for Regional State Formation

As discussed above, Somalia is more of a holding together federation, with the main goal of maintaining national unity and establishing a stable government. Prior to the adoption of the Provisional Constitution, there

were no independent units that came together to form a federal system, but the country had a unitary system of government since its independence. Although the Provisional Constitution establishes a two-tiered federation, there is no adequate guidance on the process of establishing subnational governments, and the legal framework has gaps. The Provisional Constitution, the law establishing the Independent Boundaries and Federalism Commission[23], and the Districts and Regions Administration Act[24] provide the legal framework for the formation of regional states. The following section discusses the principles and criteria for forming regional states based on the aforementioned legal framework.

3.3. Boundaries Between the States

Regarding the first condition of two or more regions, the Provisional Constitution indicated that the country had 18 administrative regions prior to federalization, so should the boundaries of the federal member states be demarcated? The answer can be found in the change in the government system. Despite the presence of local governments at the regional and district levels, the former central government of Somalia did not prioritize the boundaries between the regions and districts because the entire country was governed from a single center.[25] However, the system has changed into a federal system with more than one center, and new previously unimportant issues have become priorities and significant. Territories are defined by political power sharing, resource sharing, and revenue collection. Furthermore, in the past, the demarcation of the boundaries between the regions was not well-defined; for example, the boundaries were defined by familiar places such as a water-well, a large tree, or a well-known terrain. For whatever reason, these symbols may vanish, resulting in the loss of the boundary that separates the two regions. Worse, the previous central government created districts by dividing existing ones without defining their boundaries.[26] In short, it is now necessary to have a clearly defined boundary that should be defined

by kilometers and demarcate the boundaries of the states. This is made possible by new GPS (Global Positioning System) technology, which can be easily monitored to reduce cross-border disputes between states.[27]

3.4. The Mandate to Establish Regional States

One of the first and most important tasks of implementing the provisional constitution is the formation of regional states, but there is considerable debate about who has that mandate. According to Article 49 (1) of the provisional constitution, the House of the People (the lower house of the Federal Parliament) shall determine the number and boundaries of the federal member states. In contrast, Clause 6 of the same article stipulates that two or more regions may voluntarily merge to form a federal member state. From here, the Parliament and the regions have the authority to form regional states.

The executive branch (federal government), on the other hand, made a case for its involvement in managing local and regional government (including the appointment of governors) by citing Article 48 (2), which states that regions that do not join a state must be administered by the federal government for a maximum of two years. This has left room for interpretations on the formation of regional states in which various aspirants compete to dominate the process. "With many parts of southern and central Somalia still under Al-Shabaab control in 2012 [until now], this interpretation gave the Mogadishu government significant leeway to attempt to influence local events."[28]

However, according to the bottom-up approach discussed in the earlier sections; firstly, local administrations (districts and regions) should be established through an inclusive process participated by the community groups, including traditional elders, civil society organizations and the federal government which shall have a facilitating and monitoring role.

Traditional leaders form the backbone and lead the nomination of local councils of districts, and members chosen from district councils form the regional council. This is a quick process of establishing administrations for districts and regions. The second stage would consist of negotiations and conferences in which regional administrations would merge to form regional states.[29] Unfortunately, this did not happen as expected. Regional states, with the exception of Puntland and Somaliland, were established in a hasty and top-down process led by some political aspirants who were either supported by the Federal Government or external actors on the understanding that the emerging federal member states were exclusive political projects in which everyone should make the most of it or abandon it.[30]

3.5. Procedures for Establishing and Recognizing a Federal Member States' Boundaries

Neither the Provisional Constitution nor any other law specifies a specific procedure for state formation, but a closer look at the state formation process reveals that there are a number of stages in the formation of sub-national governments. The first of these stages is[31]:

1. Establishment of the Independent Boundaries and Federalism Commission. Article 135 (2) (e) of the Provisional Constitution requires the Federal Parliament to establish the Boundaries and Federalism Commission within 60 days during the 1st term of the Federal Parliament after adopting the Provisional Federal Constitution in 2012. Before the formation of the Commission, the Federal Parliament shall approve the law establishing the Commission, which shall specify the powers, number and rights of the Commission.

2. Stage 2 would be for the Commission to conduct a study and submit to the Federal Parliament a detailed report on how to form regional states, including the recommendations of the Commission.[32] When the committee is formed, it should conduct studies and research on the

assigned work. It includes going to all parts of the country, except Somaliland, and consulting with the people, administrations, politicians and traditional leaders. Conduct a geographical survey of the country's landscape, as well as regional and district boundaries, with the help of experts, and submit a detailed report on the formation of Federal Member States to the Federal Parliament.[33]

3. Stage 3 would be the Parliamentary decision on the Boundaries of the Federal Member States. Pursuant to Articles 49 and 111E of the Provisional Constitution, the Parliament shall determine the number and boundaries of the Federal Member States based on the recommendations of the Boundaries and Federation Commission.

4. The next stage would be the formation of regional state governments. Once the numbers and boundaries of the member states have been determined, the next step is to establish their own structures and institutions through a legal process centered on the local community. That legal should follow the decision of the Federal Parliament on the Boundaries.[34]

As previously stated, the current states were not established in the manner described above; rather, they were created using a shortened top-down method without consulting the Boundaries Commission, which may make them '*not yet fully member states of the federation*'. The members of the Boundary Commission were appointed in July 2015, after four of the five Regional States had been established, and the fifth was in the process of formation, resulting in the incomplete formation of the States. To conclude the process of establishing states, the Boundary Commission can now support the formalization of existing Regional States into Federal Member States and reorganizing their boundaries when forming a new state out of the existing States. Commenting on this, the chairman of the Boundary Commission informed the researcher that the Commission had prepared a comprehensive report that included recommendations for the regularization of the existing Regional States. He added that "they [the

Boundary Commission] conducted extensive research on all the current states and prepared a report that includes the commission's recommendations on how to legalize the existing states to become full members of the federation."[35] The Commission will submit the report to the 11th Parliament.[36]

3.6. The Issue of Mudug Region

Mudug region is in central Somalia and comprises five districts, including the regional capital, Galkayo. Abdullah Yousuf Ahmed, the then leader of the Somali Salvation Democratic Front (SSDF) and President of the Transitional Federal Government (October 14, 2004 – December 29, 2008), the Ali Ismail Abdi-Giir of Somali National Democratic Union (SNDU), and the late General Mohamed Farah Aideed, Chairman of the United Somali Congress (USC), signed the Mudug Peace Agreement in 1993, which ended violence and bloodshed in the region that had been the most violent in Somalia during the civil war.[37] According to the Mudug peace agreement of 1993, a clan has jurisdiction over its territory. Mudug region serves as a commercial "meeting point" for the country's northern and southern region, as well as a commercial crossroads for Somali regions in Eastern Ethiopia.[38] Prior the adoption of federalism, regional divisions were irrelevant, but now that the country is federalized, they are vital. Currently, the political, economic, and administrative aspects of the incomplete federalization are reflected in the geographic division of already existing administrative regions. Puntland objected to creating a Mudug and Galgudud regional government in 2014, claiming Mudug was part of Puntland.[39] Due to the new state, it ceased cooperating with the federal government. On October 14, 2014, the Federal Government and Puntland agreed that Northern Mudug is part of Puntland State and Southern Mudug is part of Galmudug. Consequently, Mudug belongs to both Puntland and Galmudug.[40] But the question is, can a region be divided in this manner? To respond, two points should be clarified.

According to the Provisional Constitution, a regional state must first consist of two or more regions. This requirement is thought to be related to geography, in which the communities of each region are brought together to decide which state to join or form. In reality, Somali clans coexist in every region, but disagreements and conflicts tend to arise more frequently when it comes to politics. The second issue is that power-sharing in Somalia is clan-based, and even the federal government is based on clan-based power sharing, with each clan having its own division. This also exists at the regional state level, and all regional governments, including Puntland and Galmudug, have been established accordingly.[41]

3.7. Reorganizing Federal Member States and Establishing a New State

Another critical issue for which other federations have devised solutions is what to do with forming a new state. The Provisional Constitution does not address the requirements for forming new states following the formation of federal member states. The Constitution only states that two or more regions can voluntarily form a state, and that no region can stand alone on its own.[42] The Federal Government shall govern each region for up to two years before joining a federal member state. Similarly, it does not clarify the procedure for a region can secede from a federal member state. The conditions associated with the formation of regional states can be understood -Although not clearly limited to- to be related to the first establishment of the federal member states but not relevant to their reorganization after joining the federation.[43] Prior to the formation of the states, the regions had the autonomy to decide their own destiny and which state to join, but if the states formed, local governments would be subject to the jurisdiction of the federal member states and their constitutions, and they can be reorganized differently than the 18 regions that existed in 1991. Principally, no state would allow a state's territory to be separated and merged with another state, as the Puntland and Jubaland constitutions clearly stated.[44]

3.8. The Issue of Somaliland

On 1 July 1960, the former British Protectorate of Somaliland and the former Italian Somali joined together to form the Somali Republic, following their respective independence from Britain and Italy on 26 June and 1 July of the same year, respectively. In January 1991, a coalition of armed opposition groups ousted the government in Mogadishu, resulting in the collapse of the Somali central government and creating a power vacuum. Consequently, the Somali National Movement (SNM) gained control of most of the northern regions, the former British Protectorate of Somaliland, and declared independence from the rest of the country, and established a new nation called "The Republic of Somaliland.". Despite this, the country has yet to receive any international recognition. However, Somalia has consistently rejected all of these actions, considering them unilateral and illegal; and repeatedly affirming its commitment to maintaining its territorial integrity.

Prior to the collapse of the central government, the northern regions of Somalia constituted five of the country's 18 administrative regions: Awdal, North West, Togdheer, Sool, and Sanaag.

On the other hand, residents of certain areas within the Togdheer, Sanaag and Sool regions participated in establishing Puntland State in August 1998. Consequently, these areas have become a point of contention between Somaliland and Puntland, as they claim ownership of these regions. Since 2012, there have been several rounds of negotiations between the Somali Federal Government and Somaliland, but thus far, significant progress has yet to be made toward resolving their differences. Somaliland maintains that it should be granted independence, while Somalia maintains that unity is inviolable. The inability to reach a consensus on the issue of Somaliland and its status remains one of the most contentious issues in Somalia, particularly concluding its federal system.

