SOMALIA
CLAN AND STATE POLITICS
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ITPCM International Commentary
Foreword

I feel honoured to write the Foreword for this compilation of articles written by authors from diverse disciplines and cultural backgrounds. I am also pleased to offer, in the conventionally limited space of a foreword, a few comments on some key themes that I think the articles collectively underscore. While presenting them in a list I express myself in words which some may consider too cynical, but with the intention of constructively highlighting central problems concerning Somalia.

The Somali crisis has many and complex aspects that no author or work can fully discuss; therefore academics, true to their trade, cautiously take up an aspect or two of the Somali crisis to make sense of it and propose a solution.

The cost of what we often call ‘the Somali Crisis’ is so massive in scope, so devastating to human life and material resources that it is nothing short of a catastrophe. However, its ceaselessness and tedious repetition in the media for nearly a quarter of a century (1990-2013) no longer shocks or lessens and tedious repetition in the media for nearly a quarter of a century (1990-2013). Americans and Europeans view it as a stubborn, banal, and distant problem. Politicians who want to project an image of effective and compassionate leadership find it as an inconvenient thorn that does not go away.

Key political actors in Somali society comprised mostly of warlords and ‘dollar-lords’ - some of them undeservedly anointed as presidents, prime ministers, ministers, or governors - do not take the kind of cautious and deliberate thought as academics do. They act instinctively and quickly in pursuit of personal power and wealth at the expense of their people, including members of their clan whom they use as fodder and foot soldiers in their ascent to power. They practice winner-takes-all strategy and seldom hold prisoners - they quickly kill their opponents, real or imagined.

Different and highly costly interventions were attempted to restore peace and order in Somalia since the collapse of the military regime in 1991. The United Nations and the United States sent peacekeeping and then peace-enforcing forces including UNOSOM 1, Operation Provide Relief, Operation Restore Hope, and UNOSOM II. These interventions mostly failing and ending with frustration, attention and energy shifted to reconciliation conferences. These conferences too did not bring about the intended outcome.

These interventions did not work mainly because they relied on top-down approach. The peacekeeping or peace-making missions used foreign forces and well equipped armies to enforce peace and order. The reconciliation conferences held in plush hotels abroad focused on reconciling warlords and politicians who were the primary impediment to peace in Somalia. The peacekeeping and reconciliation conferences also sought to re-establish the flawed, unitary, and central state - inherited from colonial rule, presided over by corrupt elite, and proven unsuitable to Somalis by culture and experience.

Not equal amount of investment and attention was given to bottom-up approach in Somalia (i.e. the former Italian colony). Numerous studies and common sense affirm the efficacy of solving human problems by encouraging and building on successes and inner resources of people while helping those unable to attain such successes and garner their resources. Somaliland and Puntland has shown the value of bottom-up approach not only with regard to cost efficiency but also sustainability of solution. Durable solution comes when people participate in the search for solution and own the outcome. Perhaps the African Union Mission (AMISOM) may do better than earlier peacekeeping efforts. But one cannot find lasting reassurance that Al-Shabaab has been pushed out of Mogadishu or other areas so long as we remain fixated on re-inventing the flawed state by superficial change of its names (e.g. calling it federal when it is still unitary and centralized) or by changing leaders (be they colonels, religious leaders, or professors) when the system of corruption, inequity, and injustice prevails.

The authors of the articles presented in this issue of the International Commentary describe well these and many other problems causing torment and turmoil in Somalia. But they go further than that: they also propose valuable lessons and solutions to the specific topics of their specialty and chosen topic.

Obviously, the kind of analyses and proposed solutions presented here do not directly change the world, but they educate and inform, seeding more ideas, better decisions, and serving as prelude to constructive action. That in itself is a significant contribution, the best one can hope for analyses and recommendations. Therefore, I congratulate the authors and the institution that published their valuable articles.

Prof. Hussein A. Bulhan
The tree of life, long before being an American film released in 2011 from director Terrence Malick, was a short film shot in Somalia in 1987, by Somali writer and director Abdulkaadir Ahmed Said. The title in Somali is Geedka nolosha. Confronted with a harsh environment, the Somali pastoral nomads – the great majority of the population - can only make their life sustainable and self-sufficient by respecting the load capacity of their land. They constantly negotiate with their ecosystem the level of exploitable stock on the basis of its regenerative capacity, a shifting threshold, vertically and horizontally, that results in severe diet restrictions and nomadism. The film, environmentally conscious, portrays like in a looming scenario, an unsustainable wood cutting practice under the pressure of only implied new stringent forces. The tree that sustains life itself, and in Somali culture represents also a symbolic space for traditional powers assembly, is eventually chopped down. All this mercilessly leads to the desertification and disorientation of the nomadic culture.

In 1991, 4 years after the release of the film, Somalis experienced the collapse of their state, the end of the dictatorship and the outbreak of one of the most devastating civil wars the African continent has ever witnessed. In the vacuum left over by the old regime, warlords, clans, sub-clans and Islamist movements took to the floor in an apparently never ending fight for power and resource control. Everybody was opposed to everybody in a looting practice and claim for legitimacy over the remains of the State itself, its capital town and the neighbouring area. The dismissal of a tyranny does not compare with the chopping down of a symbolic tree, all the more if the bulwark of such statehood laid in oppression and death. But, it is also true that the authoritarian rule, ever since the bloodless coup, had managed to accommodate competing clans’ claims and rivalries, or at least to constrict them at a submerged level. Only the Ogaden war (1977) unveiled political cleavages.

Western analysis and perceptions regard the collapse of Siyad Barre’s autocracy as a suitable example of state failure. But, one should first wonder if a functioning state, as tested against a western model, has ever actually been in place in Somalia. Although 21 years of firm state control can contradict this interpretation, the following events and dynamics reveal that the regime itself was sitting on the lid of a Pandora’s box, whose evils existed well before 1969. Due to irresponsible policy, power greed and corruption, those plagues and diseases kept growing during the scientific socialism’s interlude, with far-reaching consequences that were to be seen in the aftermath of its crumble.

Ever since imperial partition, with an exception made for the Dervish state/movement at the beginning of the 20th century, the Somali ‘nation’ has witnessed season after season of an alternation of elites in the ruling role over it - a common destiny for many peoples similarly affected by the scramble for Africa. It was the French, British and Italian colonial rulers first, the Fascist state later, and the British protectorate and the Italian trust territory after WWII. This foreign rule lasted until 1960, when a power transition to an indigenous oligarchy occurred. A new elite started to administer the freshly independent polity, comprised of all its inherited institutions, by mimicking structures and forms of the previous era.

Power and access to it was pursued as an opportunity to promote, at the state and sub-state level, the vested interests of the given class and/or clan to which that elite belonged. Too occupied in making a living, the majority of Somalis kept herding livestock, and in some cases fishing/farming, far away from such practices of patrimonialism. At the central level, an alleged representative scheme of power management, in which competing clans advocated for their factional rights, peace, or the suspension of war between the parties, was guaranteed through benefits, resource partition, oppression, promotions and demotions. Without a doubt it was a flawed system, which has replicated itself ever since independence. Even at the times of the long and inconclusive peace conferences, which western donors and horn of Africa brokers have
hosted and financed until recently, similar methods have remained in place.

Basically, the imported forms of governance, while in the best professed intentions of the ruling elites hoping to unite and overcome common Somali issues, proved *de facto* instrumental to sowing the seeds of discord and destruction. Deluded by supposed clan supremacy and mobilised along kinship and loyalty lines, Somalis have waged wars and disputed each other for years, in an armed contest and political competition that has left everybody defeated.

Going back to the question raised above, a Somali state, or a functioning approximation of it, has failed to exist, maybe in the first place, in the hearts and the minds of the Somalis themselves, at least so far. *Stateness*, like any other social construction, finds in collective experience and praxis those founding elements that underpin its building up process. Such process, in the Somali case, and in different degrees in many other countries, has yet to produce the expected result, provided that everybody agrees with the wished output. In this respect, several years of civil war, toppled by an exacerbated clan identity, could continue to challenge the formation of a united polity above and beyond clan lines. The possibility to reverse course is remote at best. At this stage of their history and development, Somalis cannot disregard their own experience of western state institutions. Starting again from scratch, with a locally developed polity, reflecting exclusively traditional knowledge and character, would be highly improbable. The *tertium non datur*, Somalis can only go forward.

Within this framework, and in the eternal present of the globalisation era, life is dominated by the Internet and mobile phones. While politics are dominated by multilateralism, pressing state protagonism and the market economy. Nomadic ways of life and traditional forms of power administration are dramatically confronted with all this. Yet, if the most remote camel breeder checks on his smart phone the price of the meat at the local market in Berbera, adjustments and compromises over economy and politics are already on the way.

This issue of the *International Commentary* looks into all this and addresses, among others, the on-going ‘states’ building processes within the country. A first set of contributions, reflecting indigenous knowledge and understanding, looks at Somalia as a whole. Musau takes on the challenge to tackle the pivotal role played by clans and clannism. He maintains that state building momentum will largely depend on how quickly clans and traditional leaders will connect and relate to the emerging state institutions. Odowa argues that Somali political leaders, historically, never possessed a balance of vision and competence that could prompt a message of justice and unity for all. Jibrell, while hinting at the salience of urban/rural dimensions, expresses her warnings for environmental degradation and resources mismanagement (charcoal). Here, as well as in the political arena, women’s empowerment would be crucial.

It is within this framework that the institutional experiences of Somaliland and Puntland - in which traditional forms of governance are tentatively absorbed within western models - acquire relevance. Distancing themselves from the current South-Central Somalia stalemate, they are often referred to as examples of what the Somali can achieve if they are left to do it [almost] their own way, as Somalia emeritus specialist Ioan Lewis puts it. Mingale’s contribution looks at what made Somaliland’s political enterprise a success story - at least during the peace-building phase - while pointing out the role played by traditional elders. Haji debates instead threats and challenges with which this *de facto* state is confronted. Tahir is much more critical, he argues that state-building, in contrast to peacebuilding, has failed to shift Somaliland from the past Somali experience, replicating old cleavages and flaws.

As far as the humanitarian issues are concerned, Rotelli’s contribution draws attention on aid perceived impartiality and access issues, particularly in South-Central Somalia. Discussing engagement dilemmas with armed non-state actors, he argues that United Nations integrated missions as mandated and implemented in Somalia may compromise the principles of their interventions. By the same token, piracy is another Somali plague whose root causes have often been overlooked. In her contribution, Sterzi extensively discusses counter-piracy strategies, costs and approach, as well as the legal implications of the so called *private* maritime security.

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Franco expands on drivers, magnitude and main sectors of the EU cooperation efforts, including the recent Somali Compact. Along development, humanitarian and security lines, she also looks into the EU adopted ‘variable geometry’ approach, which allows for regional and non-state actors as interlocutors. Yet, on the internal
front and quite contradictorily, the EU policy towards Somali asylum seekers proves more and more restrictive on the claim of a supposed ‘internal protection alternative’. Parisciani arrives to this conclusion by examining the recent case law from the European Court of Human Rights and other national courts.

There are some notable opinions absent among the addressed topics of this issue. Some speak for themselves, some others reflect focus and time-space constraints. From South-Central Somalia, despite numerous attempts, potential contributors have for one reason or another declined the offer to participate in the project. A federal government perspective on the very aspects introduced so far would have served to complete the picture, at least the hosted debate revolving around state building issues. Islam, in all its declinations and implications, also remains unaddressed, in a dedicated article as well as marginally. All authors circumvented touching upon religious issues. Commenting on that, a reputed scholar of Somali affairs stated: “the topic is for sure sensitive, mostly for fear of reprisal from two directions: the West that looks around for terrorists, real or imagine, and religious zealots, who take upon themselves the roles of morality police, judges, and executioners”.

Aware of the limits of the enterprise, this issue of the International Commentary tries to shed some light on the on-going rebuilding efforts in Somalia. In the epilogue of the film Geedka nolosha, the young nomad, lost in a biological desert, comes across a small tree from which life will regenerate. But Somali are well beyond an institutional desert. It is rather what and how many (competing) trees they are planting that matters today.

Michele Gonnelli
Our community is of people sincere and with great modesty made of silken thread they mistreat none they live in Allah’s grace they are vulnerable to feelings But, mind you, fools they are not.

By Mohamed Ibraahim Warsame (Hadraawi), somali poet.

Even the most religious man never abandons his clan for paradise*

Enslavement begins in fear*

Somali proverbs
*All translations from Somali into English by Hussein A. Bulhan, from Politics of Cain, one hundred years of crises in somali politics and society, 2008

Photo | Albany Associates
CLANS’ AND CLANNISM’S CONTROL OVER WEAK POLITICAL INSTITUTIONS

CLAN MOBILISATION AND CLANNISM PRESENTS STRENUOUS CHALLENGES IN THE NASCENT SOMALIA FEDERAL GOVERNMENT. REGAINING STATE BUILDING MOMENTUM IN THE COLLAPSED STATE OF SOMALIA WILL LARGELY DEPEND ON HOW QUICKLY CLANS AND TRADITIONAL AUTHORITIES CONNECT AND RELATE TO THE EMERGING STATE STRUCTURES AND INSTITUTIONS.

