

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 spirit 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 a 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.
- ¹⁶ *bid*
- 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).

References:

National Laws

- The provisional Federal Constitution of Somali Republic, 2012

Books and Journals

- 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.
- Kamali, M. H. (2007). *Sharīah and Civil Law: Towards a Methodology of Harmonization*. *Islamic Law and Society*, 14(3), 391-420.
- Rosett, A. (1992). Unification, Harmonization, Restatement, Codification, and Reform in International Commercial Law. *Am. j. Comp. L.*, 40, 683.
- 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)).
- Gundel, Joakim, Louis-Alexandre Berg, and Yahya Ibrahim. *Political Economy of Justice in Somalia*. Working Paper. Justice, Security and Development Series, 2016.
- Mulu, Bekalu. "The Move Towards Developmental State in FDRE: The Role of Intergovernmental Relation (IGR) for Its Implementation Preserving the Autonomy of Reginal States." PhD diss., Addis Ababa University, 2015.

- Darrell, William E. "Federalism, Intergovernmental Relations, and the Illinois State Division of Safety Inspection and Education." (1992).
- Anderson, G. "Federalism: An Introduction (Forum of Federations, Oxford Univ. press)." (2008).
- Halberstam, Daniel, and Mathias Reimann. *Federalism and Legal Unification*. Springer Science, 2014.
- Palermo, Francesco, and Karl Kössler. *Comparative Federalism: Constitutional Arrangements and Case Law*. Vol. 19 Bloomsbury Publishing, 2017. At 134.
- Karpen, Ulrich. "Comparative Law: Perspectives of Legislation." *Legisprudence* 6, no. 2 (2012): 149-189.
- Contini, Paolo. *The Somali Republic: an Experiment in Legal Integration*. Routledge, 1969.
- Contini, Paolo. "Integration of Legal Systems in the Somali Republic." *International & Comparative Law Quarterly* 16, no. 4 (1967): 1088-1105.

Internet Sources

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).

About the Author

Salim Said Salim is a legal expert with L.L.B. from EAU, Somalia, and L.L.M. specializing in public law, accompanied by a master's degree in education with a focus on educational planning. From 2011 to 2013, he served as the dean of law at Puntland State University in Somalia. Over the years, he has taught constitutional law, human rights, administrative law and criminal law at the university. Salim has provided legal advisory services to various international organizations in Somalia and several state and federal ministries. Presently, he holds the position of Executive Director at the Somali Institute for Development and Research Analysis (SIDRA), where he previously served as a research fellow.

About this Journal

Somali Studies: A Peer-Reviewed Academic Journal for Somali Studies is a broad scope multidisciplinary academic journal specialized in Somali studies, published annually, in print and online forms, by the Institute for Somali Studies at Mogadishu University. The journal aims to promote a scholarly understanding of Somalia, the Horn of Africa and the Somali diaspora communities around the globe. It is an open access journal, and all articles are freely available to access, print and download from the website of the institute, www.isos.so.

Disclaimer: All views and opinions expressed in the article(s) published in *Somali Studies: A Peer-Reviewed Academic Journal for Somali Studies* are the sole responsibility of author(s) of the article(s), and do not necessarily reflect those of the editors, the journal, or the Institute for Somali Studies.

Published by Institute for Somali Studies

Hodan District, Near Km4 Square

Website: www.isos.so

Email: isos@mu.edu.so

Tel/Fax: +252 1 858118

Mogadishu, Somalia