Part Four: Conclusion and Recommendations

1. Conclusion

Based on the discussions and analysis in the study, the following research conclusions were reached:

1.1. One of the most important issues in federalizing a country is how its federal system organizes the formation of subnational units. In coming together federations, such as the United States and Switzerland, forming federated units is not difficult and does not necessitate the determination of boundaries; instead, the boundaries of previously independent states are accepted without modification. Whereas in federations where unitary countries with a single entity want to devolve and create subnational levels, such as Ethiopia, Nigeria and Somalia, the boundaries of the new subnational units shall be demarcated based on negotiations and political agreements within a federal supreme written constitution framework.

1.2. Inadequate constitutional and legal framework for determining regional states' boundaries. The Provisional Constitution, the law establishing the Independent Boundaries and Federalism Commission, and the Districts and Regions Administration Act, which serve as the legal framework for determining regional state boundaries, are ambiguous regarding the process, roles, and responsibilities of determining regional state boundaries.

1.3. A lack of political will and credible commitment to the rule of law. Despite the legal gap in defining clear rules and procedures for regional state formation, politicians and elites could come together and find solutions by adhering to the existing legal framework. Regrettably, all four regional states formed between 2013 and 2016 were outside the existing rules.

1.4. Although the Provisional Constitution grants the Federal Parliament final decision on the number and boundaries of regional states, there is ambiguity regarding the role of regional administrations, the Federal Government, and the Federal Parliament in determining regional state boundaries.

1.5. Dispute over the boundaries. The demarcation of 18 regions prior to the collapse of the central government was not well-defined in the past; for example, the boundaries were defined by familiar places such as a water-well, a large tree, or a well-known terrain. For whatever reason, these symbols may disappear, resulting in the loss of the boundary separating the two regions.

2. Recommendations

In light of the above findings, this study recommends the following actions:

2.1. Finalizing the constitution review. The Provisional Constitution should be finalized to end any excuse for not respecting and applying it. As soon as the two Houses of the Federal Parliament approve the revised Provisional Constitution, a constitutional assembly composed of traditional elders who nominated delegates elected members of the House of the People in the 2016 and 2022 elections, should be established and convened to approve the final constitution.

2.2. The Federal Constitutional Court should be established and given the tools it needs to carry out its duties. The Provisional Constitution creates a constitutional court of five judges as an umpire institution responsible for hearing and deciding the constitutionality of laws and government measures and determining disputes between government organs. Unfortunately, the constitutional court has not yet been established, which allows politicians to break the law without fear of consequence. Establishing the constitutional court

may be a solution to the political impasses between government branches within the Federal Government and between the Federal and State levels. Apart from that, cooperation between the federal government and the states should be maintained in order to strengthen relations, discuss and agree on national issues, preserve the country's unity, and harmonize policies. Rules and procedures for such intergovernmental relations should be established, as well as institutions to facilitate such cooperation.

2.3. The study recommends that the Boundaries and Federalism Commission and the Federal Parliament use cutting-edge technology to determine the boundaries of current administrative regions, such as GPS (Global Positioning System) technology, which can be easily monitored to reduce cross-border disputes between states.

2.4. The formalization of current regional states into full members of the Federal Republic of Somalia. It is recommended that they be included in the revised federal constitution, which should clearly define their jurisdictional boundaries. The revised federal constitution should clearly define the boundaries between federal member states. Formalization should consider the local level by recognizing them as the third level in the federation and granting them irrevocable competencies.

2.5. Criteria and procedures for new states should be specified in the federal constitution. The revised federal constitution should include comprehensive conditions and criteria for establishing new member states. The consent of the local people should be taken into account when deciding on the procedure for establishing a new state. When redrawing the boundaries of an existing state to form a new state, the consent of the people in the state should be obtained first, and the Independent Boundaries and Federalism Commission should administer the process of redrawing its boundary.

Notes

[1] Articles 01 and 12 of the Somali Constitution of 1960 (as amended in 1963).

[2] Article 1 of the Constitution of the Somali Democratic Republic of 1979; Cleophus Thomas, 'Federalism in Somalia: Obstacles, Aspiration, and Opportunities in Jubaland' (PhD dissertation, George Mason University 2017) 41-42.

[3] Mohamed Aden Farah, 'Federalism: State-Building in Somalia and People's State Ownership' (MA thesis, Addis Ababa University 2017) 2.

[4] See Articles 1 and 48 of the Provisional Constitution of Somalia of 2012.

[5] Cleophus Thomas (n 2) 105-127.

[6] Ibid, 3.

[7] Article 49 (1) of the Provisional Constitution of Somalia of 2012.

[8] Ibid, 111E.

[9] Ibid.

[10] Ibid; Julia Cresswell, *Oxford Dictionary of Word Origins (3rd ed, Oxford University Press 2021).*

[11] Thomas O. Hueglin and Alan Fenna, Comparative Federalism: A Systematic Inquiry (2nd edition, University of Toronto Press 2015) 99.

[12] Gabriel Lanre Adeola and Adeleke Olumide Ogunnoiki, 'The Philosophy and Theories of Federalism' (2020) 1 Crawford Journal of Politics 77, 79 <https://bit.ly/3sOVTfe> accessed 27 December 2021.

[13] Daniel Elazar, Exploring Federalism (University of Alabama Press 2006) 5.

[14] Michael Burgess, Comparative Federalism: Theory and Practice (Routledge 2006) 136.

[15] This study uses these names interchangeably: ' subnational units/levels' and 'regional states' as constituent units. As well as 'central', 'national', and 'federal' as denoted to the centre or the union.

[16] In Somalia, the English version of the constitution uses Federal Member States, which is equivalent to 'state', but the Somali version, which is the official version, sometimes uses 'regional administration' in articles 120 and 132 (2 & 3), which may have a different connotation.

[17] Ronald L. Watts, Comparing Federal Systems (3rd edition, Published for the School of Policy Studies, Queen's University by McGill-Queen's University Press 2008) 71.

[18] George Anderson, 'Creation of Constituent Units: Practitioners' Guide' (2014) Center for Constitutional Transitions at NYU Law <https://www.constitutionaltransitions.org/wp-content/uploads/2017/05/Creation-Prac-Guide-Final.pdf > accessed 27 November 2021.

[19] Thomas O. Hueglin and Alan Fenna (n 12) 102.

[20] Articles 105-109 of the Provisional Constitution.

[21] Ibid article 120.

[22] Ibid article 3 (4).

[23] Independent Boundaries and Federalism Commission Act 2014.

[24] Districts and Regions Administration Act 2013.

[25] Interview with Khalif Abdikarim Mohamed, Chairperson, Independent Boundaries and Federalism Commission (Mogadishu, Somalia, 8 March 2022).

[26] Ibid.

[27] Ibid.

[28] Jason Mosley, 'Somalia's Federal Future: Layered Agendas, Risks and Opportunities' (2015) Chatham House, 9 <https://www.chathamhouse.org/sites/default/files/field/field_document/20150902SomaliaFederalFutureMosley.pdf> accessed 26 March 2022.

[29] Articles 6-11 of Districts and Regions Administration Act 2013; Articles 14-17 of the Independent Boundaries and Federalism Commission Act 2014.

[30] Jason Mosley (n 27) 5.

[31] Ibid.

[32] Article 111E (1 and 2) of the Provisional Constitution; and Article 17 (1) of the Independent Boundaries and Federalism Commission Act 2014.

[33] Article 111E (3) of the PC; and article 17 (2) of the Independent Boundaries and Federalism Commission Act 2014.

[34] Interview with Khalif Abdikarim Mohamed (n 24).

[35] Ibid.

[36] Ibid.

[37] The Mudug Peace Agreement of 1993 <https://www.peaceagreements.org/viewmasterdocument/1710> accessed 01 November 2022.

[38] Puntland Development and Research Center (PDRC) and International Peace building Alliance (Interpeace), 'Peacemaking at the Crossroads: Consolidation of the 1993 Mudug Peace Agreement' (September 2006), 7 <https://www.interpeace.org/wp-content/uploads/2006/09/2006_09_SomS_Interpeace_PDRC_Peacemaking.pdf> accessed 01 November 2022.

[39] Tres Thomas, 'Somalia's New Federalism Deal Is a Disaster (And It's Everyone's Fault)' (Somalia newsroom, 6 August 2014) <https://somalianewsroom.com/2014/08/06/somalias-new-federalism-deal-is-a-disaster-and-its-everyones-fault/> accessed 12 April 2022.

[40] Article 7 of the Puntland State Constitution 2012 and Article 2 of the Galmudug Interim Constitution 2015.

[41] Interview with Ali Mohamed Mohamud, intellectual and civil society activist (Mogadishu, Somalia, 7 April 2022).

[42] Article 48 (2) of the Provisional Constitution.

[43] Interview with Khalif Abdikarim Mohamed (n 24).

[44] Article 7 (2) of the Puntland Constitution of 2012, Article 6 (3) of Jubaland Interim Constitution of 2015.

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Managing Market Fire Outbreaks in Somalia:
Case Study of Bakara Market in Mogadishu

Fatima Aden Eidle

Abstract

In Somalia, market fire occurrences have become regular incidents, with a loss of millions of dollars and possibly loss of lives. It is a severe threat to the fragile economy of a country recovering from a devastating civil war. It disrupts economic activities and deteriorates the problem of poverty. Somalia markets suffer from ineffective fire management, and their layouts need to be designed better, because they are always congested and susceptible to fire. Anytime fire breaks out in the market, it becomes complicated for fire tenders to mitigate and control the fire; hence, the fire destroys many goods in the markets.

This study describes fire management in the Bakara Market and identifies some challenges. It proposes several recommendations to build effective fire management for preventing fire outbreaks and minimizing losses in Mogadishu markets.

Keywords: Market fire, fire outbreaks, fire management, Somalia markets.