Consultant for
Human Rights and Institutional Building
Nairobi, Kenya

by Stephen Musau

Contextual background

Although there are more issues that unite the Somali people than just the clan affiliation, over the years, clans have become the bane of Somalia. Clans, in Somalia, are culturally a consensual identity inherited from patriarchal ancestors and clannism, as a political ideology, determines everything else in the country - power, resource distribution, expansion of territory and even recruitment to positions of influence.¹ Though clans existed even before colonialism, the colonial institutional legacy cemented this through the West state import, enhancing the clan divide and rule tactics.²

It is argued that whoever can claim to represent a clan in Somalia would have the right to claim some local power and the resources that go with it.³ The biggest challenge in the country is therefore, the clan identity and how to strike a balance amongst the clan interests as a resource for political power with the calls for big powers to condemn the clan-based political formula currently being framed for the federal political system.⁴

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¹ Abdi Dirshe, “Manipulating clan or ethnic political identity for power”, August 04, 2013
² Ibid
³ Faisal A. Roble, “The Culture of Politics: The Somali Experience” May 05, 2013
⁴ http://www.aljazeera.com/indepth/
clash of clan and political identities, almost dualistic approaches are being deployed to manage the clan and state interests. Whether the Somalia Federal Government will surmount these forces and endeavour towards the making of a Somalia state is a matter of interest to many actors. This however, does not underscore the increasing intermarriages amongst the Somali people, the improved lifestyles and the sense of pride associated with the Somalis, which came with modernisation just like in any other part of the world.

The place and role of clans in the Modern Somalia

The deep divisions amongst the Somalis started from the colonial era where international borders greatly influenced internal conflicts leading to intra and interstate wars due to primordial clannism and sub-clannism. Even with these divisions, the Somali culture is still passed down orally, and in detail, from generation to generation with clans and clannism determining ones origin, social standing and leadership. The intellect of Somali clannism is so mighty and mysterious that it is even exercised by seasoned scholars with loyalty, as is observed by Dr Fatuma Lamungu Nur.

These divisions inform the scholarly debate as to whether clans and clannism would end up defining the embryonic Somalia Federal Government. Those interviewed grievously observed that the divisive nature of clans in the country makes it difficult to identify the roles and functions of the emerging state structures and organs through the ongoing reconstruction of the Somali state, as clans determine and run the private sector and businesses. Up to now, Somalia lacks prominent local voices that are non-clanist in nature; there are no strong civil society organisations to champion the SFG role. All of this works against the genuine state making process, with no political parties to galvanise the people’s voice.

At its best, the clan works for the society providing the required social security welfare system, and protecting the society members in all aspects. However at its worst, the clan leads to conflicts, bloodshed, xenophobia, and masculine control. It is also the clan identity that influences the politics although by itself, the clan is not the cause of the conflicts but a compelling mobilization instrument with any local political actor using this to garner their support. This goes a long way to define and form the Somali state, with clans being the bedrock of Somali identity.

With the lack of any social and economic institutions beyond the clans, the political development in the country ends up being controlled by two major clans in Somalia, which according to the interviewees are the Hawiye and the Darod. All the other clans rally around these two for state power and control and are followed by the Dir, Rahanweyn, Isaaq and the Digil. As expounded by Afshey Abd Elmi, these clans are seen as sources of pride with the Hawiye, Darod, Dir and Isaaq being nomadic pastoralists and the others agrarian pastoralists.

Somali clans are grouped into clan bonds or clan alliances, formed to safeguard the mutual interests and protect the members of these alliances. Remarkably those interviewed discerned that the problem in Somalia might be an oversupply of clans and sub-clannish attitudes that struggle for power and with the Social Contract or “xeer” being the most important component that cements together their alliances. Those outside these alliances are considered as marginalised groups and are vulnerable to attacks by the dominant clans.

For instance, the Hawiye, which is the big ruling clan, have several sub-clans including the Abgaal, Habargedir, Hawadle, Mursade, Rahwein, Murale, Ajuran, and Garre among many others with their sub- clan as well. On the other side, the Darod have the Harti, Marehan, and Ogaden sub-clans. The rift between the Marehan and Ogaden over control of Jubaland and Kismayu demonstrates how these sub-clans struggle for power, yet both support the Darod for the larger control of the Somalia government. It is important to note that the Harti sub-clans including the Majeran control Puntland. On the other hand, the Dir, largely in Somaliland, mix well with the Isaaq, the Garre and the Degodia, with closer sub-clans being the Biyamal, Gadsan, and Werda among others. The sub-clans closer to the Isaaq include Habar Awal, Habar Jalo, Habar Yunis, Edigale, and Ayub among others while those closer to the Digil are the Geledi, Shanta Aaleen, Bagadi, and Garre, among others.

While most of these clans and sub-clans are found in Somalia, large numbers have also moved and live in Ethiopia, Djibouti, Kenya, Yemen, the Middle East, South Asia, USA and Europe. In fact, a Somali in today’s context can be a potential citizen of several states in the Horn of Africa including Ethiopia, Somalia-
land, Puntland, Jubaland and Central regions), Kenya and Djibouti. There are also the Somali Bantus who are the minority groups. They are largely the Mushunguli, Benadiri and Eyle. They are distinct from other Somalis in their ethnic identity, culture and traditions, and are referred to as “Jerer”, which literally means thick hair. There are also the white skinned semi Arabic Somalis including the Bajun, Barawa and Yemen. Many of these are considered outsiders unless they have patrons or a patron clan that support their cause from the large alliances.

The Baidari group with its sub-clans occupy the north, central, and southern Somalia while the Wa Gosha group also known as the forest people or the Oji, largely believed to be descendants from Tanzanians, Mozambicans, and Malawi were taken to Somalia in the 19th century during the Arab slave traders. Moreover, Faisal A. Robel notes that, the Mushunguli group have retained their Mushunguli language while almost all the other smaller clans have been fully assimilated into the local Somali communities and speak Somali language.

Outside Somalia, it is quite hard to separate these clans. Despite the prevailing political realities, all Somalis are allowed, especially in time of war or famine, to move in and live anywhere in the Somali geography. This means a Hawiyan clansman fleeing a civil war in Mogadishu is welcome in a Darod dominated territory, thus implying that the Somali identity takes primacy over clan lineage or kinship system. Outside Somalia, they emphasise “otherness” despite their internal differences of individuals or clans.

**Political institutions and how they relate with the clans and state policies**

As recently constituted, neither President Hassan Sheikh Mohamud nor the Prime Minister, Abdi Shirdon played a major role during the past civil wars although there are simmering tensions. The President is from the Hawiye clan and the Prime Minister Shirdon is from the Marehan Darod clan, with almost 60% to 40% representation respectively.

With a bicameral parliament composed of an upper and lower house, with 54 and 275 representatives respectively, the SFG’s main agenda is to advance national reconciliation, anti-corruption measures, socio-economic and security sector reforms in Somalia; although formation of the upper house is still pending. The parliamentarians are nominated by the clans themselves and are being viewed as more representative than the previous ones.

Regrettably, Somalia has never had cross-board social, economic and political institutions. The president’s political party, the Peace and Development Party (PDP) is new and has difficulty being marketed across the country with the SFG still being a provisional government. The SFG has a de facto control over Mogadishu and parts of the South including Baidoa, Baladwein, Murku, Afgoye, Merca and Barawe and it is still dependent on foreign troops to keep its enemies at bay.

What ought to be appreciated is that the SFG cannot stabilise Somalia through military measures alone nor can it impose peace. Nationwide processes of negotiations with the traditional authorities and clan leaders, while providing options for power sharing with other political forces, could lead to improved governance, if only Somerset take lead in these processes.

Even with this however, federalism with clannism remains a hard mix when it comes to reconciling different positions on the devolution of power with all sub-clans fighting to be close to either the Hawiye or Darod. Thus, political clannism still remains a demon that requires to be exercised for Somalia to score high on economic development, health, education and other scientific achievements.

Clannism has also affected the recruitment and loyalty of the Somali security forces. According to the last UN report on Somalia, the forces continue to face significant logistical challenges. President Hassan called on the UN to support the Somalia National Army and AMISOM as the Al-Shabaab had been driven back but is yet to be vanquished. The involvement of AMISOM under the AU, the UN, IGAD, the League of Arab States, and the World Bank among others, with no clear division of responsibilities or lead actors, presents a huge challenge and more so if they engage different contacts on the ground. The overlapping roles of AU and UN remain unclear.

The impact of the United Nations Assistance Mission for Somalia (UN-SOM), that was formed on 3rd June 2012, with a wide mandate that included- providing policy advice to the SFG and AMISOM on peace building and state building in the areas of governance, security sector reform and rule of law is yet to be felt. The absence of domestic political institutions coupled with no capacity to support comprehensive transitional justice processes and how these would relate with the clans, is constraining the much-needed state building process.

**A changing Somalia with unclear state policies**

With centralists, federalists and clan divisions in Somalia, it remains difficult to establish a unified approach to governance. The SFG faces a myriad of challenges with minimum abilities...
to assert its monopoly of violence and therefore its authority, hence influencing its state policies. The limited policy options SFG has could appear dualistic or even multilateral in approach, to manage those with centralised unified interests, federal interests and those purely protecting clan interests irrespective of the system of government in place.\(^27\)

This has been a delicate move to ensure that the state functions while at the same time wooing the divergent interests to blend and connect with the emerging structures and policies of the State. This presents a serious challenge as the lacuna, that was created since the state collapsed in 1991, led to an emergence of various clan led structures. The clans through their traditional authorities organised and provided the necessary services such as security, devoid of the state infrastructure.

With the Hawiye clan alliances dominating the central, south and the greater Mogadishu in support of a unitary Somalia, the Darod clan alliances, that dominate Puntland and Jubaland (Kismayu), being strong proponents of federalism, and the Dir dominating Somaliland and Galmudug regions, the uncertainty of the state policies remain conspicuous.

These differences are clear and define what Somalia is today despite the prevailing cyphers of tranquillity under the SFG. Divided views still remain between those who support a strong unitary Somalia state and those that fear a centralised government would be dominated by a single clan or a group of clans.\(^28\) The impact of this uncertainty of state policies has kept the Somali population in conditions of abject poverty, disease, starvation and irredeemable mental slavery, an issue that ought to be of great concern to the international community.

### Extension of clan supremacy in the region

In the last few months Mandera and Wajir counties in Kenya have experienced bloody clan wars’ pitting the Garre, a sub clan that supports Hawiye against Degodia, a Dir sub clan, which does not support Darod or Hawiye in Somalia. Wajir has the Degodia, Ogaden and Ajuran Somali sub-clans and Mandera has the Garre, Degodia, Murule and others normally called the “Corner Tribes”.\(^29\)

These clan feuds can be traced way back to even before Kenya became an independent state. The dominant clans in these two Kenyan counties, the Degodia in Wajir face off with the Garre and Marehan, the dominant Hawiye sub-clans in Mandera from Elwak to Liboi. The minority clans in these two Kenyan counties are disgruntled and frustrated as the big clans use violence to settle old scores.

It is interesting to note that, Mr. Ahmed Mohamed alias Madobe, an Ogaden clan leader was elected to lead the Jubaland and is alleged to be closer to both Ethiopian and Kenyan authorities than the SFG.\(^30\) One of those interviewed stated that Ahmed refused to meet the SFG per an Addis Ababa Negotiation Agreement and Kenya and Ethiopia are in support of the Jubaladn Ogaden leadership despite Ethiopia having had, what was seen as, a disparaging role in the greater Somalia since 2006 leading to the Transitional Federal Government.

Further, many Somalis do not see Ogadens as pure Somali citizens but believe them to have strong links and connections to the clan wars as they seek their federal Jubaland state within Somalia. The Ogaden area is still a contested region between the greater Somalia and Ethiopia; more so as the region has significant security interests in Somalia, and immediate neighbours like Djibouti, Ethiopia and Kenya.

According to the UN Monitoring Group, and as a sign of the extension of clan supremacy, the Kenyan-Somali politicians and Kenyan military officers have allegedly been earning large amounts of money from trade, including illegal charcoal\(^31\), passing through Kismayu, although those interviewed could not deny or affirm these allegations. Moreover, the Kismayu area is alleged to have oil and natural gas deposits.

Further north in the Horn of Africa, Djibouti a former French colony is a peaceful country. The country played a key role trying to restore the Somali state after the 1991 collapse and still maintains close ties with Somalia albeit with Kenyan and Ethiopian close contacts. Also, due to the instability that had existed in the South and Central Somalia, many Somalis moved to Djibouti from Mogadishu, Baidoa, and Beletweyne and went into business there. They remain concerned with what happens in Somalia.\(^32\)

Puntland remains an autonomous region although it does not seek outright independence from Somalia despite having its President, Abdirahman Mohamud Farole. Some of those interviewed alleged that President Hassan Sheikh Mohamud is being accused of changing the provincial constitution in favour of centralism with Puntland’s President Farole’s calculative influence, an issue also alleged by Faisal A. Roble.\(^33\)

It can be argued that the divisions seen amongst the clans in Somalia, just like many other African tribes, are largely influenced by the close contacts some maintain with the former colonies; notwithstanding, external identities that were imposed on the Somali nation since 1884’s scramble for Africa. This is an issue that permanently apportioned different Somali clans and geographies to different competing European and Ethiopian colonial

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\(^{27}\) Interviews with various persons of Somali origin in Nairobi on 11th November 2013


\(^{29}\) These were interviews with various persons of Somali origin in Nairobi on 11th November 2013

\(^{30}\) Ibid


\(^{32}\) Interviews with various persons of Somali origin in Nairobi on 10th November 2013

\(^{33}\) Faisal A. Roble, “The Culture of Politics: The Somali Experience,” May 05, 2013 (accessed on 18th November 2013)
powers and have not changed,\textsuperscript{34} hence extending to the whole region.