1. Introduction

In Africa, the frequent occurrence of major fire accidents in commercial buildings, shopping malls, and markets has become a severe threat to the fragile economy of most countries. In Somalia, major markets and commercial buildings have been gutted by "market fire", destroying properties worth several million dollars, and even causing losses of lives. These market fires have continued to render many jobless, damage the environment, disrupt economic activities and worsen the problem of poverty.

Decades of civil hostilities have virtually destroyed Somalia's economy and infrastructure and split the country into areas under the rule of various entities. The Somali economy heavily relies on livestock and agriculture, which have greatly suffered from drought and conflict. Mass internal displacement has overpopulated the cities. As a result, traditional markets have been heavily disrupted by insecurity, fire and critical infrastructure such as roads. Huge fires have engulfed Mogadishu markets differently, including the primary market in the city's center. The lost properties are worth millions or billions of dollars in every incident.

This study discusses the recurrent fire incidence in the Bakara Market in Mogadishu from time to time. It examines the fire management capabilities in preventive measures and firefighting preparedness and identifies the causes and main challenges. Finally, it proposes several recommendations to build effective fire management to prevent and mitigate fire outbreaks and minimize losses in Mogadishu markets.

The Primary data was collected from a sampled population of market traders using unstructured questionnaires. Key informant interviews were also utilized to know the causes and effects of the fire on the traders. A review of secondary data sources, including books, articles, journals,

newspapers and internet sources to review literature was also used and found relevant information.

2.   Fire Risk Management

Fire breakouts usually occur in houses and markets based on four elements: fuel, ignition source, oxidizing agent and mechanism of the reaction. The most common energies that cause fire breakouts include electricity, flammable gases used for cooking, furniture, clothing, and solvents used in our daily activities, such as kerosene and gasoline, and combustible dust such as toners used in offices and starch sold in markets (Sirt, 2016). According to the respondents, in Bakara Market fire outbreak is caused by several factors. The possible causes of fire outbreaks include using substandard electrical materials, improper electrical fittings, poor knowledge of electricity appliance users, and power fluctuations resulting from frequent power outages. The rise in fire outbreaks could be traced to intense wind, overloading electrical appliances on the same fuse and improper electrical installation, or cooking with naked fire are some of the major causes of frequent fire outbreaks.

Fire Consequences

The fire can devastate everything and causes huge losses in the markets. We can take two recent incidents as an example the *Madina* Market Fire and *Benadir* Market Fire in Mogadishu. In April and June 2022, a huge fire broke out in both markets and caused massive losses.

Madina Market in Mogadishu is the third largest in Mogadishu. It draws sellers and shoppers from the city and surrounding communities. In addition to providing for the livelihoods of thousands of residents, the marketplace was a significant source of revenue for Wadajir district municipality and Benadir Regional Administration revenue. The National

Chamber of Commerce and Industry estimates that fire accounts for 20 to 30 percent of the regional economy. With an estimated 2,000 businesses – ranging from large stores to small stalls – once located in the marketplace. A fire broke out in the market on 9 April 2022. The Firefighters were having problems accessing the blaze because squatters of hundreds of small-scale retailers had been blocking streets leading to the market for decades. The fire destroyed the livelihood and businesses of communities struggling with poverty and unemployment. According to the respondents, the cause of fire may have been an open fire left in the market at night and windblown or an electric shock (Team, 2022).

On June 2022, a massive fire tore through the Benadir Market in Mogadishu too. The flames raged for over four hours, injuring dozens of people and leaving the market in ruins. The loss in stock and infrastructure is estimated at around $2 Million, which is a massive blow to the economy. The effects of the fire have been particularly hard on the vendors who had traded there for years. They lost their sole source of income, and their families are feeling the effects (Somalia, 2022). However, this tragedy could have been prevented or mitigated in losses. So, the big question is, how can we prevent fire breakouts in the market, workplace, offices, or houses? Is it preventable? Is it manageable?

Types of Fire and its Prevention

There are various types of fires, including open fire, electric fire and smoke fire. While fires can start anytime and anywhere, below are descriptions of the four most common types (Otenga-Ababio, 2015).

a) **Kitchen Fire:** The most common type of fire is the kitchen fire. The kitchen is the source of many fire hazards because the kitchen is where heat, water, electricity and grease come together.

b) **Electrical fires**: This type of fire is caused by several factors, including faulty appliances, worn or defective electrical wiring, improper use of electrical outlets and worn-out breaker boxes.

c) **Smoking-Related Fires:** These fires are caused by cigarettes or wildfires. Most smoking fires are started by embers igniting on furniture, bedding and trash cans.

Several methods prevent domestic and other types of fires, as described in the following discussion (Kime, 2011).

Electricity: Preventive measures include keeping facilities in good condition to avoid overcharging, poor contact, and short circuits, not using worn-out plugs and wires, and lowering the recommended gauge. Consumers should not overload electrical outlets by connecting multiple devices simultaneously because the wires become hot and can catch fire. It is never safe to leave an electric fan while leaving on and closing the building, as this has been linked to fires. Always ensure that holes and air vents of home appliances (such as televisions and microwave ovens) are not near any clothing or decorative covers. Provision of utilization public awareness will be highly beneficial in this regard.

Gas Cylinder: Gas cylinders should be handled cautiously to avoid falling or suffering from a stroke. Gas cylinders should be kept in clean, well-ventilated, oil-and-grease-free areas, away from rain, sun, and other heat sources. Domestic gas cylinders should be held in a different room than the stove but kept outside and connected to metal pipes. If the gas is installed inside the house and leaks occur, do not light a match or turn on or off the lights.

Open fire in the kitchen or Outside the Kitchen: Cooking over an open fire is the oldest and most primitive method of cooking known, with glowing red flames and smoky ambers mostly lending them to frying,

grilling a,nd boiling. Open fire is common in Somalia restaurants, and small teashops use brick stoves that cook. This type of fire is preventable, and risks can be minimized. This can be prevented by locking up any items that can start a fire (matches, lighters, cigarettes, etc.)

Fire Management

Over the years, the profession has assessed the effectiveness of safety programs by measuring failures such as accident frequency and severity. The rates of property loss measuring safety programs based on failures are ineffective. Managers needed to be more present to implement activities that could have prevented those failures. While the safety profession has never established a direct correlation between various safety program activities and positive program outcomes, safety managers strive to identify possible relationships. The safety program's effectiveness should be measured by the quality, rigor, and utility of these activities and their impact on the bottom line. Developing and implementing an effective fire management program can: reduce property loss insurance premiums, demonstrate why certain practices are being used, help minimize the financial impact of business interruptions, boost customer service and public image, foster an efficient work environment to help realize quality gains, impact favorably on the profitability of an organization and evaluate building construction (Daniel E. Della-Giustina, 2014).

There are various best practices in fire prevention that have been recognized and put into practice. Identifying and analyzing high-risk homes, expanding and educating on fire prevention programs, performing home safety visits, and running substantial school and youth programs are just a few of the eight main areas into which the best practices were divided (Khan, 2001). The remaining tasks included targeting high-risk older populations with programs, creating safer consumer goods,

expanding the use of fire stations for neighborhood fire safety initiatives, and organizing both national and local fire safety campaigns. The British Fire Service identified and utilized a few chosen local radio stations and newspapers to broadcast fire safety messages to the public. The campaigns' objectives were to argue that people with knowledge about fire disasters will acquire equipment such as fire extinguishers, fire blankets, and smoke detectors, among others, to support response activities. They must also educate their families and employees to take immediate action to prevent property loss, destruction, and casualties whenever disaster strikes. Safety regulations in the government impose mandatory fire safety training on all employees working within a building, a construction area, or any other busy area. This helps provide employees with crucial information and drills, such as those used in operating fire extinguishers and proper escape behavior (Dwomoh, June 2015).

Furthermore, fire outbreaks can adequately be managed using a risk analysis model. According to Khan and Abbasi (1995), risk analysis is systematic hazard identification and assessment method. It is a process that includes qualitative and quantitative determination of risks and their social evaluation. Adequate fire safety management requires recognizing the potential risks associated with the premises and effectively assessing the adequacy of the measures provided or needed to combat the threat. Risk analysis indicates the proneness of theatre outbreak and spread of fire and thus decides what steps must be taken to provide suitable artists for protecting people on the premises from fire, and should ensure that the risk of fire occurring is reduced to the absolute minimum as well as the risk of fire spreading is minimized. (Buchanan, 2001).

3. Bakara Market and Fire Breakouts

Mogadishu city has seven main markets: Bakara Market, Suuq-Bacad, Siinaay, Hamar Weyne, Suuqa Madina, Suuq Boocle, and Suuqa Xoolaha. The Bakara Market, which once served as a storage facility for farmers' annual harvests, is now the primary market in Mogadishu and Somalia. It feeds the city markets; other markets in Somalia and neighboring countries.

From 1991, Mogadishu markets encountered various fires that have affected uncountable supplies, products, buildings and other personal and family products. Huge fires have engulfed Mogadishu markets differently, including the primary market in the city's center. As witnesses reported, the fire usually starts from somewhere in the market and winds spread rapidly through the market, razing multistore buildings, tea shops, groceries, food stores, restaurants and electronics stores. Open fire is common in Bakara or Somalia markets and restaurants, and small teashops use brick stoves that cook. This type of fire is preventable, and risks can be minimized.

According to the respondents' awareness, there is a market committee, but it needs to be functional and organized as expected. Hence, it needs to be energized to work as an effective entity to develop strategies for hazard prevention and responses. However, the committee has built small interlock roads in the market.

Nearly every year, a fire outbreak hits the Mogadishu Bakara market. The business people reported that the market has experienced over 13 fire breakouts in Mogadishu alone in the last three decades. For example, in 2018, an inferno started at the gold bazaar, and winds rapidly spread through the market, demolishing large buildings, shops, and food stores. The store owners reported a massive loss of properties due to the fire,

which sent plumes of smoke into the air. Mogadishu's then mayor, Sheikh Yusuf Hussein, visited the burned-out marketplace and said the narrow streets hampered firefighters' response (News B 2017).

The causes of the fire are not officially identified, but most pointed out market fires are caused by electrical problems such as; faulty wiring, misuse of electrical gadgets, improper electrical fittings, power fluctuations, storing of flammable substances such as charcoal, open fire left in the market. Additionally, most fires may occur out of ignorance and negligence on the part of the residents.

Several contributing factors help it spread quickly and become more destructive when a fire occurs. Some of these factors include poor knowledge among fire users, wood shingle/thatched roofs, high wind, blocked access, lack of exposure protection, inadequate public protection (i.e., fire department inadequacies), unusually hot and/or dry weather conditions, delay in discovery of fire, insufficient fire protection, and absence of fire alarm, lack or misuse of the notice. There is a need to assess fire breakout preparedness strategies against fire for any possible outbreak. Despite the frequency and magnitude of the fire disasters, the market is not prepared to deal with a potential next fire.

Challenges Facing Bakara Fire Management

To sum up, various challenges are hindering the achievement of effective fire management in Bakara Market, including; poor market design and structure for the buildings, deficiency in firefighting equipment, lack of allocated funds for running the fire management department, lack of commitment to fire prevention and fighting regulations.

The market site suffers from poor design and infrastructure. The Bakara market is served by fourteen roads (two tarmacs and twelve unpaved) and

seventeen roads (three tarmacs and fourteen unpaved) running south to north (SIPAM Report, 2019). Due to semi-permanent structures made of iron sheets and squatters of hundreds of small-scale retailers blocking the streets, market pathways have become narrow, making free movement nearly impossible. It is challenging for fire brigade teams to get to the site in the time since vendors obstruct the streets with their merchandise. Hence, fire fighters and ambulance services are forced to use bulldozers to clear the way because of the goods & businesses on the road. In addition, plastic bottles, plastic bags, and takeout containers are all over the place. These waste piles have the potential to cause a market fire incident.

The market lacks firefighting supplies and equipment. It also lacks a specialized unit for this purpose. Hence, if a fire breaks out in the market, the firefighters are not available near sites, knowing that the capital lacks an effective firefighting unit. The inaccessible roadways make it more difficult for the fire brigade crew to reach the burning site and perform their jobs effectively and efficiently. Additionally, obvious no market fire management, prevention, or response plan.

4. Conclusions and Recommendations

The findings of the study have indicated that the Bakara market is indeed vulnerable to fire due to poor, or lack of, fire management practices and poor fire safety awareness. The lack of access routes due to overpopulation has contributed to, and coupled, this vulnerability.

There are different possible ways to prevent fire in the market. Proper fire prevention practices are the best fire management and can ensure the facility does not go up in flames as quickly; fire management can be achieved by strictly implementing regulations. In this regard, I

recommend some ways to develop these measures in Bakara Market as follows:

a. **Market Committee Training:** Providing relevant training for the market committee is key to successfully implementing market fire management. The committee will have the ability to plan fire prevention, response and manage the market issues systematically.

b. **Fire Management policy, regulation, and reporting:** Fire management policy, regulation, and reporting are important to develop and implement urgently. The regional or national fire incident reporting system has never been implemented in Somalia and has never collected data on fires. This will facilitate several fire safety activities, including supporting the building and fire regulation development and characterizing the fire problem for resource allocation purposes.

c. **Fire safety awareness:** It is important to achieve public awareness and intensify the dissemination of fire information among the market community regarding fire prevention and safety measures to avoid incidents due to negligence. Understanding may help reduce or even eliminate the risk of starting a fire and managing it effectively if ignited.

d. **Every building should have accessible fire equipment:** The relevant authority must endorse the Act of fire protection laws to abide by at the design and construction stage. The equipment quality must also be ensured, and people must be trained in the building. For example, the provision of portable fire extinguishers and installation of fire and smoke detectors and fire alarms, the markets should have wide roads for the supplies and firefighters.

e. **Precautionary accessible equipment**: The inhabitants must ensure all fire equipment (i.e., fire extinguishers, control panels, fire sprinklers, fire alarms, fire protection services, etc.) are easily

accessible. Fire safety demonstrations can go a long way regarding building occupants' safety and how to react to a fire and use a fire extinguisher, along with other fire protection devices, and prevent a fire from spreading if it occurs in a building.

f. **Proper disposal**: People must timely discard hazardous waste in a container with a lid. Hazardous waste can include anything from oils to chemicals. To prevent fire hazards, even flammable and combustible materials should be appropriately disposed of.

g. **Safe storage:** Any chemicals, flammable materials, or other hazardous substances, in or outside the market, must be stored in a dry and safe place. It is also a good idea to keep fire protection equipment for flammable substances near the storage area, just in case.

h. **Regular emergency plan:** People must know that emergency and evacuation plans are essential to prevent further damages or issues if there is a fire. Someone needs to call for help, what must do, how to find the building address quickly, and what the next steps should be. Therefore, home numbering and street naming with directions will be helpful. Fire prevention is just as important after a fire has already started because it can reduce the risk. A special firefighting team should be allocated to the market.

i. **Removing flammable kiosks and bushes in the market:** There are small kiosks and bushes selling goods or services in the Bakara market, and also most other markets in Somalia, built in front of buildings. The local government should remove these kiosks and bushes because they may help ignition or spread the fire and challenge firefighters. Market sanitation is also important to consider.

j. **Security & Fire Management Fund:** The market committee should have mechanisms to collect funds and have a bank account for market safety. This fund will also help the committee to provide incentives for the security personnel in the market.

k. **National Education Curriculum:** Topics of fire management awareness better include national education curriculum from primary to secondary schools. This will help people learn and adopt systems early in childhood.

Attaining these recommendations and compliance with the necessary standards and regulations in fire preventive and controlling measures contribute to achieving effective fire management in the Bakara market and other markets in Somalia, and minimize the expected losses.

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Turkish-Somalia Relations in Agriculture & Livestock Sectors

✍ Bashir Ahmed Maow

Abstract

Somalia is a country with abundant agricultural and livestock resources; however, it has not been able to fully utilize its potential due to a prolonged civil war, political instability and insecurity. Türkiye, on the other hand, possesses advanced technology and wide experience in various fields, including agriculture and livestock. Türkiye has actively engaged in Somalia's reconstruction efforts since 2011, when then Prime Minister Recep Tayyip Erdoğan led a large delegation to Mogadishu.

Thus, both countries can collaborate in various areas, particularly in agriculture, livestock, and fisheries. This article will examine ways to strengthen the relationship between the two nations in the agriculture, livestock and fishery sectors to achieve mutual benefits. The article argues that consistent investment in these sectors could foster economic growth and stability in Somalia.

Keywords: Agriculture, livestock, fishery, banana, Somalia.

1. Introduction

Relations between the current territories of Somalia and Türkiye date back to the Middle Ages. Türkiye's historical ties with Somalia date back to the Ottoman Empire era. In some parts of Somalia, the heritage of the Ottoman Empire can still be seen in the construction of water canals, castles, and mosques (NANÇ, 2014). The Ajuran Empire and the Adal Sultanate maintained good commercial and military relations with the Ottoman Empire. The Ajuran Empire was assisted by the Ottomans by importing firearms through the Muzzaffar port of Mogadishu during the Ajuran-Portuguese wars (Strandes, 1961). Ottoman-Somalia cooperation in the Indian Ocean reached a high point in the 1580s when Ajuran clients of Somali coastal cities began to sympathize with the Arabs and Swahilis under Portuguese rule and sent an envoy to Turkish corsair Mir Ali Beg for a joint mission against the Portuguese. He agreed and joined a large Somali fleet that began attacking the Portuguese colonies in southeast Africa. The Ottoman Empire also had a great relationship with the Sultanate of Adal were allies in the Abyssinian-Adal conflict, where the Ottomans sided with the Adalites and the Portuguese sided with the Abyssinians (Black, 1996).

In Modern Days, Somalia and Türkiye had a strong relationship as they were among the founding members of the Organization of Islamic Cooperation (OIC) in 1969. Modern Turkish-Somalia relations began with the opening of the Somali Embassy in Ankara in 1976, where Türkiye appointed its first ambassador to Mogadishu in 1979 and maintained a diplomatic presence until the collapse of Somali government in 1991, but then ceased operations for security reasons (Sıradağ, 2016).

As Somalia was hit by prolonged civil war, Turkish President RecepTayyipErdoğan visited the war-torn capital of Mogadishu on 19 August 2011 with a large delegation including his family members,

politicians, artists, singers, ministers, the President of the Turkish Religious Affairs, and businessmen to draw the world's attention to the severe droughts that have taken place in Somalia. Erdogan's visit comes after a country was hit by a huge famine that caused the deaths of many people and livestock. Mr. Erdogan was the most prolific visitor to Mogadishu. Since then, Türkiye has actively developed its relations with Somalia in a wide range of fields (Sıradağ, 2016). Turkish involvement in Somalia consists of many areas, including development aid, humanitarian aid, peacekeeping, state-building, and peacemaking through mediation (Akpınar, 2013). According to the International Crisis Group, despite Türkiye's late involvement in Somalia, positive results have been achieved (Crisisgroup, 2012). Türkiye has become a very welcome country in Somalia compared to the other countries that have been in the country for many years, as a result of the widespread Somali gratitude for Turkish humanitarian efforts and the status of the country as a Muslim. In 2011, Somalia became the fourth country to be followed by Pakistan, Syria, and Afghanistan, as a result, Turkish raising interest in Somalia resulted in a flow of over $365 million in aid into the country(TIKA, 2011).

Somalia is a foundation of Türkiye's emerging foreign policy, as it highlights its commitment and leadership in an area that the international community has been unable to resolve and has been unwilling to commit fully. Besides, Türkiye has been able to influence politics in Somalia without incurring external or internal punishment for their actions (Gullo, 2012). Türkiye has found fertile ground in Somalia because it combined government-coordinated funding, business ventures, and humanitarian work. Somalia has provided Türkiye with an opportunity—a very risky opportunity that appears to have been worth the risk. Türkiye's willingness and ability to take many bold risks in Somalia, therefore, meant a greater return on its investment. Türkiye's risks in Somalia have resulted in a potential increase in Somalia's dependence on Turkish

goods, expertise, and services. Somalia has become a major destination for Turkish goods and services, including construction materials, medical equipment, educational and school development, engineering expertise, and household goods ranging from teapots to clothing (Cannon, 2016).