**Options for effective management of public affairs for a better Somalia**

Somalia remains a country with high economic potentials with its extended coastal strip but SFG policies remain far removed from the people due to the extensive divisions and interests. A lack of integration of the militia groups and low levels of awareness combined with high levels of brokerage of state processes, limits the state potentials.

Property ownership, trade and businesses with the State, military and economic aid to the SFG regime all present grounds for deepened negotiations with the clan and traditional authority leaders. The challenges for the SFG are far too many to surmount, especially, as there is a lack of clear state policies and guidelines on engagements and militias still acting as go-betweens, specifically from Mogadishu to Kismayu.

However, due to the potentials that Somalia has, the international community quickly recognised the new government and in September 2013, the US pledged about $2.5 billion in a ‘New Deal’ conditioned on greater transparency and governance reforms.\textsuperscript{35} If allocated efficiently, this money could be a boon to the country and its people. Nonetheless, many already feel left out of the state processes and find that the policies are not permitting people to engage despite their willingness to do so.

Further, a lot of taxes and fees on trade transiting through ports and airports in Somalia are not accounted for due to corrupt officials, businessmen, and the local clan powers. Much of what these ports and airports generate is not known or documented\textsuperscript{36} despite Mogadishu slowly stabilising itself with thousands of diaspora residents returning to do business.

The new UNSOM, working closely with AMISOM and the Somali National Army (SNA), could transform Somalia if the clan militia are also integrated, engaged and convinced of why a strong Somalia is beneficial to all devoid of Islamic fundamentalism especially in Mogadishu, Afgooye, Baidoa, Merca and Kismayu.\textsuperscript{37} Many of those interviewed observed that with this, those strong willed and bend to liberate Somalis need not be trapped into the Hawiye clan, the Darod clan, the Dir clan, and the Isaaq or Rahanweyn clan.\textsuperscript{38} Rather, they should be able to find avenues where the sub-clans elect their representatives into the SFG structures at the districts, divisions, locations and sub-location levels while also integrating the militias.

A preferred view would be what has been tried and tested in Somaliland. This could as well have been tried and tested in Somalia devoid of the top-down centralized conceptions of the state. The centralised governance system is hard to sell in Somalia for it does not easily accommodate the uncentralised and localised bottom-up style which Somalis have got used to over the years.

A federal democratic style will have to emerge from the clans were decision-making processes which have been followed in Somaliland, with promising results so far, could as well be applied, while allowing more room for home grown patterns of governance to emerge, hence forming the Somali state.

**Conclusion**

Somalia remains an extremely poor, weak and fragile country. With the SFG still generating very few of its own resources, and with entrenched clans and clannism in control of the means of revenue generation, thus, the state needs continued support.

Prioritisation of nation-wide negotiations on the type of federalism that the SFG could implement while accommodating the centralists, federalists and clans’ interests would be important. Incongruent policies to manage many diverse interests won’t be sustainable in the long run.

To avoid this approach, the federal system remains the hard path to follow with integration of the militia into the state system and structures, and with the sub-clans having their representatives in the deepened and further devolved Federal System. The formula to share power from the centre, where the presidency and the prime ministry is, with the peripheries, where the clans and traditional leaders are, should keep on being sought; with recognition and appreciation of the divergent views being presented by those supporting a centralised and unified Somalia and those supporting a federalised system with the recognition of the clan interests, to avoid further conflicts.

The long journey should be made by Somalis, with the necessary support from the international community. This should be emboldened with avenues towards national security and economic justice in identified areas, both in the urban and rural areas. Of much importance is the restructuring of the relationship of the rest of Somalia with Mogadishu as the capital city and creation of urban centres that could serve as pillars of the new Somalia to attract investments and investors.

\textsuperscript{34} Ibid


\textsuperscript{36} Ibid

\textsuperscript{37} Ibid

\textsuperscript{38} http://www.wardheernews.com/tribute-to-the-mighty-genius-of-somali-clannism/ [accessed on 8th November 2013]
Once one of Mogadishu’s most luxurious hotels, the Al-Uruba lays in ruins after two decades of civil war. Though building work in Mogadishu is on the rise, it may still be several years before many of the city’s buildings will be restored.

AU-UN IST Photo | Tobin Jones
SOMALI LEADERS, IN ADVANCING THEIR PERSONAL INTERESTS, KEEP CREATING POLITICAL AND SOCIAL CRISIS BY EXPLOITING AND MISUSING THE DIVISIVE FACE OF THE CLAN. POWER AND WEALTH GREEDINESS, AS ULTIMATE GOALS OF POLITICAL ACTION, SEEM TO CONTINUE TO THIS DAY IN SOMALIA, WITH NO LESSONS LEARNED FROM THE PAST HISTORY.

WHAT CAN CURRENT LEADERS IN SOMALIA LEARN FROM THEIR PAST HISTORY?

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Leadership in the Somali Context

Since pre-1991 history of Somaliland, when it was tied either wholly or partially with the former Somali Democratic Republic and the regions shared a common cultural heritage, can the terms ‘Somalia’ and ‘Somali’ be said to encompass both Somaliland and Somalia.

Inspired by the Danish philosopher Soren Kierkegaar who said “We understood life only backwards; but it must be lived forward” and the Somali poet Cabdiqaadir Shube who wrote “Taariikhda dib u eega waa laga dab qaataaye” which when translated reads “you revisit the history as it provides light to the way forward,” I was encouraged to look briefly at several past eras of Somali history in order to better understand the lessons that they may hold for the country’s traditional and political leaders today. In seeking to undertake any examination of Somali history it is important to keep in mind the words of Dr. Hussein A. Bulhan who wrote in his book “Politics of Cain: One Hundred Years of Crises in Somali Politics and Society” that:

“Inquiry into Somali politics and history, full of peril and pain, is in some respects akin to an onion. As you peel each layer, you shed tears. That indeed has been my experience in writing Politics of Cain. As I wrote about the disaster of decades, I could not help but grieve the loss of life that Somalis could prevent if they intelligently analyzed their predicament and garnered that will to change their self-destruction behaviour. (2008 p.15)

This important work together with others such as Cost of Dictatorship, Getting Somalia Wrong: Faith War and Hope in a Shattered State, Somalia a Nation Without a State, Somali Phoenix and Understanding the Somalia Conflagration, which I read in preparation for this paper, do much to highlight the toxic mix of rivalry, conflict, de-
struc tion, displacement and famine that have characterized recent Somali history in order to create what some have described as the ‘w orst humani tarian crises in the modern history’. However, while much attention has been given in these and other studies to the issues of poverty, illiteracy, reli gious extremism and clanism as the root causes and drivers of Somalia’s misfortunes, there has been little similar attention given to the issue of lead ership in helping to shape this history.

This article will argue that historically Somalia and its citizens have never had the type of leaders who possessed a balance of vision, competence and power to successfully promote a message of justice, unity and hope. Rather, the evidence will suggest that the experience in Somalia has been of leaders at the local, regional and national level frequently choosing to take advantage of opportunities to advance personal and clan interests in a manner that has resulted in conflict, corruption, weak institutions and social fragmentation.

The Colonial Era
Beginning in the late 19th Century, during the ‘Scramble for Africa’ following the 1884 Berlin Conference, it is with little surprise that interest turned towards Somalia given its strategic location along the approach to the Suez Canal. However, while powers including the Ottoman Empire, Egypt, Italy, France and Abyssinia all displayed an interest in occupying Somali soil, it was the periodic intervention of the British Empire that checked or else limited these ambitions (Lewis 2002, 42).

According to Lewis this interest by the British in preventing the occupation of Somalia by a rival power stemmed not from any sensitivity to the desires of the Somali people but was rather driven by a desire to maintain the supply of meat from Somaliland to its forces stationed in Aden (pp. 40-41). It was during this time that the British Somaliland protectorate was established through a series of treaties that included promises of protection between the British Empire and local clans living in the region in order to “secure a supply market, check the traffic in slaves, and to exclude the interference of foreign powers.” (Samar 1989, p. 31)

Nevertheless, it is worth noting that even in the event of a successful occupation by these powers the impact on Somalia and its development was in fact limited. It was during the brief period of Egyptian rule over the coastal towns of Somaliland, from 1870-1884 that, some developmental projects were implemented that include improvement of port facilities in Zeila and Berbera, erection of piers and lighthouses, restoration of the ancient Dubar channel that supplies fresh water to the town of Berbera, and the building of new mosques (pp. 43-44).

Although the British presence was minimal in Somaliland, the agreements it made with local leaders helped to fuel the anger of the famous Somali Dervish Mohammed Abdullah Hassan, who objected to any foreign, particularly Christian, presence in Somalia. Following Dervish raids on clans in Somaliland between 1900 and 1920 the British fought a series of five military campaigns that resulted in the destruction of the Dervish State and direct British rule over the region. It was the failure of traditional Somali leaders in this region, who at the time were divided into five major camps - Ise, Gadabursi, Habar Garhajis, Habar Awal and Habar Tol Ja’alo - to effectively negotiate with the British colonial to either support local social and economic development or to allow other foreign power to have access to Somali land and resources. They neither served as an intermediate between the British Empire and Dervish insurgency nor stopped the war and its impact.

Events that impacted Events Leading to Unification
Following the conclusion of the Second World War, the increasing levels of contact between Somali communities across the Horn of Africa region, resulting from the travels of members of the elite, merchants and soldiers serving with British forces, saw the spread of nationalist thought and ideas of pan-Somali unity (Bulhan 2008, p. 46).

In the region of British Somaliland these ideas continued to grow and developed throughout the period of the 1950’s with the result that all registered political parties were eventually able to agree, in principal, to the idea of unification with the former region of Italian Somaliland, which at the time was administered as a United Nations Trust Territory (Lewis 2002, p. 155). However, even at this time it was obvious that this enthusiasm for unification failed to produce any meaningful debate or discussion regarding the timing and conditions under which this would occur.

This failure by the political and traditional leadership of Somaliland was famously discussed by Mr. Umar Arte Qalib in an interview with the BBC Somali Service1. Mr. Qalib told the BBC that, in April 1960, following the passing of a resolution by the Legislative Council of British Somaliland requesting not only independence but also union with the Trust Territory of Somalia.

Nevertheless, following the granting of independence by Britain the first meeting of the Somaliland Legislative Council sent a telegram to their counter-parts in the newly independent Somali Republic requesting the unconditional unification of these two countries. Although Abdullah Osman, the head of the parliament of the Somali Republic had previously welcomed this very idea, there was no official response to this message. Instead, a delegation led by Dr. Mohamed Sheikh Gabyow, at that time the Minister of Constitutional Affairs and supported by an Italian lawyer, was sent to Hargeisa where they met with the Somali Officials Union headed by Umar Arte.

According to Arte, the Somali Officials Union, although not the ruling party in Somaliland, was held in respect among the community as well as the former Colonial authorities. This meeting between the delegation

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1 The recorded interview of Mr. Qalib was given to the BBC Somali Section during a BBC series of programmes featuring Somali History. He gave this interview during session 4 of the series that focused on the events that led to the Unification of British Somaliland with Italian Somaliland.
from the Somali Republic and the Somali Officials Union saw a proposal put forward whereby the positions of President and Prime Minister would be shared. In other words if the President was from Somalia, the Prime Minister should come from Somaliland and vice versa. Additionally, each side would be awarded equal numbers of parliamentary seats, shared ministerial positions, shared control of the armed forces as well as an agreement that in the event that one side had the national capital of the new country, the capital of the other should be host to consulates from foreign countries.

However, the proposal did not last long and when the delegation from the Somali Republic met with the Somaliland Parliament the members of this institution insisted on an immediate and unconditional union of these two newly independent countries.

Although it is impossible to try and predict the outcome of future negotiations, had the recommendations of the Somali Officials Union been supported by the members of the Somaliland Parliament, the occasion of the union of an independent Somaliland with the newly established Republic of Somalia, once again demonstrates a lack of foresight and unity among leaders in Somaliland. Whatever the merits or shortcomings of the proposal by the Somali Officials Union the rush to push for immediate unification without any meaningful negotiations or debate within the Somaliland Parliament resulted in unity on unequal terms for Somaliland. Following unification, politicians from other regions of Somalia worked together to take the positions of President and Prime Minister as well as other key cabinet positions at the expense of representation for the region of Somaliland (Bulhan 2008, p. 59).