Türkiye has contributed to different aspects of the country's development, including the building of schools, hospitals and infrastructure, as well as providing of scholarships for many Somalis studying in Türkiye (Asiedu, 2017). Since 2011, Türkiye, through TIKA, has participated in more than 150 projects in Somalia, including Modern Hospitals, Boreholes, Roads, Government Buildings, Education, and Health Infrastructure.TIKA has also established an agricultural school in Mogadishu, which provides advanced agricultural studies to more than 400 students across the country (Mukami & Dhaysane, 2019). According to the Ministry of Foreign Affairs of Türkiye Report 2019, Turkish humanitarian and technical development assistance to Somalia in the context of development projects such as health, education, municipal services, and infrastructure has exceeded USD 1 billion since 2011. On the other hand, bilateral trade volumes between countries showed a dramatic increase from USD 72.3 million, USD 187.3 million, and USD 250.850 million respectively in 2017, 2018, and 2019. While the total value of Turkish investment in Somalia has reached US$100 million (MFA, 2019). Since 1992, 1,092 Somali students have received Turkish higher education scholarships. Türkiye also trains Somali soldiers at its largest overseas military base in the capital of Mogadishu and also in Türkiye to restore the long-awaited peace of the Horn of Africa. On 30 September 2017, the Turkish Government opened its largest military base abroad in the Somali capital of Mogadishu. The ceremony was attended by the Turkish Chief of Staff, Hulusi Akarand since the opening of this base, the Somali government has extended authority to many cities (Asiedu, 2017).On 19 February 2019, the Qatar Government, through the Qatar Fund, laid the foundation stone for the two main roads of Mogadishu-Afgoi and

Mogadishu-Jawhar (Qatarfund, 2019), which will help facilitate trade between the agriculturally rich regions and the capital.

Now that political recovery and transition are slowly underway, the country's economy is facing new barriers (OCHA, 2014). It is time for countries to launch mutual benefit projects. In addition to aid, Somalia and Türkiye can cooperate in many sectors, including agriculture and livestock. The article will focus on how to enhance the relationship between countries in the agriculture, livestock, and fisheries sectors to achieve mutual benefit between countries.

2. Agriculture and Livestock Sector

Increased agricultural trade is recognized as a vital means of alleviating poverty and stimulating international growth (BEIERLE & DIAZ-BONILLA, 2003). In recent decades, trade in agricultural and food products has increasingly shifted to higher-value food products, with the largest share of agricultural exports being traded primarily in developed and developing countries (Gombkötő, 2019).

In Somalia, the agriculture sector is one of the main driver of the economy of the country. More than two-thirds of the country's labor force is employed in agriculture, and the sector accounts for more than 60% of the country's output (Abukar, 2004; Pyrtel, 2012). Decades of civil war, neglect, administrative mismanagement, and a series of environmental disasters have seriously damaged Somalia's agricultural productivity, but despite these challenges, Somalia's agricultural economy can recover if the civil conflict ends and peace and stability are restored. Since about 55 % of Somalia's population is considered to be nomadic pastorals, livestock production is the country's primary economic activity, accounting for approximately 50% of gross domestic product and more than 80% of export revenues (Handulle & Gay, 1987).

In Türkiye, agriculture plays a significant role in the Turkish economy, accounting for 9% of GDP, 29.5% of employment, and 4.25% of export value (Boyaci&Yildiz, 2016). Türkiye produces a wide range of agricultural products, including grains, pulses, fruit, vegetables, and livestock, employing nearly 23 % of the total in 2012. (Berk, 2013). The cultivated area in Türkiye is around 24.5 million and the majority of farms are specialized in field crop production (25.7 %), mixed crop and livestock production (21.8 %), and fruit and vineyard production (19.8 %) (Keskin&Sekerli, 2016).

Türkiye plays an important role in the food supply and is the world's leading producer and exporter of certain agricultural products (Berk, 2013). On the contrary, Somalia is a general consumer, and agricultural production is very small below average, but in some crops, including bananas and sesames, Somalia is a well-known exporter in the world. Bananas are the main cash crop in Somalia, accounting for nearly 50% of export earnings (M. M. M. N. N. Isak& A. Y. S. Ali, 2015).

2.1 Banana

Banana is a subtropical, evergreen, perennial plant belonging to the Musa genus. It is one of the most popular fruits in the world and is considered a staple crop in many countries. It is the fifth most popular agricultural plant in the world trade after coffee, cereals, sugar, and cocoa. India, China, the Philippines, and Ecuador are the world's leading banana producers. Türkiye had a banana harvest area of 700 ha with a production of 5200 t in 1961, after which it showed a dramatic increase to 5350 ha and 251,994 t in 2014 (Eyduran et al., 2020). Despite the increase in banana production in Türkiye, it still represents a small fraction of what is needed to meet domestic consumption, but the gap between consumption and production is made up of imports(Hatirli, Jones, & AKTAŞ, 2004). The value of imports of bananas into Türkiye amounted to $181 million

in 2019. Banana sales increased by 172% compared to 2018 at $114 million. Bananas' share of total imports to Türkiye increased by 0.056 p.p. Compared to 2018 (Trendeconomy, 2020).
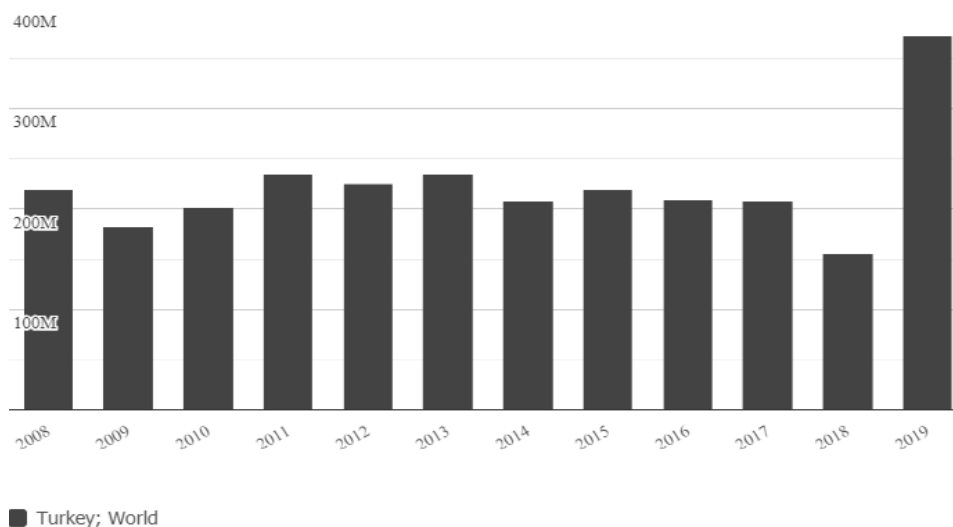

■ Turkey; World

Figure 1 Turkey Banana Imports (2008-2019)

Türkiye's main banana importers in 2019 were Latin American countries, including Ecuador, which imported 86% of banana imports into Türkiye in exchange for $157 million, while Costa Rica and Columbia imported 8.8% and 3.3% in exchange for $15.9 and $6.03 million respectively (Trendeconomy, 2020). Ecuador, Costa Rica, and Colombia account for more than 55% of the world's total banana exports (Hatirli et al., 2004).

Somalia's main exports are livestock, bananas, skins, and fish, but despite the country's export value of US$204.3 million in 2016, it has decreased by 70.4% since 2015 and decreased by 58.2% from 2018 to 2019. The latest country-specific data available shows that 92.9 % of products exported from Somalia were purchased by importers in Saudi Arabia (40.1 % of the global total), India (10.7 %), Japan (9.6 %), China (9.1 %), Bulgaria (8.2 %) and Türkiye (3.1 %) (Exports, 2019).
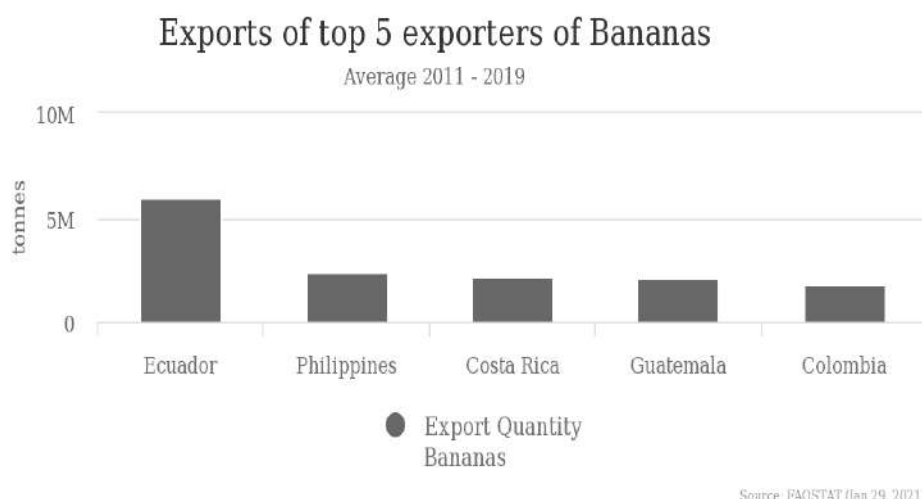
Figure 2 World's Top 5 Banana Exporters

In December 2019, the Turkish-Somali Agriculture Expo, organized by Somalia and Türkiye, was held in Mogadishu, attracting hundreds of participants, including business leaders from all sectors of agriculture and the Turkish Ambassador to Somalia, Mehmet Yilmaz (Mukami, 2019). Businesses from both countries have presented their products to other companies to make them a market. Somalia can be the missing part of Türkiye's need for agricultural products, with a cheaper and more reliable source, while many Somalis can change their lives at the same time as creating many jobs and boosting the country's economy.

2.2 Livestock and Meat

Global livestock trade is estimated at $173 billion (Tambi, Maina, &Bessin, 2004). Livestock plays a key role in the economies of most African countries and generates significant amounts of foreign exchange used for other development purposes. In 2000, African countries earned about USD 1 billion from exports of animal and animal products. Major exporters of live animals are Namibia, Chad, Mali, Niger, Central African Republic, Somalia, and Sudan (Tambi et al., 2004).

Somalia has a traditional livestock sector based on nomadic pastoralism, and a growing private sector is leading the export sector. The livestock sector is central to the economic and cultural life of Somalis. Approximately 43 % of camels, 2 % of cattle, 10 % of sheep, and 5 % of goats living in Africa are found in Somalia (Elmi, 1991). Small ruminants are the main domestic animals in the country where the population of camels exceeds the number of cattle.

YEAR	CAMELS	CATTLE	SHEEP	GOATS	TOTAL
1978	5.6	4.0	9.8	16.0	35.4
1979	5.8	4.5	10.7	17.2	38.2
1980	5.8	4.5	10.3	16.8	37.4
1981	5.8	4.4	10.3	17.0	37.5
1982	6.0	4.5	10.8	18.0	39.3
1983	6.2	4.6	10.6	19.0	40.4
1984	6.1	4.2	11.2	18.0	39.5
1985	6.2	4.3	11.8	18.3	40.6
1986	6.4	4.5	11.8	19.0	41.7
1987	6.4	4.6	12.3	19.3	42.5
1988	6.6	4.8	13.2	19.7	44.3

(Source:Ministry of National Planning,1990)

Figure 3: Estimates of total number of livestock population (in millions) in Somalia from 1978 to 1988

The livestock sector provides food and income to more than 60% of the country's population (OCHA, 2020). Somalia is the main exporter of livestock and livestock products to the Gulf States, among the countries in the Horn of Africa (Reusse, 1982). Millions of live animals are sold on the international markets of the Middle East. Somalia exports 3 million sheep and goats, 176,000 cattle, and 11,000 camels per year, plus varying

quantities of carcasses from 340,409 (2005) to 718,903 (2006) and 377,395 (2008) respectively (M. Isak& A. Y. S. Ali, 2015). Most of the livestock was exported through the ports of Berbera and Bosasso.

In Somalia, more than half of the total exports of goods and more than 90% of agricultural exports consisted of animal and animal products (Tambi et al., 2004). Northern Somali livestock trade involves an annual export of at least $200 million worth of live animals, which is said to be the largest movement of live animal trade anywhere in the world (Majid, 2010). The livestock sector and exports, therefore, have a major impact on the country's food deficit and overall food security, which has recently worsened, and therefore the need for increased growth in the livestock sector is even more pressing (M. Isak& A. Y. S. Ali, 2015). Saudi Arabia is the main foreign importer of Somali livestock, and goat is the main export of livestock varieties, although camels and cattle are also common (Acharya, Harding, & Harris, 2020). In 2014, Somalia exported a record 5 million livestock to markets in the Gulf of Arabia; this is the largest number of live animals exported from Somalia in the last 20 years. Export data collected by the FAO-managed Food Security and Nutrition Analysis Unit (FSNAU) show that Somalia exported 4.6 million goats and sheep, 340,000 cattle, and 77,000 camels in 2014, worth an estimated $360 million (FAO, 2015).

Since 2010, Türkiye has imported 2.6 million head of live animals worth 1.3 billion dollars. Türkiye has been importing breeding cattle for years and the total import quantity of breeding cattle reached a record 80,000 head in 2011 for $293 million but fell to 23,676 head in 2014 for $72 million (USDA, 2015). Türkiye imported 895,000 head of cattle valued at $1.2 billion in 2017, which is 81% higher than in 2016. Slaughter imports of cattle increased fourfold in 2017 by 96,493 head compared to 2016 to reduce the high prices of meat in Türkiye. Live cattle imports reached 706,000 head in 2018 between January and June and are projected to

reach 900,000 head. The slaughtering of cattle by June 2018 amounted to 52,000 head (USDA, 2018).

Somalia, a country with a large livestock population, can have a good market for livestock and various types of meat with Türkiye, while Türkiye can help Somalia with veterinary health and provide international certificates to help Somalia gain access to a large livestock market.

2.3 Fishery

Globally, trade in food products has been valued at around USD 500 billion annually (Watson, Nichols, Lam, &Sumaila, 2017). Seafood has been a commodity traded for thousands of years. From the start, the quantity traded was limited, because the perishability of seafood and the conservation of fish were time-consuming, costly, and often inefficient. However, improved storage and preservation technologies and cheaper transport have dramatically increased trade in fish over the last 30 years (Asche& Smith, 2010).

Seafood is one of the most valued food commodities, exceeding the commercial value of sugar, maize, coffee, rice, and cocoa combined (Asche, Bellemare, Roheim, Smith, &Tveteras, 2015; Sumaila, Tipping, &Bellmann, 2016). Fish and fishery products are among the most widely traded food commodities in the world. The export share of total production increased significantly from 25% in the mid-1970s to nearly 37% in 2012, reflecting the increasing degree of integration of the sector in the global economy. A high proportion of total seafood exports (54%) are exported from developing countries to developed countries (Bellmann, Tipping, &Sumaila, 2016).

Somalia is geographically located in a favorable region of the world, with the longest coastline in Africa (3,330 km), the Gulf of Aden in the North,

and the Indian Ocean in the East. Somali waters are home to some of the richest fishing grounds in Africa, with a vast potential for fishing and coastal development (Hassan &Gichinga, 2018). According to the latest survey, some of the only fish stocks in the world that are actually "underfished" are in deep waters off the Somali coast. There is no doubt that Somalia is home to an extensive list of fish species, including lobster, swordfish, shark, and many others.

Annual fish catch estimated at US$ 36 million was 32,600 metric tons in 2006. The exclusive economic zone (EEZ) with an area of 830,400 km2 has a productivity of approximately 882 mg per m2 per day (Solutions, 2015). Despite high productivity, the annual catch of fish is low compared to the US West Coast with a similar EEZ area and ocean productivity. Somali fisheries resources remain largely under-exploited, partly due to the lack of a good infrastructure for post-harvest catch management, but despite the growing local, regional, and international demand for fish that could be exploited. The average fishing yield in Somali waters was approximately $46 million per year between 1997 and 2006, which is only 1% of Somalia's estimated GDP in 2010. (Hurlburt&Spivak, 2013).

In the pre-war era, especially in 1989, exports of fishery products earned US$15 million per year, but currently, exports of fishery products account for around 3% of total exports and 2% of GDP. After the war, high-quality fish and lobster are exported to the neighboring Arab Gulf States, also dry shark meat and dry shark fin exports bring high prices (FAO, 2013). Somali waters invite millions of tons of migratory fish species each year, creating one of the most profitable fishing grounds in Africa. The annual production of fisheries currently ranges from 25.000 to 30.000 MT/year (Satg, 2016).

Türkiye is surrounded by four seas on three sides: The Black Sea in the north, the Mediterranean Sea in the south, the Aegean Sea in the west,

and the Sea of Marmara, which connects the Black Sea to the Aegean Sea with a coastline of more than 8,300 km (Yucel-Gier, Uslu, &Kucuksezgin, 2009). Despite Türkiye's long coastline and large freshwater bodies, fisheries are an underdeveloped industry compared to other sectors. Türkiye's total fishery production in 2006 was 661,991 tonnes. Production reached 772,323 tons in 2017 and decreased to 646,310 tons in 2008 (Harlioğlu, 2011). Due to insufficient production of fish, Türkiye imports fish from abroad, the total imports of fishery products from Türkiye are approximately 80% frozen fish, the majority of which are processed into canned fish and again exported mainly to EU countries (Harlioğlu, 2011). In 2016, Türkiye imported $172 million worth of fish and seafood products, with salmon as the top individual variety (Worldfood, 2018).

Overall, developing countries whose exports accounted for only 34% of world trade in 1982 saw their share rise to 54% of total fishery export value by 2012. (Bellmann et al., 2016). Somalia can be a solution for Türkiye's fishery products if Türkiye helps improve Somalia's untapped marine resources.

3. Conclusion

Türkiye is developed country in various areas, including economy, manufacturing and technology, boasting extensive industries and a significant presence in the global market. On the contrary, Somalia is on the path to recovery after enduring years of conflict and crisis. However, it possesses abundant resources, including fertile land ideal for agriculture and livestock, and the longest coastline in Africa, teeming with various fish and marine products. These two countries have the potential for fruitful collaboration, particularly in the fields of agriculture, livestock, and fisheries. As a result, they can establish a mutually beneficial bilateral relationship where each country can reap advantages from the other.

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Exploring Oral Poetry in the Somali Novel
'Ignorance is the Enemy of Love'

✑ Abdilahi Ismail Abdilahi & Pei Likun

Abstract

Somali writer Farah Mohamed Jama Awl has written three novels, with 'Ignorance is the Enemy of Love' (Aqoondarro waa u nacab jacayl) being the first and most influential. This novel is based on a true story. Farah, the author, demonstrates a profound understanding of Somali traditional oral poetry, weaving it throughout the entire narrative. This novel reflects that oral poetry is an integral part of the daily life of Somalis and a powerful tool for expressing emotions and conveying thoughts.

This article examines the significance of poetry in Somali literature and culture. It delves into the cultural and literary importance of integrating poetry into the narrative, shedding light on the stylistic elements of poetry in fiction.

Keywords: Somali novel, oral poetry, "Ignorance is the Enemy of Love", Somali literature, cultural expression.

1. Introduction

Farah M.J. Awl was a Somali writer.[1] His works are based on Somali history and are filled with many traditional Somali poems. He has crafted three novels, and among them, *'Ignorance is the Enemy of Love'* (Aqoondarro waa u nacab jacayl) stands as the inaugural and most impactful. Additionally, "*Ignorance is the enemy of love*" is the first novel written in Somali language, which not only contributes to the success of Farah, but also inspires the writing of many other Somali writers, promoting the rapid development and progress of Somali written literature within just a few years. As reflected in this novel, oral poetry is an integral part of the daily life of Somalis. Hence, it has been chosen as a subject for exploring the characteristics of Somali oral poetry.