Leadership Crises in the First Government of Somalia (1960)

The long period of colonization and domination at the hands of foreign powers had created a strong desire among all Somali people for a strong and prosperous Greater Somalia [Somali: Soomaalitweyn] leading to great expectations and hope being placed on the newly unified republic. However, these hopes were quickly dashed as the new political elite actively engaged in nepotism, corruption, injustice and the theft of government resources (Elmi, 2010, p. 20). With the initial wave of nationalist euphoria quickly dissipating, the famous Somali poet Ahmed Ismail Diiriye (Qaasim) wrote:

…Isma doorin Gaalkaad diriyo, daarta kii galaye
Dusha midakka Soomaalidaad, dugul ka noodaaye
Misna laguma diirsado qalbi gaa, waa dirkii Karale.

Nothing changed with the white man I rejected, and with those who replaced him
In surface appearance, Somalis, black in color they look
But they bring misery to the heart, being the offspring of Carroll2

Another popular poem by the late Haji Aadam Af-Qalooc voiced disappointment with the incompetence of the leadership of the first Somali civilian government in the 1960s writing:

…Halmaan bay ahaad darajaduye kuma habooneyn…

It was mistake to honour them, as they are incompetent to lead3

While it is important to recognise that

2 Ahmed Ismail Diiriye, also known as Qaasim, is well-known Somali poet. He composed this poem in 1964 to express his disappointment with the Somali post-colonial leaders and how the colonial system remained unchanged with the exception that white colonial masters were replaced by local black Somalis with a white man’s mentality. Qaasim referred in his poem to a British man called ‘Carroll’ who represented the Queen during the transfer of power from British authority to Somalia.

3 The original Somali poem is quoted from the Book entitled ‘HOGGAAMIYE IS-BEIDDEL HORSEEDA’ by Saciid Cali Shire, 2009, Buuh Consulting LTD. Haji Aadan Af-Qaloof was a well-known Somali poet and Islamic Scholar who through his wisdom criticised the clanism, nepotism and bad leadership in the Somali content. His poem underscores public dissatisfaction with performance of the first leaders of Somali aftermath of the independence.


The assassination of President Abdirashid Ali Shermarke by one of his bodyguards had the effect of creating an unexpected power vacuum as the Prime Minister was away at the United Nations headquarters in New York. The Prime Minister was helping to fight for the rights of the Palestinian civilian people, as well as advocating for the membership of the People’s Republic of China into the international organization, despite a number of on-going crises back home including the assassination of the President and the Military plan to overthrow the civilian government. An immediate power struggle emerged behind the scenes, within the government and the members of the Somali parliament, with many opportunistically offering their support to the highest bidder (Bulhan, 2008, p. 167). This behaviour, scandalous as it was at the time, helped to create the ongoing popular image of a Somali politician, whether from Somaliland, Puntland or South-Central, as being willing to sell his/her vote to the highest bidder regardless of the interests of the public.

On 21 October 1969, a coup led by Major General Mohamed Siad Barre took power amid genuine excitement by the people of Somalia, who had grown increasingly outraged over the corruption, nepotism and injustice perpetrated by their elected representatives (Bulhan 2008, p. 168).
In addition to the popular promises of peace and justice, the new military government also made the task of eradicating clanism one of its major priorities. Although the clan had, for unknown centuries, provided the most basic social institution among the Somali people, this was viewed as being incompatible with socialism and the root cause of society’s problems. Speaking as the leader of Somalia, Siad Barre argued that “[t]he absolute basis of social life is the family. If the family survives, so too will the clan. . . . If the clan survives, the state will survive” (Bulhan 2008, p. 22).

While the military regime, and the Somali Revolutionary Socialist Party it established in 1976 as the vehicle for its rule over Somalia, officially transcended clan lines and preached the need for loyalty to the state, in reality the practice of clanism continued. This was evident in the original composition of the Supreme Revolutionary Council which took over in 1969, of which, 40 percent were Daarood, the same clan as the newly retitled President Siad Barre. Similarly, the membership of the later Somali Revolutionary Socialist Party, which also drew its membership heavily from members of the Daarood clan, practically contradicts the regime’s message of equality among Somalis despite their clan affiliation or region of origin.

This inability of the Sa’d Barre regime to effectively address the clanism issue, as well as the use of its own notorious version of the KGB, the National Security Service, turned the country into one large prison camp. This undermined the popular support and goodwill that the government nonetheless managed to earn through improvements achieved in various fields, infrastructure, education, healthcare and national military strength (Bulhan 2008, p. 220).

Able to maintain power through a combination of clan loyalty, fear and repression, the first cracks in the power of the Sa’d Barre were seen following the humiliation of Somalia’s defeat in the unnecessary and badly handled 1977-1978 Ogaden War with Ethiopia and in the emergence of the Isaq dominated Somali National Movement during the early 1980’s. Between 1986 and 1990 the regime unleashed a reign of terror against members of the Majeerteen, the Hawiye, and Isaq clans, which included the deployment of its feared Red Berets (Somali: Duub Cab). As the death toll ran into the thousands, and the regime struggled to defeat rebel forces, its support base and military position collapsed when the Hawiye clan finally rose in active rebellion. However, any hope held by the people of Somaliland and other Somalis that the fall of the dictatorship would lead to a more peaceful and prosperous Somalia soon faded away as the country descended into a still yet unfinished civil war that saw the state replaced by warlords, clan militia and weak authorities (Harper 2012, p. 57). In Politics of Cain Bulhan aptly described the cycle of hope and disappointment in the Somali politics that is now repeated itself through the civil war saying:

“Often, the leaders and the led forget after victory the rhetoric of revolution and promises of change with which the armed struggle for liberty started. Unanticipated problems emerge and draw attention away from the realizing the promised change. Gradually, the old habits of misrule, corruption and tyranny return in imperceptible ways until they become as blatant as practices of the earlier regime, giving rise for another call for regime change” (p. 311).

What is wrong with Somali Leaders and Politics?

After only this brief examination of several periods of modern Somali history it is clear that the country and its people have failed to produce leaders genuinely capable of rising above the issues of clanism, corruption and dishonesty in order to successfully address the numerous political, social and economic problems facing their communities, regions and nation.

While some local initiatives in areas such as Puntland, Galmugug and Xiib & Ximan have restored a measure of peace and security, these initiatives have proven far less successful and resilient than what has been achieved in Somaliland, even though they have been populated by a single clan and related sub-clans.

It is the opinion of the author that while the clan system has provided the bedrock of Somali society it has also left traditional, political and religious leaders ill-equipped to respond in a unified manner to shared threats and opportunities. Unable to understand or reconcile their role as both clan leaders and actors within a nation state, these leaders, even at times in Somaliland, have attempted to nurture and promote clanism believing that it represents a better means by which they can secure their own personal interests. In describing how Somali politicians have gone about encouraging clanism Bulhan (2008) notes that, “[t]hey also take from the clan systems its divisive and distorted aspects that satisfy their greed for power and wealth in the midst of poverty and misery” (p.11).

The failure of traditional and political leaders has also been mirrored by the so-called educated class which, with some notable exceptions, have attempted to exploit clan politics to assert themselves over their illiterate and ‘backwards’ countrymen for their own political, economic and personal ambitions.

Constant misuse of clan structure and dynamics by local leaders has been exposing the ugly and divisive face of clan system in Somalia, making it difficult for many local and international commentators in the Somali conflict and politics to understand the extent of the role of clan and clanism in Somali way of life. These issues aside, it must be remembered that this same clan system has also continued to provide a source of kinship, justice and protection in the absence of a functioning national government. Likewise, this understanding should also apply to the system of Somali traditional law (Somali: xeer), which also offers a similar paradox, in that it has provided the benefit of a social safety net and means of support and protection for members, while simultaneously creating poisonous and at times violent relationships within communities and the wider society.
Conclusion
Since the 19th century, traditional, political and religious Somali leaders have been handicapped by their individual and collective inability to overcome their failure to act in unison to address threats and opportunities to the Somali people, including when these have involved foreign powers. Instead, Somalia and the Somali people have failed to produce leaders capable of rising above clan politics, even when ostensibly motivated by religion, in a manner that is not self-serving, either politically or materially. There is unfortunately no question that the actions of some Somali leaders have continued to pose a challenge to the creation of a functioning and viable modern state in order to preserve clanism as an alternative form of governance. Somalia has seen the institutions of the modern state often used to serve personal and clan interests rather than those of the wider community, making them ‘prizes’ to be fought over and captured.

In Somaliland these historic lessons were noted by local leaders following the violence and instability that preceded and then continued following the collapse of the central government, as well as the inter-clan conflict that affected the region during the early 1990’s. Through the Hargeisa National Conference, held from October 1996 to February 1997, not only was peace restored, but an active effort was undertaken to incorporate traditional Somali power structures within a modern state, thereby avoiding the toxic experience of clanism experienced in other regions of the former Somali state. This was most evident in the creation of a bicameral legislature incorporating a House of Elders (Somali: Gurti) in which representatives of the clans living in Somaliland sit in addition to the elected House of Representatives. Even though this hybrid system of governance seems to be relatively working for the people of Somaliland in preventing massive conflict among various clans living in this part of the world, it has failed to build functioning institutions and state. Even after more than two decades of relative peace and stability in Somaliland, there does not seem to be enough to build a functioning and viable state institution, and current institutions are coming under increasing strain as they remain flawed and dysfunctional.

The political and social crises that have been created by Somali leaders by exploiting and misusing the divisive face of the clan, while advancing their personal interest and their greediness for power and wealth, seem to be continuing to this day with no lesson learned from their past history. Unless Somali leaders learn and draw lessons from the past, and practice a new way of politics that advances inclusion, justice and equality rather than distorted clanism, nepotism and public fund misuse, factors which have led to Somalia’s current situation, the misery and anarchy will continue.

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Somalia, women in the rain

Beledweyne, Hiiraan, Somalia | Photo Frank Keillor
SOMALI POLITICS AND POWER RUNS OVER WOMEN AND THEIR ENVIRONMENT

CLAN BASED GOVERNANCE IS WHAT EMERGED OUT OF 21 YEARS OF CIVIL WAR. IF IN PASTORAL CONTEXTS CLAN-SHIP TRUST IS NOT QUESTIONED, IN URBAN ONES IT IS ABUSED AND MANIPULATED BY POLITICALLY AMBITIOUS MEN. WHILE INTERNATIONALS ENTER SOMALIA WITH MANY DIVERGENT AGENDAS, THE PRODUCTION OF CHARCOAL PUTS THE LIVELIHOODS OF PASTORAL COMMUNITIES AT RISK. THE EMPOWERMENT OF SOMALI WOMEN WOULD PRESERVE THE ENVIRONMENT AND IMPROVE POLITICS.

The Context/Environment

Since time immemorial, Somalis have survived in the Horn of Africa by herding camels, sheep, and goats. Pastoralism is their way of life and pastoral livelihoods are tied to the wellbeing of their environment. It is the women and children who are the first casualties of its degradation and mismanagement, the luckier ones being those who do make it to urban centers, thus, dealing with displacement becomes a survival mechanism.

The Environment in fact is compromised in various ways. The limited trees and shrubs that are available in the semi-desert, which remains a pastoral landscape, are turned into charcoal for job creation and for profit, while putting livestock and the livelihoods of pastoral communities at risk. Due to the influx of pastoral IDPs (internally displaced peoples), cities and towns that do not offer healthy alternatives become over populated and crime remains unattended too. Thus cities become a jungle of insecurity, substandard health and hygiene facilities. As a result, rapes and killings are not major surprise, but habitual occurrences.

Illegal fishing is one devastating marine problem along the Somali coasts facing the Indian Ocean and the Red Sea, stretching over 3330 km, the longest coastline in Africa. For the last 23 years, international fishing fleets have been continuously destroying reefs, using illegal methods and tools to get as much fish as possible of highly marketable species. By doing so they

The views expressed in this contribution reflect stance and political views of Fatima Jibrell and do not pretend to constitute a scientific analysis on the matter.
destroy all marine life that their tools catch. Artisanal fishing boats are also attacked and their nets cut by illegal fishing boats and fleets. As a result, fish factories and cooling facilities in Alula, Lasqoray and Bosaso are all closed. Mohamed Abshir Waldo, a known Somali researcher, estimates that in monetary terms the income Somalia loses on illegal fishing is worth more than all donated aid received from the international community put together.

Political Leadership
Somalia is an interesting spot for diverse international interests. Since its independence in 1960, it expressed a natural interest of wanting to unite all Somali regions in the Horn. This was a very daring policy. It set a new-ly independent Somalia against the World Order led by Somalia’s former colonizers. Without the political backing of their colonial powers, Somalia’s first Prime Minister, Abdirashid Ali Shamarre, travelled to Moscow and made a long-term pact with the former Soviet Union. Thereafter, Somalia has been in a foreign policy that puts most of its resources in the Ministry of Defense. After a few wars with Ethiopia, the economy and foreign policy both collapsed, affecting internal security and creating the civil war that set one clan against the other.

Clan based governance is what emerged out of the 21 years of civil war. Somaliland also, using clan politics, managed to progress from clan elders’ politics by voting through political parties for parliamentarians and a president during the last two free elections. The newly formed Somalia Federal Government instead has gained legitimacy mainly through support from International Donors and the UN despite the fact that it controls less than the city of Mogadishu. Unfortunately, internal quarrels and fights between the President and his Prime Minister escalated and distracted general governance and negatively divided the leadership.

The constitution of Somalia is in limbo. The cabinet and Parliament in Mogadishu are busy trying to change and revamp it without public consent. On the contrary, the majority of civil society institutions and organized regional authorities wish to see it implemented. In particular, they want the provision of the Federations of States to be realized as the Constitution stipulates. Federalism is a well-liked concept which people think will give more independence to regions. Furthermore, trust has not been nurtured and healed through effective reconciliation.

The internationals come in with many divergent interests. Different interests come in with the conflicting influences guiding the new Somali Government. Oil exporting and importing countries are united in their interest of the Somali sea lanes to be free of pirates; whereas, Somalis are more interested in securing the safety of their fishing communities and fish factories to be able to function and harvest enough to keep their fishing businesses afloat. Furthermore, some Gulf countries want to keep Somalia out of the oil and gas competition. And some of the interested countries, upset and surprise the political contestations with sudden buckets of money and buy the whole political outcome for their favored Somali male political candidates. Unfortunately, nobody dares to ask questions about corruption inflicted onto the system and about women in particular. A few needy women are paid pennies so they may sing for the corrupt leaders. Women, in general, have no power and recognition within clan or political/religious circles.

In reality, money coming to Somalia through political and aid channels does not trickle down enough to the makeshift foot soldiers who are young, naive and from pastoral environments. In pastoral contexts clan-ship trust is not questioned. This clan-ship calls for total trust and clan-ship trust is not questioned. Thus, these young men are the ones who are disoriented, confused and in military uniforms, whom one sees displayed on streets as government security forces. They are usually high on the stimulant kaat/mira. They often have gaunt figures with wide eyes, suppressing their hunger and disillusionment with this drug that numbs them till they die of TB, AIDs, or hepatitis and similar diseases. Clan-youth are continuously pushed to cities due to environmental destruction. Thus, these pastoral clansmen are a ready pool for hire trickling to towns in search of livelihoods.

Women and their children as well as thousands of unaccompanied children, the elderly and the challenged are negatively affected by this political upheaval that created warlord-like governance. They are left for women to protect and fetch for. Women and the family members under their care, in these horrible situations, are vulnerable, scattered, exposed and experience rape over and over again due to non-existent attention, care or even human sympathy. They live in open spaces or old and broken down government buildings. Yet these, so called shelters of the poor, are the first to be pulled down by government forces for security or money-making schemes, without considering the human lives that call these places home. These families are environmental IDPs displaced by repetitive droughts, insecurity or due to the fact that their pastoral land is used for charcoal harvesting, that is in the business of snatching limited forests and shrubs used by livestock that sustained families’ livelihoods. Rich men in charcoal trade are shipping from South Somalia and Central regions to the Middle East, in particular Dubai.

Northern Somalia, nearly a desert, is also crippled by charcoal harvesting from very limited trees and shrubs used for cooking energy in urban centers. The majority of charcoal traders are women trying to raise their children and care for their extended family’s unwanted members. These women traders use pastoral youth labor that are already internally displaced in urban centers. This activity is impoverishing pastoral livelihoods and is creating the fastest growing desert.

Somali Women in this context
The Somali constitution stipulates that women must receive 30% of all political and non political posts offered by Somali Governance at Lo-
cal, Regional and National level. Yet women leadership has been derailed from fair political participation; even though, the constitution dictates that less than 30% of women in Parliament makes it unconstitutional. Unfortunately, the United Nations Political Office for Somalia, who was the main referee in this regard, was unable to keep the constitutional promise. The proportion of women members in Mogadishu Parliament remains at only 12%, less than half of their quota.

With the funding and advice of International Community, this process further developed along the embraced direction, with the status quo accepted and justice compromised. The watchdogs, the Somali political patriarchs, exposed their intent. They never wanted to include women in decision making nor in management positions of big companies and businesses, including political power that owns and gets contracts; wheeling and dealing of power is dealt here and only in this way. It is also difficult to find professional women working in other sectors including contracts, transport, communication and money transfers, despite the fact that women are the biggest users of telephone companies and money transfer services. Women are less empowered because of their limited access to education, their service-giving role and lack of collective organizational institutions and inputs from donor community, as well as disinterest of highly educated women to join politics. Consequently, Somali women are left being behind.

If the international community strengthens their support for women and add their voices to the present female campaign, that is trying their best to achieve 30% of representative seats, a greater number of women will be encouraged to join, for example, the newly forming Puntland Parliament. This will precipitate to other regional and national governments that may get formed and include greater participation of women.

Women’s groups who are interested in political participation and advocacy are all financially unable to pay what is required to overcome this political struggle such as lobbying expenses including office space, transport, media and most of the capital needed to involve the clan elders, also known as Sultans, Garads, Malaaqs and so on. The selection of a parliamentarian is done by clan leaders and clan leaders are not given any allowances by known institutions, they are generally opportunistic and ask for a high price when the time comes for their services to be used. As a matter of fact, the President is voted for by the members of Parliament. The Parliament also votes for the formation of the President’s Cabinet. This is a big opportunity for those who allow their vote to be bought. Therefore, it is very difficult and in fact almost impossible for women to join such a huge old boys club where money is easily exchanged for favors all the time.

The urgency of the intervention needed is dire and women are disempowered by the fact that they are not considered a partner or player by internationals or UN representatives visiting the capital cities. Why is it a dire need for Somalia to eternalize and/or institutionalize Women Political Participation?

- For Somali Children to have clean water, education, and health care is a priority to women and women only.
- Women know that milk and meat are the main dietary requirements for Somalis and livelihoods will not be compromised through charcoal production, if women are in political decision-making.
- Women politicians are eager to move politics towards the ballot box as soon as possible.
- Somali women will work very well with donors toward self-reliance for Somalia and respectful relationships and trade.

Missing this opportunity of supporting women to empower their political process is a major failure for Somalia, International supporters, UN and Transparent Donors as well.

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1 See International Crisis Group report on the formation of the current Federal government.
Hargeisa, Somaliland, bus station

Photo | Tristam Sparks
HOW DID SOMALILAND EMERGE AS A STABLE AND PEACEFUL POLITY?

NOTWITHSTANDING THE CRUCIAL ROLE PLAYED BY ELDERS, PEACE AND STABILITY IN SOMALILAND IS AN OUTCOME OF A CONVERGENCE OF PRE-WAR AND POST WAR FACTORS. THE ABSENCE OF INTERNATIONAL TECHNICAL AND FINANCIAL HELP PUSHED SOMALILANDERS TO LOOK TO THEMSELVES AND RELY ON DOMESTIC RESOURCES.

Introduction

In the backdrop of the crisis and inter-clan violence in the South-central Somalia, a self proclaimed republic in the North West – Somaliland – has emerged as a peaceful, functional and relatively democratic polity in the past two decades. In contrast to the faction ridden and unstable territory of much of Somalia, Somaliland, had reinstated a functioning government and maintained a considerable degree of political stability.1 The country is still weak and poor with very rudimentary infrastructure and meager resource basis.2 But it has managed to establish a degree of stability that excels much of other Somali territories and a democratically elected government which in the words of Hansen and Bradbury is “matched by few other countries in Africa and the Middle East.”3

To be sure, just like its counterpart in the South, Somaliland had its own critical moments of violence, warfare, and banditry. However, it has managed to fully recover from these initial setbacks and realize a stable polity that enjoys greater peace and

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1 Renders, Marleen and Terlinden, Ulf (2010) “Negotiating Statehood in a Hybrid


legitimacy. Its successful efforts in the past two decades received a bunch of appreciation and applause from academics, policy makers, journalists and commentators. For Matt Bryden (2005), Somaliland represents a “rare success story” in a region that is epitomized by endemic poverty, conflict and home to some of the world’s worst regimes.5 Mark Bradbury (2008) described the small polity as “one of the most stable polities in the horn,” that boasts a “popularly elected government and a political system with democratic credentials to rival any in the region and most Muslim states.”

5 According to Brickhill and Johnson (cited in Jhazbhay, 2009), Somaliland represents an “inspiring story of resilience and reconstruction, and a truly African Renaissance that has many lessons to teach the rest of Africa and the international community.”6

These statements are not mere contentions by anxious scholars and commentators. Somaliland’s bottom up and indigenous state building approach has in fact been at the centre of the burgeoning literature on hybrid state building.

The purpose of this article is to discern the reasons and factors that led to the emergence of a peaceful Somaliland as compared to the crisis and violence in South-Central Somalia. The study forms part of an ongoing field research project and is based on data collected from interviews, observations and informal discussions with Somalilanders in Somaliland.

Beyond the Master narrative - putting the role of the elders in context

The master narrative most frequently presented accounting the development of a peaceful and widely legitimate state of Somaliland is the key role played by clan elders. Peace in Somaliland is almost invariably attributed to the role by traditional leaders and institutions.7 Indeed, the clan elders were quite crucial in the fight against Siad Bare’s regime during the war as well as in post war reconciliation, institutional building and conflict resolution in Somaliland. They are the “heroes” of Somaliland who guided the country to victory and post war peace, popular legitimacy and economic resurrection.8

Yet this narrative centering on the clan elders alone obfuscates other critical contextual factors that enabled – or rather forced – the elders to play the role they did play. The question of how the elders came to play the role that they played, has rarely been asked and properly addressed in the literature. An incorrect perception is that the elders chose their roles proactively and as if this sprang essentially from the Somali tradition. Although reconciliation has always been on the “to do list” of clan elders in accordance with the Somali tradition, practicing politics has not. The elders who have been engaged in the politics of the war and the legislative branch of the post war state for instance are referred to by Somalilanders as “politically active clan elders,” revealing the fact that these elders are involved in matters that supersede their traditional clan responsibilities.9 Elders often deal with clan politics rather than state politics.10

Therefore, a proper analysis of the post conflict reconstruction role of elders in Somaliland shall be made in the background of the civil war and context of peculiar post-war developments within Somaliland. Unlike those in the south, the elders in the north –particularly the Issaq11 – were quite engaged in the war, providing the Somali National Movement (SNM) – the movement fighting against the Siad Bare regime with moral, logistics and human support. A council of elders, as advisors to the movement, has in fact been part of the SNM leadership structure since the mid 1980s.12 Despite their roles as advisors, the influence and authority of the elders within the SNM grew steadfastly. In early 1990, the elders were already eminent and powerful actors within the SNM.13 Hence, in light of this, the post war role of elders was not something that suddenly popped up with the end of the war. Rather, it was an extension of their roles during the war. The pre-war roles provided a platform to play a similar role in the reconstruction of Somaliland after the war.

In addition, after the end of the civil war in January 1991, there were some peculiar developments within Somaliland that forced the elders to continue the job they had started. Due to the trauma of persecution under the leaders of the South, there was popular pressure not to return back to the 1960 Union with the Italian Trust territory of Somalia.14 Against the intentions and wishes of the top SNM leadership, the elders had to be the mouthpiece for these popular sentiments.15 Moreover, the SNM, which was presiding over a two years interim ad interim government of national unity that included the Issa and Habr Yunis, decided to follow the leaders of the south’s example.16

The population of Somaliland is divided into major sub units of: Habar Yunis and Idaqale (Ghraajis together), Habar Ja’lo, Habar Awal (Issa Musa and Saad Musa), Arap, and Ayub

10 Renders, Matt (2004) “Somalia and Somaliland: Envisioning a Dialogue on the Question of Somali Unity” in African Security Review 13(2), p. 24; Somaliland was created as a British colony in 1880s. It was granted independence on 26 June 1960, but joined the Italian trust territory of Somalia in the South within five days on July 1, 1960. Today, Somalilanders argue that the declaration of independence in 1991 was not a case of secession. Rather, it was an act of termination of their marriage with the south to reclaim the sovereignty they forfeited in 1960.