In 1982, B.W. Andrzejewski, a renowned linguist and specialist in Somali and Cushitic languages, translated the novel into English, named '*Ignorance is the Enemy of Love',* and published in London. As one of the masterpieces of African literature selected by UNESCO, it has taken a place in the international literary history. Furthermore, Mr. Liang Bingtian, a Chinese scholar and translator, translated the novel into Chinese, named '*Aloe Love Song'* and published in Beijing in 1984. This novel marked a significant moment in the development of the novel genre in the Somali literature, a new genre in Somali literature.

2. The Story Background and Content

Ignorance is the enemy of love, though presented in the form of a novel, is written based on a real story in Somalia. Both the hero, *Cali Maax,* and the heroine, *Cawrala Barre,* are real historical figures whose stories have

been spread among Somali people. The situation in the region at the beginning of the 20th century sets the stage for the tragic ending of the love story between the hero and the heroine.[2]

At the end of the 19th century, the British colony occupied the northern coastal region of Somali territory, where *Ignorance is the enemy of love* was set. During this period, the Dervish forces,[3] including Cali Maax, opposed the colonial invaders. *Ignorance is the enemy of love* tells the love tragedy of the hero Ali Muhammad Hassan, nicknamed *'Cali Maax'* and the heroine Awrala Barre *'Cawrala Barre'*. *Cali Maax's* ship sank on the way back to Somalia from the Gulf of Aden when he saved the heroine, who was his shipmate at that time. Cawrala Barre dreamed of a beautiful life and fell in love with the brave and talented *Cali Maax.*[4]

Later, before Cawrala Barre had the opportunity to express her love, Cali Maax went to take part in an armed struggle against the colony and joined the Dervish Forces. Then, Cawrala Barre was betrothed by her family to a rich man at an old age, when she started to resist this arrangement and wrote a letter to express her love to Cali Maax, who unfortunately was already married when receiving Cawrala Barre's poetic letter. Worse still, he was illiterate and could neither read nor write. He handed the letter to his father-in-law and brother-in-law, anticipating their reading. Soon, realizing he was in an inappropriate situation, and unintentionally, became a subject of amusement before his wife's family, despite their sympathetic acknowledgement of his ignorance.[5]

Meanwhile, Cali Maax was moved by this poetic letter and fell in love with Cawrala Barre, which prompted him to learn reading and writing. In the end, under the pressure of public opinion and the blow of dignity, he

went to a remote area to participate in an armed struggle, during which he tried his best to learn knowledge to make up for the regret in his heart and finally was injured and almost died in the battle.[6] Cawrala Barre fell ill due to long-time worrying about not receiving a reply for a long time, the forced marriage by her family, and the gossips of her neighbors. Her marriage was even taken place by her sister because of her heavy illness. Cawrala passed away just one day before Cali Maax recovered from his injuries and rode a horse to ask her to marry him.

In a poignant conclusion, Cali Maax visited her grave, leaving a poetic letter written to her about the cause and effect of the whole story and his full and infinite regret and love.[7]

3. An Overview of Oral Poetry in Somali Literature

Oral poetry has been a powerful tool for Somali people to express their emotions and communicate their thoughts for centuries. It is an integral part of Somali culture and an important way to preserve Somali history, beliefs, and values. British explorer Richard Burton, who visited Somalia in 1854, named *'the Land of Bards'*. Somali scholar Said Sheikh Samatar once stated, *'Somali oral poetry is the core of Somali life'*. Therefore, poetry has become a rich cultural history of Somalia.

A. Significance of Oral Poetry in Somali Literature and Culture

In ancient times, although the Somali language was written in Arabic script, it primarily remained an oral language without an official script or written records. Nonetheless, it persisted as a spoken language throughout the colonial period. Most of the readings circulated among the locals at that time were oral poems and stories. Furthermore, before adopting the

official script for the Somali language, foreign languages posed practical difficulties for Somalis, and many Somalis with creative talents could not write in their native language. They could only translate their work into other languages as secondary creations.

In 1972, the Somali government officially adopted the Somali orthography. Subsequently, efforts were initiated to promote the use of the Somali script, and a national literacy campaign was launched.[8] In 1979 the Constitution of Somalia set Somali and Arabic as official languages. Hence, Somalis finally tell their story in their own written words. In these circumstances, *'Ignorance is the Enemy of Love'* was presented not only in the Somali script but also in the form of traditional Somali poetry, thereby enhancing the Somali people's cultural awakening.

B. Key Features and Characteristics of Somali Oral poetry

This form of expression is open to any talented individual, allowing them to craft poems that reflect either their personal experiences or those of others. Through reading poems, people can understand the development of things and the poet's position and attitude towards things and get wisdom and wishes for good things from them. A respected poet must have superb poetic skills and strong persuasive ability and could enjoy privileges in society and politics after winning public's favor.

In Somalia, poets and poetry reciters are separated. Preserving and disseminating the original text of oral poetry is the task of poetry reciters, whose main ability is to memorize poems, which they have practiced repeatedly since they were young. According to the rule of poetry reciters, they must remain committed to the original work. They cannot change,

add, delete, or even miss a single word, by which they could gain trust from the public and win recognition and reputation. Poetry reciters must report the poet's name when reading poems based on the etiquette and responsibility of the reciter; otherwise, their reputation will be affected. In addition, reciters, in the process of reading aloud, are also required to explain the background and description of the poem, which is also a part of the oral poetry inheritance. The most famous ancient and remote poetry in Somali people is often transmitted through poetry reciters who are regarded as Somali oral historians.

C. A Journey Through Past and Present of Oral Poetry

Somali literature includes a large number of oral art in different genres and a relatively small collection of written works. Anyone exposed to Somali literature will know that Somalis attach great importance to oral communication, especially oral poetry. It is a kind of historical discourse everywhere in Somalia, passed down from generation to generation by word of mouth. In the 1940s, the invention of radio and audio tapes contributed to the recording and spread of poetry. In the past, much of Somali traditional culture was lost, of which oral poetry was best preserved in rural and pastoral areas, where herdsmen gathered to discuss poetry while looking after herds of camels grazing nearby.

In the modern era, the role of poetry and its impact on society continue to be significant. Prominent series of poetic debates, such as *'Siinley'* in 1973 with over a dozen poets, and *'Deelley'* in 1979-1980 with about 50 poets, have marked this period. The Somalia Peace Conference held in Djibouti in 2000 featured Somali singers and musical troupes performing on stage, using songs and poetry to promote peace and reconciliation.

Since the country plunged into political disturbance, economic hardships, and armed conflicts, eventually spiraling into civil war with the overthrow of the central government in 1991, it has endured decades of turmoil. This upheaval has significantly impacted both the propagation of poetry and the environment in which it is created.

In the contemporary era, poetry appears to have lost some of its traditional allure, resulting in a weakened role in Somali society. The younger generation is less inclined to compose poetry in the traditional *'maanso'* form, instead focusing on innovative approaches within the *'hees'* form. Young Somalis living abroad are keenly interested in crafting Somali oral songs. Modern multicultural programming and internet platforms are also steering oral poetry in Somalia toward new directions in terms of creation and presentation.

4. Oral Poetry in *'Ignorance is the Enemy of Love'*
A. Analysing Stylistic Elements of Oral Poetry in Fiction

Farah M.J. Awl is loyal to traditional Somali culture and created this novel based on the materials and outlines provided by the local people in oral form. The first chapter of this novel's eight chapters describes where Cali Maax and Cawrala Barre grow up. By quoting the traditional long poems of Haji Adan Ahmed (Afqalo'), one of the most famous oral poets in Somalia, which depict mountains, green trees, singing birds, and fragrant flowers, the writer praises the beautiful natural scenery of Somalia for expressing his love for his country.

The second chapter tells about the encounter of Cali Maax and Cawrala Barre in the sea, where in the dialogue between Cali Maax and Nuur, Nuur quotes an excerpt from Sayid Mohamed Abdulle Hassan's poem:

Magaalada masruufkiyo dharkaa, laga muraadeysto
Mushmushaaxa iyo beecu waa, moodka soo dega e
Miyigaba haddii laga xiraa, mawdku ka adeegi.[9]

The second chapter also uses an old Somali proverb by the heroine Cawrala:

Afar waa mugdi,
Afar waa maradhaamo,
Afar baa ka macaan,
Afarna wawga maso.

1. Abaari waa mugdi
Cawsna waw maradhaamo
Doog baa ka macaan
Ninna wawga maso, oo waa ninkaan cood lahayn.

2. Colaadi waa mugdi
Ergana waw maradhaamo
Nabad baa ka macaan
Ninna wawga maso, oo waa ninkii ku dhintay.

3. Habeen waa mugdi
Dayaxna waw maradhaamo

Maalintaa ka macaan

Ninna wawga maso, oo waa ninkii indhoole ah.

4. Hammadi waa mugdi

Guurna waw maradhaamo

Jacayl baa ka macaan

Ninna wawga maso, oo waa caamadaan garanayn.[10]

The proverb implies Cawrala's positive attitude towards life and the optimistic nature of her mindset. This chapter also shows the talent of the hero Cali Maax, especially his act of saving the beauty, which provides foreshadowing for the future development of the story.

The third chapter mainly includes the letter written by the heroine Cawrala to the hero Cali Maax, where the poems created and the dialogue with friends are expressed in the form of poetry. Somali poetry could be classified into two categories, poetry (Maanso) and songs (Hees),[11] which are well reflected in this chapter and meanwhile express Cawrala's sincere feelings and beautiful dream for a better life.

The fourth chapter tells that both Cali Maax and Cawrala are fighting for anti-colonialism and shows the pain of losing loved ones in the war through Cawrala's poems, where the author metaphors peace against war and praises the patriotism of both Cali Maax and Cawrala. The fifth chapter tells the story of Cali Maax realizing the value of Cawrala's love after he survived the war. Cali Maax's poems show his excellent qualities of courage, dedication, and loyalty to the country and its people. The dialogue between the herders and Cali Maax after he is rescued embodies a metaphor for the life philosophy of the nomadic people in Somalia.