15 The SNM had no declared agenda of secessionism. Even after taking control of the northwest, there were steps by top SNM leadership to take part in the peace conferences in the South. The declaration of independence was forced on the SNM leadership by the elders due to a strong popular pressure and pushed by the rank and file of the SNM.
ministration, was consuming itself and succumbed to an internal power struggle. Once again, the elders needed to step in to mediate between rival SNM factions and ensure a smooth transition to a civilian rule. Added to all these, although independence was declared four months after the end of the war (18 May 1991), international recognition remained elusive. And without international recognition, there was little aid and international support for Somaliland. Hence, the people in the north had no one to depend on but themselves. They had to make peace conferences within the confines of their territories and at the disposal of their own resources.16

Clan Elders in the Somali Traditional Law – the Xeer

The Somali society is founded on a customary Somali law known as the Xeer.17 As a form of ‘social contract,’ the Xeer constitutes a set of unwritten laws that govern relationships between the various segmentary lineage groups of the Somali society18; Personal and collective security is guaranteed by the application of the Xeer.19 Liability is shared collectively. If a man kills another man, for example, the decent group of the culprit is responsible for compensating the descent group of the victim. The Xeer is enacted, deliberated and transmitted by the clan elders.”20 The elders are a “clan’s adult married men who decide on an egalitarian basis and are collectively responsible for the affairs regarding their descent group.” A group (council) of these elders who gather for deliberation on specific issues of governance, conflict resolution and general well being are known as Guurti.21 A guurti is found at each level of the Somali segmentary lineage group. Members meet for deliberation when circumstance demand. Over time, however, the nature and scope of the guurti has changed. Since 1993 a national guurti of Somaliland has, for instance, been formally and permanently institutionalized as the upper house of the parliament. The elders meet up in open councils (Shirs) to discuss relations between groups, work out Xeer contracts, settle disputes, or decide upon war or peace.22 They are the “professional negotiators and mediators in all clan matters.”23 Yet, the acquisition of the authority of elder is not a matter of age only. Elders acquire their authority from a variety of attributes and qualities. These include: wealth, wisdom, religious knowledge, political acumen, oratory skills or a combination of all these.24 Besides, the authority of an elder is not an inherent attribute of the individual. An elder rather is a representative who receives a delegated authority. In council meetings, he represents and is backed by his clan.25

The institution of elders is different from leaders. Elders are found in all segmentary lineages, and can be all adult married men, heads of families, heads of the so called diya paying groups, akils.26 Clan leaders, on the other hand, are found at the level of a clan only. Identified with different names (Sultans, Gaarads or Ugaas), the clan leader acts as the chief of the clan. In contrast to the elder, his position is hereditary.27 He enjoys respect and is presumed to be wise and knowledgeable. Although he might also be involved in tasks of mediation and peacemaking within his own clan and other clans, the authority of the leader is essentially symbolic. In practice, it is the elders who are engaged in the actual deliberation of the Xeer, tasks of reconciliation, conflict resolution and decision making.28 These decisions by the elders are then approved by the clan leader as the head of the clan.29

Reconciliation, Conflict Resolution and State building by Elders

The major post conflict reconstruction role played by the elders lies in the extensive conferences they proposed with the view to restore relations between communities affected by the war, mediating and resolving conflicts between various post war factions, and laying down the institutional foundation of the state.30 A research output by Interpeace (formerly War-torn societies Project International, Rebuilding Somaliland: Issues and Possibilities (2005), recounts 30 community conferences undertaken between, 1991-1996.31 A publication by the same organization produced in partnership with the Somaliland Academy for Peace and Development in 2008 put the number at thirty nine.32

18 Ibid
19 Ibid, p.161-162
21 Interpeace and Academy for peace and development, p.13
23 Ibid, p. 69
24 Ibid; Farah and Lewis, p. 359
25 Bradbury, 1999, p. 69
26 The Somali social structure is divided into clan family, clans, sub clans, lineage, and diya paying groups. The diya paying group refers to a collection of closely related people who collectively receive and pay blood compensation – diya. The diya paying group is the most politically stable unit in the Somali societal structure. The head of the diya paying groups, akils, were the core members of the elders and the guurti who played a central role in post conflict reconstruction after the war. For on social structure of Somalis, see Lewis, I. M (1999) A Pastoral Democracy: A Study of Pastoralism and Politics among the Northern Somali of The Horn Of Africa, New Introduction by Said Samatar. Afterword by Lewis. Oxford: James Curry Publishers.
27 Bradbury, 1999, p. 69
28 Ibid; it is not always clear if the notion of elders also includes clan leaders. Much of the discussion on elders and post conflict reconstruction in Somaliland rarely makes a distinction between the two and other similar actors such as religious leaders. In practice, however, Somaliland’s peace conferences were characterized by a comprehensive participation of all major traditional and religious actors. Clan leaders participated, not simply in approving decisions but also engaging in peace conferences themselves. Religious leaders made important interventions to resolve deadlock among conference participants.
29 Ibid
30 Interpeace and Academy for Peace and Development, p. 13
31 Interpeace is an independent organization based in Zurich, Switzerland. In partnership with local centres, interpeace carries out research projects all over the Somali region. In Somaliland interpeace collaborates with Academy of Peace and Development based in Hargeisa.
Some of these conferences were national involving all northern lineage groups, while others were regional or local. The objectives of the conference varied according to the pressing needs of the time. Some were carried for the purpose of reconciliation, others for conflict resolution, still others for purposes of reconciliation and institutional building. In most inter-clan conferences, the proceedings were a matter of negotiations between the elders sitting under a shadow of a tree. In the larger regional and national conferences, the elders were supported by advisors, professionals, politicians, military officers, businessmen, intellectuals and secretaries.34

Inter-clan Reconciliations
The first crucial task the elders picked was reconciliation and confidence building between communities whose relations has been damaged by the war. This is because the war in the north was not only between the Issaq dominated SNM and the Somali National Army but also between the SNM forces and non-Issaq clan militias, armed by Siad Bare to fight against the SNM and the Issaq. Hence, when the SNM took control of the northwest following the end of the war, there were fears of retribution among non-Issaq-clans. This, however, did not happen to the credit of elders. Reconciliation efforts are dated to as early as 1989 in which Issaq elders, who were members of the guurti of the SNM, signed a ceasefire with elders of the Dhulbahante.35 Such endeavors were intensively carried out locally, regionally and nationally after the end of the war.36 In a series of meetings and clan conferences, elders from Issaq, the Gababuursi and Dhul-

The violence raging between clan affiliated militias of the Issaq, the resolution of these conflicts needed an external third party intervention.37 Initial efforts of mediation by the Issaq guurti met with resistance and proved unsuccessful. As a result, in both cases, the violence was stopped with an intervention of third party mediators from Somaliland and the Diaspora. The first round of violence was brought to an end with an intervention of Gababuursi elders, while the second one was stopped with mediation efforts of a peace committee from the Diaspora called Somaliland Peace Committee.38

Conflict Resolution - Mediation
The other major role the elders took was mediation of post war conflicts that threatened to push Somaliland into the mayhem and chaos of the South. Following the end of the war, the elders instigated a number of peace and reconciliation conferences with the view to mend broken relationships between Issaq and non-Issaq clans. However, they did not do much to redress schisms within the SNM and various Issaq sub-clans. This has proved costly in the sense that two rounds of violence between factions of the SNM and clan affiliated militias turned Somaliland in to a battle ground. The first round of fighting occurred between 1992-1993, while the second – the more severe and protracted one – happened between 1994-1996. Existing historical rivalries between intra Issaq clans, competition for power and control of key resource centers – Burco, Berbera and Hargeisa – were the major derivatives of the conflict.

The Burco, the Boorama and the Hargeisa conferences were the three major conferences whereby the direction and the nature of the state was determined. In Burco (1991), the elders made a decision to end the union with former Italian Trust territory of Somalia. At the Boorama conference (1993), often described as “the height” of all the clan conferences, the elders laid out the hybrid institutional framework of the state. A national guurti of Somaliland was formally and permanently institutionalized as the upper house of the parliament and the highest organ of the state. The Hargeisa conference, held from October 1996 to February 1997, took the country to the next level. It transformed Somaliland from a clan based governance system into a multi party democracy. At the conference, elders approved a draft constitution that replaced the national charter (adopted at the Boorama conference) and endorsed a schedule for a transition from the clan system of governance to a democratic multi party system.43

The institutional contributions of the elders were particularly made in nationwide clan conferences. In national clan conferences (Shir beeles), the delegates of all the northern clans, assisted by advisors, politicians, civil service professionals, military personnel and secretaries has laid down the institutional framework of the state. 40

33 WSP International Somali Program (2005) Rebuilding Somaliland: Issues and Possibilities, Asmara: Red sea press Inc, p. 64; the Burco (1991), Boorama (1993) and Hargeisa (1997) conferences were the three major national conferences that involved all the northern clans. The Sanaag Grand Peace and Reconciliation conference among clans of the Sanaag region was the major peace conference at regional level. Others were mainly local involving two or more clans.
34 Bradbury, 1999, p. 73
35 Bradbury, 2012, p.88
36 Interpeace and Academy for Peace and Development, p.15
37 Rinders, 2012, p.88
39 The Somaliland peace committee
40 Farah and Lewis, p. 358
41 Farah and Lewis, p. 350
42 Bradbury, et al, 2003, p. 462
43 Hansen and Bradbury, p.464; the multiparty system kicked off with the conduct district elections in December 2002 and a presidential election in April 2003. Yet the proper functioning of the system was challenged by several factors, primarily, by the traditional kinship system. At times, elders were reluctant

Institutional Building
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was a transient organization established by Somaliland intellectuals in Diaspora with the prime objective of mediating the 1994-1996 conflict. The work of the committee illustrates the significance of citizen and community based peace initiatives. The committee facilitated meetings between elders of the parties in the conflict and financed the negotiation processes. Their efforts bore fruit preventing the degradation of Somaliland in to a Somalia type quagmire. For more on the Peace committee, see Farah, A. Yusuf and Bryden, Matt (n.d) The Peace Committee for Somaliland: Case study of a Grass Roots Peace-making Initiative, UNDP emergencies Unit from Ethiopia.
Other Explaining Factors
Although bottom up efforts of peace and state building were crucial, there were also other factors which contributed to peace and stability in Somaliland. These include: the weight of indigenous institutions, the extent of the war in the north, the existence of common values and cross cutting interests, and a limited resource base in the north.

Weight of Indigenous Institutions
Against all the purge under colonial powers and post colonial state of Somalia, indigenous institutions in the north seem to have survived better than those in the south. In the wake of the total collapse of the apparatus of the Somali state in 1991, indigenous institutions in the north were on guard to shoulder their traditional responsibility of reconciliation and peacemaking than those in the South.

The Extent of the War in the North
Although there were clashes between the SNM and non-Issaq clan militias, the war in the north was mainly concentrated in the Issaq clan held territory. The destruction and killing between northern clans in the north was relatively limited compared to that in the south. This limited scope of the war in the north has later on provided a political space for a smooth process of reconciliation. In addition, in winning the war, the Issaqs had emerged as powerful actors inducing non-Issaq clans to opt for peace rather than violence. In contrast, the armed forces in the south were more or less in a comparably limited military posture. Foreign aid was not available. The destruction and killing between northern clans in the north was relatively limited compared to that in the south.

Shared values and Common Interests among Northern clans
It also appears that northern clans have maintained relatively closer socio-cultural linkages and economic interdependence than those in the south. The clans in the north, whose composition is not as diverse as those in the South, have a long history of intermingling, interaction and intermarriage. Over the years, this has culminated in the development a common Xeer. In addition, shared values among the northern clans were also reflected by the composition of the SNM. Although it remained a predominantly Issaq organization, the SNM was also able to attract members from the non-Issaq clans. These non-Issaq members of the organization were instrumental in the reconciliation between Issaq and non-Issaq clans after the war. Negotiations between the Issaq and Gadabuersi, for instance, were facilitated by the efforts of Abdirahman Aw Ali Farah, one of the few SNM commanders from Gadabuersi.

Besides all these, there were also strong shared economic interests among the clans in the north which served as powerful incentives to peace. The Dhulbahante and the Warsangeli, for instance, have investments in the traditional Issaq territories of Burco, Berbera and Hargeisa.

To little to fight for
The resource base which existed right after the end of the war is another major explaining factor to peace and stability in the north. As opposed to the south, there was relatively little incentive for fighting in the north. Following the demise of the Somali state in 1991, there was “a wealthy resource base” in the south. Infrastructure, industry and agriculture were developed in the south. Mogadishu, the political capital to fight for, happened to be in the South. Foreign aid was quite concentrated in the south. In the north, on the other hand, many of these conditions were absent. The north has always been an economic periphery. Foreign aid was not available. There was just little money; little problem.

Conclusions
To conclude, notwithstanding the crucial role played by elders, peace and stability in Somaliland is an outcome of a convergence of pre-war and post war factors. The elders in the north had the political space and platform due to their active pre-war involvement. In addition, after 1991, the post war dynamics in Somaliland, particularly, the absence of international technical and financial help which other post conflict countries receive, pushed Somalilanders to look in to themselves and rely on domestic resources. This internal focus in turn has enhanced the legitimacy and effectiveness of post war peace and state building efforts. In contrast, in southern and central Somalia, there existed a number of incentives to compete and fight for. Weakened by years of an anti-tribalism campaign, and with some of them aligning with warlords of their own clans, elders in the south were not in a position to pick up their traditional roles of reconciliation and peacemaking. Besides, the vast resource base made available from external and internal sources at the wake of the war provided an enormous motivation for which to compete and fight. Furthermore, unlike the north where the Issaq dominated SNM has emerged as a powerful force, there was no any clear dominant group that emerged from the war in the south. Hence, in the absence of such a power to dictate peace, the various clan based militias kept on fighting for years.
Berbera, Somaliland

6 June 2010, Somalia, Photo | YoTut
Although Somaliland’s sovereignty remains unrecognized by any country, the state boasts a functioning constitutional democracy and has enjoyed relative peace, stability and a flourishing rule of law since 1991. Yet, the country is not free from social, economic and political hurdles that impede its progress towards the national vision of a brighter and secure future for its entire people.

Introduction

Since the collapse of Somalia’s central government in early 1991, the people of Somaliland and their government have managed to survive and steer clear of the chaotic circumstances that besieged South Somalia. The country was able to avoid the depredation of the warlords and radical Islamists that has afflicted the rest of Somalia by organizing and holding locally driven reconciliation and peace conferences convened and led by clan elders and initially by the Somali National Movement (SNM) leaders.