The sixth chapter presents Cawrala's resistance and struggle against fate, where her uncle, a family elder, quoted the poem when he persuaded her:[12]

Ma ogtahay ikhyaarkii ku raba, inaan la iska eedaynin

Ma ogtahay abaalkiisu waa, inaad addeecdaaye

Ma ogtahay ninkii uumiyaha, la ibtilaynaayo

Ma ogtahay wixii khayr leh, baa lagu adkeeyaaye

Ma ogtahay adduun nimaan lahayn, laga ilwaad roone

Ma ogtahay dadkuba haatan, waw iima tiriyaaye

Ma ogtahay inkaar waalid, waa eebo kugu taale

Ma ogtahay ishiisaa ka daran, ololkii naareede.

This poem has a deep persuasive power, which Cawrala and her uncle quote to persuade each other. A notable feature in this poem is the art of persuasion, which appears when conflicting opinions, thoughts, and attitudes are resolved through proverbs and poetry. Philosophical lines are meant not only to convince the characters in the story but also to convince the reader.

Chapter seven tells the process of Cawrala's dying of serious illness, which describes the traditional Somali wedding customs in detail as well as Cawrala remaining hopeful for love and free life when she was seriously ill, as is shown in her poems. Chapter eight is Cali Maax's condolences to Cawrala, which contains a large number of poems in different forms created by Cali Maax after he learned of Cawrala's death and quotes the poems of Qamaan Bulxan, the most famous poet at that time, which was used to express Cali Maax's reluctance and infinite sadness for Cawrala's departure. Cawrala's dying poem in chapter eight is just as moving:[13]

Naftu waa macaan tahay intay, mala awaalayso

Wa maqaama weyn tahay intay, maasha talinayso

Ha yeeshee, masuubada heshaa, magaceed waw hooge.

Jacayl waa macaan yahay intaad hayso midhihiise

Waa muusiiqa raaxa leh intaad, milaygii dhawraysid

Ha yeeshee, haddii uu ku miro, mililkii waa hooge.

Cali way macaanaa markuu, midigta ii laadshey

Waa mahadshay araggiisi hore, mayey la moodkiiye

Ha yeeshee, markaan muuqii gabay, maqalkii wey hooge.

Mar haddaan waxaan mohanayiyo, mudanihii waayey

Micne maleh adduuyadu haddaanan, maahad ku waarayne

Mootkoo i dilaa ka roon, miiska aan ahaye.

The hero and heroine, as well as other characters in the novel, have created a large amount of wonderful and touching poems, which cannot be shown one by one because of the limited space.

B. Oral Poetry and Theme of the Novel

At the beginning of the novel, Farah M.J. Awl explains the heroine's emotion in *Ignorance is the enemy of love* with a poem in the form of Hees, like a story that is explained before a reader reads the poem.

"All this is true, just like a person who goes to a place to fetch water. When you recall these things, you will know that I am Cawrala Barre. I am talking about a woman whose eyes and emotions have been following you since she first saw you. There is no doubt that she belongs to you, and

her body and soul belong to you, even though you have not noticed it. Whether it is day or night, or whether it is she was thinking of you when she was asleep or awake. Her love for you has been melted in her blood and engraved on her heart. For this reason, she does not want to eat all day!"[14]

Oral poetry is Somalia's most prestigious literary form and a unique way for Somalis to express themselves; it is widely used to celebrate important events such as weddings, and to commemorate the death of a family member or friend, as well as during a war. In the novel *Ignorance is the Enemy of Love*, poetry is the medium of people's daily communication, by which characters communicate, a common form of communication among Somalis at that time. As mentioned above, poetry is the purest artistic expression of Somalis, close to true and realistic Somali culture.

5. Connection Between Oral Poetry and Theme of the Novel

A. How Poetry Enhances or Complements the Themes in the Novel

Farah M. J. Awl specializes in using traditional Somali poetry in his work, whose skills in interweaving poetry and extensive use of oral historical sources are fully deployed in *Ignorance is the enemy of love*. The poems in the novel are based on traditional poetic styles, quoted from other poets, or attributed to the creation of real historical figures in this novel, including Ali Mohammed Hassan, Cawrala Barre, Nuur Ciise, and Dalmar Barre, which enhanced the authenticity of the story. In the novel, Farah M.J. Awl describes the hero's suffering in battle and his longing for love in a sympathetic tone. Moreover, under the background of the Somali language and literacy campaign issued by the Somali government at that time, Farah expressed his support for the government's economic

development, acceptance of new ideas, and positive attitude towards the promotion of women's role and the autonomy of young people in marriage through the poems in the novel. In addition, he showed his love for the country by describing the natural scenery, landform characteristics and customs of Somalia in a large number.

B. Significance of Incorporating Poetry into the Narrative

Somalia has an old and rich oral literary tradition that still influences Somali literary creation. *Ignorance is the enemy of love* is the first full-length novel written in the Somali language, whose significance lies not only in its adaptation from the rich oral poetry of Somalia but also in the oral historical narrative and poetry in the novel, marking the transition of Somali literature from oral to written form. Although inserting spoken poetry into a novel is a common practice in African fiction, *Ignorance is the enemy of love* sets up its framework with oral poetry, which becomes the main line of the novel's narrative and inherits the creation and dissemination of oral poetry in the narratives and dialogues of nearly twenty oral proverbs and poems.

C. Exploration of the Author's Intentions and Motivations in Incorporating Oral Poetry

In the past, oral poetry was not only a tool of propaganda for Somali people, but also a unique way of socializing for Somalis, whose social status was beyond doubt. After the Second World War in the 1950s, due to the modernization of Somali society, the status of oral poetry gradually weakened. Oral poetry embodied rich historical stories and excellent literary connotations in Somalia, which were especially massively created

during the colonial period. In this book, the author incorporated a large number of oral poems into the narratives, which followed the traditional literary values in Somalia, innovated the way of expression in Somali literature, and, moreover, publicized the reform goals of the Somali government at that time, especially in promoting literacy and women's rights. In addition, the author was proud of the connotation of traditional culture-oral poetry and regretted the weakness and loss of it.

On the title page of this novel, the author, Farah M.J. Awl, wrote a 'giveaway' dedicated to the young generation of Somalia:

"I dedicate this book to young men and women who will learn the language of the motherland in the future.
They will not have the kind of suffering that we have suffered - the high and deep suffering like towering trees.
Their cultural heritage will be eternal.
O Allah, let them get the most benefit from the book!"

Farah M.J. Awl's gift in the book is to hope that young people in Somalia will no longer experience the pain that ignorance brought to their ancestors and will inherit Somali oral poetry in the future.

6. Conclusion

This article adds new perspectives to the research on *'Ignorance is the enemy of love' Aqoondarro Waa U Nacab*. By analyzing the oral poetry in the novel, this article summarizes the characteristics of Somali oral poetry; that Somali oral poetry shows the history, culture, and customs of the nation, the beautiful natural scenery of Somalia, the spirit of Somalis'

love of their families and patriotism, the spirit of not flinching or complaining in the face of problems and hardships, the status of women in Somali society, and their courage in dealing with love. Everything that happens in the world, whether in a country or a nation, cannot be separated from its history. The oral poetry is the history of the Somali nation. For future research, we hope to find new perspectives on oral poetry passed down from Somalis and the philosophical ideas it contains with the purpose to value the present and better understand the future.

Notes

[1] Farah Mohamed Jama Awl was born in 1937 in the Las Khorey district of the Sanaag region in Somalia. After completing high school, he pursued further studies in England and later returned to Somalia, eventually attaining the rank of lieutenant colonel. He traveled to villages whenever possible to collect information about Somali oral poetry and traditional customs, collecting abundant material on oral poetry.

[2] Liang Bingtian (Translator). "Ignorance is the enemy of love", Beijing, China: World Knowledge Publishing House, 1984. by p2-p3

[3] The Dervish Movement (Dhaqdhaqaaqa Daraawiishta) was an armed movement from late 1890s to 1920, established and led by Sayid Mohamed Abdulle Hassan. Its objective was to expel British and Italian colonies from Somali territories while advocating for establishing an independent state.

[4] Farah Mohamed Jama Awl, Aqoondarro Waa u Nacab Jacayl, Garanuug, page 6. (CAWRALA IYO DUXASHADII JACAYLKA). http://www.garanuug.com/buug/aqoondarro-waa-u-nacab-jacayl-6/

[5] Farah Mohamed Jama Awl, Aqoondarro Waa u Nacab Jacayl, Garanuug, page 7. (CAWRALA IYO DUXASHADII JACAYLKA). http://www.garanuug.com/buug/aqoondarro-waa-u-nacab-jacayl-7/

[6] Farah Mohamed Jama Awl, Aqoondarro Waa u Nacab Jacayl, Garanuug, page 9. (DHAAWACII IYO DHIIGKAFUQII CALIMAAX). http://www.garanuug.com/buug/aqoondarro-waa-u-nacab-jacayl-9/

[7] Farah Mohamed Jama Awl, Aqoondarro Waa u Nacab Jacayl, Garanuug, page 13. (GEERIDII CAWRALA IYO BAROORDIIQII IYO U DUCAYNTII CALIMAAX) http://www.garanuug.com/buug/aqoondarro-waa-u-nacab-jacayl-13-dhammaad/

[8] The data and sources here refer to the author's 'Language Policy and Language Situation in Somalia'.

[9] Aqoondarro Waa u Nacab Jacay, page l-2. http://www.garanuug.com/buug/ aqoondarro-waa-u-nacab-jacayl-2/

[10] Aqoondarro Waa u Nacab Jacayl, page 3. http://www.garanuug.com/buug/ aqoondarro-waa-u-nacab-jacayl-3/

[11] Maanso (classical poetry that deals with serious issues) and hees (light poetry, often sung and accompanied by instruments), each genre has its own set of performances, tunes, and rhythmic patterns.

[12] Aqoondarro Waa u Nacab Jacayl page 11. http://www.garanuug.com/buug/ aqoondarro-waa-u-nacab-jacayl-11/

[13] Aqoondarro Waa u Nacab Jacayl page 13. http://www.garanuug.com/buug/ aqoondarro-waa-u-nacab-jacayl-13

[14] From the opening of the first chapter of the novel.

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