In the early days of state-building, the SNM leadership inherited a region devastated by war in which tens of thousands of people were killed, half the population was displaced, the main cities of Hargeisa and Burco were destroyed and the countryside was left littered with mines and unexploded ordinance (Abokor, 2005).

In the present-day, the country is still reeling from and continues to experience challenges that emanated from that decade long conflict (1982-1991) between the people of Somaliland and the Siyad Barre regime, which is currently compounded and aggravated by poverty, unemployment, a youth-bulge and poor economic conditions. Some scholars even extend these challenges up to political complications inter alia lack of recognition, since no state recognizes Somaliland sovereignty and political tensions and insecurity exist in the eastern parts of the country.

On the other hand, it is widely recognized that the Somaliland government does not have the adequate capability to bring effective solutions...
to address these issues, which need quick-fixes and immediate remedies so as to avoid, or at least to reduce, their potential negative consequenc-

ence from the rest of Somalia and formed the Republic of Somaliland in 1991. Nevertheless, in the early days of the state-formation, the country experienced several years of inter-clan conflicts and social disruptions which in turn exacerbated the destruction of the entire basic social and economic amenities. Although the international community has not recognized Somaliland’s declaration of independ-

The Republic of Somaliland is locat-
ed at the tip of Horn of Africa. It is geographically positioned at a jun-
ture between the Horn and the Ara-
brian Peninsula, with coastline on the red sea. Somaliland has experienced and suffered from the devastation of many years of civil war and internal conflicts that resulted in extensive poverty, violence, heavy internal dis-
placement and total collapse of basic infrastructures throughout the coun-
try. The rate of life expectancy, infant and maternal mortality, morbidity, as well as, level of literacy have all remained among the most severe in the world. In 1988, the Siyad Bare re-
gime committed war-crimes against the people of Somaliland, which was among the events that led to the de-
mise of Somalia’s central government through regional based armed rebel-
lions. As result, the people of Soma-
liland later declared their independ-

1 In order to respond to this arduous situation, the Institute of Peace and Conflict Studies at the University of Hargeisa, as an aca-
demic institution, has devoted effort and time to produce this policy paper, with the existence of time constraints, to bring these alarming is-

2 The infant mortality rate in the five years preceding the survey is 72 deaths per 1000 live births and the under-five mortality rate is 91 deaths per 1000 live births. This means one in every 14 children die before reaching age one, while one in every 11 children does not survive to their fifth birthday. This data was retrieved from http://www.unicef.org/somalialand/SOM_resources_somalilandmics4sum.pdf. (ac-
cessed November, 15, 2013).

3 From the Net Attendance Ratios (ad-
justed), school attendance is low and only 51 percent of children at primary school age (6 to 13 years) are attending primary school and only 21 percent of children of secondary school age (14 to 17 years) are attending secondary school. More boys than girls are attending primary school; the Gender Parity Index (GPI) is 0.9. However, in secondary school the GPI drops to 0.7, indicating that even fewer girls than boys attend secondary school, retrieved from http://


36
Reflections on Somaliland’s perspectives on peace and development in the last 20 years show that the traditional elders played the central and legitimate role in the creation of peace in Somaliland. Furthermore, it seemed obvious that they should be involved in the future formation of state structures. The Somali culture recognizes the traditional leaders as the representatives of the clans. They speak on behalf of their clan and have full authority to make decisions on their behalf. However, it’s arguable whether this traditional system is compatible with the modern political systems, such as multi-party democracy, since kinship politics provide fertile ground for patronage, corruption, nepotism and clanism.

Hence, the foremost challenge that Somaliland is faced with today is how to strengthen governmental institutions and reduce the influence of traditional structures. Since Somaliland’s government structures and its judiciary system were initially built on a clan based policy approach, which has revealed numerous weaknesses, it is necessary today to reverse that system and employ new modern methods that allow institutions, such as the executive, legislative and judiciary on the one hand and traditional structures on the other to work jointly together and find a balance of power and which particularly, produces and makes available capable law enforcement agencies. Moreover, the customary law xeer and the official or formal judicial systems should be realigned rather than continuing as two parallel and conflicting systems.

**Economic Challenges**

As long as Somaliland is not officially recognized it will be blocked from getting direct funding and international loans apart from soft aid. As a result of this, the country is plunged into a situation characterized by a semi-permanent economic crises and financial dire straits which brought about the inability of attending to essential basic infrastructure. Obviously, lack of International recognition may act as an impediment to economic growth, but it’s not the sole reason for a lack of development in Somaliland. Flawed government policy choices and action is also to blame.

The government should strive to put the economy at the heart of its policies and plans and not wait for an oil boom or international recognition to address the needs of its populace. The government needs to substantially increase the mechanisms of tax collection and revenue generation. The Somaliland government must also regulate the economy to ensure its smooth transition and economic growth. The role of the central bank is currently bounded to limited services including saving accounts and needs urging to expand its services.

**Human Trafficking**

In recent years, Somaliland’s youth of both sexes have become the victims of locally and regionally organized human trafficking operations. As noted by the International Organization for Migration irregular migration.

The majority of Somaliland population, for both genders, is below the age of 30 years and constitutes 75 percent of the entire population. Youth are the key to Somaliland’s future existence and continue to be relentless players and advocates of social transformation and development in many spheres of life. They make an essential contribution to today’s societies and are expected to prepare a better future for the coming generations. Today’s young people are considerably more educated and have high expectations of a better life than the older generation.

Certain factors, which are of critical importance in realizing these expectations, are that youth are limited in their access to quality education and employment opportunities. Somaliland’s young people have limited opportunities when it comes to job markets. The absence of proper infrastructure and public commitment produced chronic unemployment, which could turn into negative social momentum in the present and future. Thus, to respond to this conundrum, the Somaliland government should strive to create more jobs through development and infrastructure projects to alleviate the saturated unemployment rate of the country.

**Youth bulge**

The government of Somaliland should adopt comprehensive policies that ensure the socio-economic development of youth. This can be achieved by empowering youth through education, training, and job creation opportunities. Additionally, efforts should be made to reduce youth unemployment and underemployment.

**Economic Opportunities**

Somaliland’s government must also work towards creating an enabling environment for private sector development and entrepreneurship. This can be achieved by simplifying bureaucratic procedures, providing access to finance, and investing in infrastructure and human capital.

**Social Inclusion**

The government should ensure that youth are included in decision-making processes and have a say in policies that affect them. This can be achieved by establishing youth councils and involving youth in community development projects.

**Conclusion**

In conclusion, Somaliland’s youth are a valuable resource that can be harnessed for the country’s development. The government must take a proactive role in empowering youth and ensuring they have access to education, employment, and social opportunities. By doing so, Somaliland can ensure a bright future for its young population and a prosperous economy.
has dramatically increased among the youth in Somaliland, particular-

ly among school-leavers, secondary school and university students and graduates in all the major towns. As a result, there have been serious nega-
tive social, economic, and psychoso-

cial repercussions on the country as a whole.

This ill-fated process of human traf-

ficking generally involves two path-

ways. The first trend is taking peo-

dle from Ethiopia to Yemen whereby

Somaliland acts as a corridor and

another one is carrying people from

Somaliland to Europe through Libya

and the Mediterranean Sea. There are

also well-organized human trafficking
groups that operate as a network
throughout the region from Libya to

Somaliland and from Somaliland to

Yemen. This is a real danger that may
jeopardize the peace and stability of

the country both now and in the near
future.

The general public sentiment is that

the prevalence of irregular migration
of youth in Somaliland has reached
alarming levels and is getting out of
hand. Therefore, there is an urgent

public appeal for irregular migration
to be addressed in a holistic and com-
prehensive manner by focusing on its

root causes, responding to its effects
and improving international coopera-
tion. The effort of containing this so-
cial crisis should be spearheaded by
the government in collaboration with
regional and international bodies.

Frequent Elections which the Coun-
try Cannot Afford

The multi-party elections present a
number of challenges for Somaliland.

In the first place, Somaliland has demo-

onstrated that it had the capacity to

hold peaceful elections15, which were
deemed reasonably free and fair by

international observers. The Na-

tional Electoral Commission (NEC) also

proved its capacity and credibility in

overseeing the democratic process

(Abokor, 2005). However, Somaliland
elections have become a real threat to
peace as the system of democracy is

a novelty with an unpredictable end
result or tail spin for the people and

their way of life.

Apparently, although multi-party de-
mocracy in Somaliland was intend-
ed to move Somaliland away from
clan-based politics, the influence of
clan politics on the elections remains
strong. Every election creates a po-

litically charged atmosphere, which

raises anxiety among the population.

Thus, on the one hand, there is the

fear of the possibility that every mi-

nor disagreement about the election
results could escalate into more open

conflict among the competing politi-
cal groups and on the other hand, the
country cannot economically afford
to hold elections every two years.

EXTERNAL CHALLENGES

Lack of International recognition

Lack of International recognition is a
stumbling block to the peace and
progress of Somaliland since it denies
the country access to international
economic linkages and assistance.

Thus the main economic and resource
re-distributor and development of
the country is the small taxation
that is imposed on its people due
to a number of political parties. However, the
constitution limits the number of parties able to
take part in the national elections to three. To
become an accredited party, political organiza-
tions held district council elections in 2001 and
2012 and had to gain 20 per cent of the votes
in four of Somaliland’s six regions. The current
ruling party is called Kalsooni Party and there
are also two opposition political parties, UCID
org/Files/SOMALILAND_ELECTIONS_RE-

The following are the different types of
taxes which the Somaliland state is collect-
ing: Local Government Unified Tariffs Law No.
12/2000 (Somali), Ports Tariffs Law (it is be-
lieved that this law is based on the 1985 Regula-
tions), Circulation Tax Law No. 82/96, Sales Tax
Law No. 84/96, Registration Tax Law No. 83/96,
Aviation & Airport Tax Law 10/1999, Airports
Security Tariffs Law - Law No. 61/2013, Post
& Telecommunication Taxes Law No. 11/1999,
Public Contracts Law No. 79/1996, retrieved
from http://somalilandlaw.com/somaliland_
public_finance_law.html (accessed November
2013),

International support such as direct
investments and loans from the interna-
tional financial system are not possible in the
current status of Somaliland. 65% of the revenue
that Somaliland collects from its citizens is spent
on security related activities. The government
does not directly handle aid received from the
UN and INGOs.

15 The Somaliland constitution defines
a political system that is based on a democratic
multi-party structure, in which the head of
state, parliament and district councils are di-
rectly elected by the public through a secret
ballot. Since Somaliland’s politics is very much
dominated by competing clan interests, the ad-
vent of multi-party politics in 2001 gave birth
needs to take into account. Firstly, these talks are non-binding and therefore may lead nowhere; secondly, the Somalia federal government enjoys a critical advantage over Somaliland including juridical recognition, which implies privileged access to external resources\(^{19}\). Therefore, the government of Somaliland needs to be very careful and conduct wider consultation with both local and international experts before taking the talks to any further serious stages otherwise it can cause an internal conflict and backlash at home.

**Recommendations**

- The Somaliland government needs to prioritise the urgent national issues and shift the focus to solving the current circumstances within the country that may put the peace and stability of the country at risk. The above stated impediments and challenges like weak institutions, unemployment, human trafficking and terrorist threats need to be reviewed and should be presented to Somaliland’s international supporters as immediate concerns.
- When it comes to challenges from global or regional terrorist and human trafficking actors, Somaliland has to work closely with countries in the region in areas of security and protection to tackle the issues effectively.
- International recognition is a significant issue, which needs the development of a new creative and adroit strategy. Part of this strategy is to proceed skilfully with the talks with Somalia. Somaliland-Somalia talks should have a clear strategic agenda, which avoids the path to a new round of war.
- The areas of long running conflict such as the eastern regions must be settled peacefully and formally.

\(^{19}\) The Agenda was to open dialogue for the future setting between Somaliland and Somalia but the talks were very difficult because the two agendas prepared by the two parties were completely opposite each other. Somaliland wanted to convince their brother Somalia to let go and accept their statehood but in contrast the delegation from Somalia attended in order to convince Somaliland that Unity is in the interest of both parties. From the international community, there has been no direct mediation but they are monitoring the negotiation between the two parties.

**References**


Untying the camel

Photo | Shafi
SOMALILAND’S 20 YEARLONG REMARKABLE DEGREE OF STABILITY HAS NOT TRANSLATED INTO AN EFFECTIVE STATE-BUILDING PROCESS. DIFFUSED CORRUPTION, HYBRID INSTITUTIONS, MISUSE OF POWER, AND A HALF-BAKED DEMOCRACY HAVE FAILED TO SHIFT THE COUNTRY FROM THE PAST SOMALI STATE-BUILDING EXPERIENCE.

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Introduction

Peacebuilding in Somaliland is celebrated mainly because of the absence of a significant conflict, in sharp contrast with the prolonged wars in south central Somalia where conflicts rage between evolving factions. The apparent assumption in this is that peacebuilding and state-building are mutually inclusive. However, if we go beyond the tendency to rationalise success by its face value and measure the state against the object for which it was established, peacebuilding in Somaliland has yet to produce the state envisaged by the people. This is due to the fact that the emergent state in Somaliland is not necessarily free from the conditions that led to the collapse of the Somali state of which it was formally a part.

Building peace for statehood?
Peace in Somaliland begun at the grassroots level with clan based meetings between the clans opposed/loyal to the Somali National Movement, an armed group which was instrumental in the removal of the Somali military dictator, Mohamed Siyad Barre, from power. After the ousting of Barre, most of the northern regions fell into the hands of SNM and there was little or no resistance to their dominance by the less armed clans in the region. This facilitated the SNM in pursuing a policy of trying to win the hearts and minds of anti SNM clans by encouraging inter clan dialogues (Farah & Lewis 1997). Lured by the success of these small scale peace initiatives,
the SNM embarked on the bigger endeavour of organising the first major peace and reconciliation conference in Burao in 1991 (Bradbury 2008). In this conference, the aim was to enhance SNM’s legitimacy in the region but it went far beyond this and declared independence from the rest of Somalia against the wish of SNM’s top leadership (Ismail 2009). In spite of initial popular public approval following the declaration of independence, political conflicts erupted initially in Burao and later in Berbera between the Isaaq sub-clans mainly in relation to the sharing of the political and economic resources of the newly founded state.

The second major peace conference in Somaliland was a response to this conflict and it occurred in Sheikh in October 1992 to bring the clashes to an end and lay the foundation for a larger conference aimed at reinventing and giving impetus to the new state. This conference was held in Boorama in 1993 and was largely manipulating by urban based elites such as businessmen and professionals who organised and prepared the agendas, formed the core technical committees, and deployed secretariats to assist the elders in their deliberations (Farah & Lewis 1997). The most significant state-building outcome of this conference was the fact that the SNM administration was removed and that a non SNM leader, Mohamed Ibrahim Egal, was elected. Egal’s election did not, however, go unchallenged as some sections of the major clans refused to recognise his administration which led to renewed armed conflict which broke out in the capital Hargeisa and Burao in 1994 and lasted until 1997. According to Balthasar (2013) Egal used this conflict as a means to build a viable bureaucratic state by integrating those perceived to be spoilers into his administration and doing away with them after neutralising their spoiling ability.

Egal’s strategy of neutralising the spoilers carries weight when read together with Menkhau’s (2003) proposition of the challenges a spoiler can present to peacebuilding. He identifies three types of spoilers in southern Somalia, namely: those spoilers who perceive that their due share in the state is not given, those who have a solid interest in maintaining lawlessness, and those who are used to the status quo and seek to minimise the risks that may emerge from the new state institutions. In Somaliland the first category presented the most threat to peacebuilding and state formation and this is that which Egal was able to overcome. Egal’s neutralisation of spoilers facilitated peace talks between the warring parties both at the community and political level. At the community level, clan based peace initiatives aimed at healing the scars of the conflict and at facilitating a conducive environment for political agreements between the warring sides began in various villages on both sides of the divide while, at the political level, politicians from both camps demonstrated a willingness to compromise for the peace to prevail and the state-building to continue.

Regardless of the strategies adopted to overcome these hurdles, it is important to note that the central object of the peacebuilding process in Somaliland was to build a state. The important question here then becomes what kind of state Somaliland desired to achieve. To understand this, it is imperative to make reference to the recent Somali state-building experience, as this would allow us to comprehend the form of state Somaliland wished to avoid creating. In their book, African state: reconsiderations, Samatar and Samatar (2002) identify five forms of African states, namely: 1) the integral state, where the state delivers public goods and generates ‘moral and intellectual bonding’ with its populace; 2) the developmental state where the state focuses on the productivity and economic wellbeing of its people even at the ‘cost of civil liberty’; 3) the prebendal state where the state is ‘preoccupied’ with the creation and maintenance of the personal interests of those in power; 4) the predatory state where order and law break down and public services are openly abused, and 5) the cadaverous state where the remaining skeleton of the state structure are demolished and the state is either on its deathbed or already in the coffin.

While Somalia is yet to have an integral state, the other forms described by Samatar and Samatar (2002) were at one point or another in place. For instance during the immediate post-colonial context of 1960-1969 the state could be categorised as prebendal due to the fact that most of those in power were actively involved in state resources misappropriation. When the military took over in 1969, the state passed through a metamorphic process which initially started with a developmental approach in the 1970s at the expense of civil liberty, but turned into a predatory form of state in the 1980’s in which public offices were treated as private property, and finally became a cadaverous state in which the remaining state structures were dismantled through an armed conflict that sent the whole country up in flames. In the immediate post Barre dispensation, there was a desire to depart from the past flawed state-building approaches and create an integral state able to enhance a nation building process based on both individual and communal rights. In this form of state, the emphasis is placed on two key elements: 1) the delivery of public goods in an accessible, equitable, accountable and transparent manner and 2) a generation of ‘moral and intellectual bonding’ where the citizens are treated as individuals with guaranteed civil rights.

**Post Conflict Hybrid State-building**

While the peace process did not result in the expected form of state, it enabled Somaliland to experiment with a hybrid political order involving both the ‘traditional’ institutions such as the elders and ‘modern’ state bureaucracies. This political order attracted significant attention from academic circles (See Walls & Kibble 2010; Hagmann & Pécloid 2010) creating an impression that successful peacebuilding in Somaliland led to successful state-building. Notwithstanding the fact that the hybrid state—
building processes were useful in the immediate post conflict context of Somaliland, they have been rightly critiqued for containing elements that limit progress and democratic development (Battera 2009). This is due to the fact that the ‘Guurti’ – which is the arm of government rooted in the ‘traditional’ system – have on many occasions hindered the democratic process by either extending their term in office or extending that of the executive (Render 2007).

Equally Hoehne (2013) criticised the hybrid order and outlined a number of weaknesses inherent to the ‘traditional’ systems which get transferred to the state when the so called ‘traditional’ and ‘modern’ systems are combined to form one political order. For instance ‘traditional’ systems have a tendency of biasing against women (see also Seid & Jotte 2004) and therefore could present a threat to equitab le participation in the political process in the country. This is evident in the fact that there are only two female cabinet ministers and two members of parliament in the national assemblies. In addition, the hybrid order is characterised by intrinsic imbalances demonstrable by the fact that ‘modern’ structures of the state dominate the incorporated ‘traditional’ structures (Hoehne 2013). As is evident in these critiques, the celebratory representation of the state in Somaliland overlooks the problems inherent in the interaction between ‘traditional’ and ‘modern’ ways of governance which are ‘characterised by [not only] complementarity [but also] incompatibility’ (Render 2007).

More importantly, hybrid state-building failed to mark a departure from the preceding political orders as the state continues to recycle itself from that which existed before it. Hoehne (2011) uses the concepts of mimesis and mimics to demonstrate the reproduction of institutions on the basis of those that existed before them. His use of the concepts is limited but could be expanded to make sense of the trajectory of state-building in Somaliland where the different administrations reproduced certain aspects of the forms of institutions with which they were familiar. For instance during Abdirahman Ahmed Ali’s term⁷, the emergent state was almost modelled on the SNM’s organisational structure. When Egal took over, the political landscape he created resembled the patrimonial state of the 1960’s criticised by scholars as corrupt elite centric polity (Samatar 1989). Over the course of Dahir Rayale’s tenure, a securo-centric⁸ state mirrored on Barre’s regime was reproduced, while the present administration stands accused of adopting a “clanist” approach to governance which again is the SNM’s favourite method of mobilisation. Taken together, the metamorphosis of the state in Somaliland had produced a clan based politics (Adam 1994) which can best be characterised as divisive and a recipe for fragmentation.

Shifting towards democracy
As the fragmented nature of the emerging polity became clearer, there was an effort aimed at moving the country away from clan based politics into a multi-party democracy (Bradbury et al. 2003). The aim here was to mark a departure from the preceding forms of African state-building where greedy elites with a colonial mentality assumed power through state engineered elections aimed at guaranteeing the emergence of favourable candidates through various mechanisms that include the relegation of election exercises to friendly administrative bodies, and the drawing or redrawing of constituency boundaries. These colonial and immediately post-colonial tactics of manipulating elections in Africa (Branch 2006) continued into the post-conflict political landscape of Somaliland. For instance Egal tailored the constitution to his personal political needs by including clauses banning certain political adversaries from contesting elections while Rayale altered district boundaries to guarantee emergence of favourable representatives in the houses of parliament and councils.

While most parties in Somaliland present their commitment to genuine democratic changes, they also most vigorously take clan lines on national issues and these could create a potential political conflict. This was at its riskiest moment in the 2010 election where parties were campaigning along explosive clan lines and the stakes in this election were higher than any other before it. The two opposition camps, Kulmiye and UCID, represented most of the population in the centre of the country and there was a sense among their voters that their desire to oust Rayale was not less than a restoration of dignity and pride. The leading opposition figure, Ahmed Mohamed Mohamoud Silanyo, was a former SNM leader whose term in office was longer than any other. In the previous elections, he conceded defeat by a small margin of 80 votes and could not have possibly allowed to accept defeat again, as many of his senior party politicians have publicly declared.

There is a general acknowledgement that the adoption of multi-party system of democracy in Somaliland was not successful in shifting the country from clan based politics (Hansen & Bradbury 2007). In fact what the elections have done is to recycle 1960s multi-party politics in Somalia where every clan created its own political party resulting in the formation of nearly 60 parties amid a corrupt political environment and of skewed public perception towards the state. In other words, the state was perceived as a resource and elections as a means to access this resource. A good analogy of this is given by the celebrated poet Mohamed Ibrahim Warsame (1993) popularly known as Hadrawi in a poem called Hal La Qalay⁹ loosely translated by Abdalla (2008) as the slaughter of a she-camel. In the poem Hadrawi compares the state to a feast involving the sacrifice of a large animal, a camel, but not large enough to be enjoyed by everyone. He demonstrates how the state was considered as a shared resource and how

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7 Abdirahman Ahmed Ali popularly known as Tuur was the first president of post-conflict Somaliland and the leader of SNM when Barre was removed from power in 1991.
8 Rayale was the third president of post-conflict Somaliland who took over the power following the death of Egal in 2002.
9 Concept of securo-centric was borrowed from Walls & Kibble (2011).
10 The poem was written in 1966 as a critique of the corrupt political order in Somalia where the state became the ultimate price for fiercely competitive and mostly corrupt elites.
that ended in disappointment when those elected to office misappropriated the resources themselves and did not bother about the well-being of the masses who put them in power. The poem was long but the part relevant to my point says:

A slaughtered she-camel, was fought over by many contenders. In the ensuing confusion, each person got hold of a tiny piece, and cooked it in the sun. Even the bones and skin, were swallowed in the dry (read uncooked).
What humors me most, are those who are still left, hungry for a share, seeing the smoke, from high mountains, clambering down, to reach an empty spot

Two main things can be teased out of the poem. One is the distinction between the elites and the masses. Here the elites are those who assumed office, looted the national resources and spared nothing worth sparing for anyone else. The other group is comprised of the masses who were made to believe that everybody should have a share of the state’s resources but who are yet to see this happen. It is important to understand that the problem shown in the analogy does not so much lie in the manner through which those who got there shared the resource among themselves, but rather in the crisis that can emerge from the grievances of the masses whose perception is now altered by the practices of those in power. As the need for electing someone from one’s clan became greater than ever before, the elections in Somaliland are reminiscent of the poet’s description of the Somali political landscape in the 1960s where elections were seen as a means of accessing state resources via a kin in public office. One informant told me that public offices are full of corrupt people and if you send in a ‘clean man’ ‘your’ clan will miss out on the national looting. Another informant also told me that a corrupt official from your clan is better than clean man from another clan. This perception feeds on the fact that when people are elected to office what more often than not happens is that the close members of their clan become empowered through the facilitation of contracts or through employment in the government. This practice leads not only to an unsustainable level of employment in the government where each appointed official brings in several of his clan men thus putting a strain on the government coffers, but it also leads to a working environment in which clan identity precedes merit and knowledge. If successful state-building is to be understood as a departure from past experience, this shows that the current processes were unable to create a better environment where ideas prevail as opposed to identity.

Conclusion

In this article, I argued that peacebuilding and state-building processes are mutually exclusive in the Somaliland context. While the peace process led to the return of the rule of law and stability, it failed to achieve its object of creating an integral state with institutional cultures and structures that are markedly different from the past Somali state-building experience. What instead it produced is a lopsided hybrid state in which the ‘traditional’ structures, such as the Guurti, are practically marginal to the state, making the public doubt about its significance as a public institution. This is not to say that Somaliland did not make a progress but rather to acknowledge and interrogate the peacebuilding object and outcome so as to avoid masking our problems and recommending our approach as a model on which other Somalis could base their peacebuilding and state-building efforts. Of course, there are lessons to be learned from Somaliland but there are also pitfalls to avoid.

On the other hand, the peacebuilding experience from Somaliland offers a commendable bottom-up approach as it shows how local people can re-focus their mutual animosity and antagonism – partly created by the politicians – into the positive energy of achieving peace and creating a state. On the other hand, however, state-building in Somaliland provides examples of avoidable drawbacks, self-evident in the fact that a 20 year-long remarkable degree of relative stability did not translate into an effective state-building process. This is due to the fact that the state of Somaliland has all the hallmarks of fragility, and the list of examples that support this is long. They include rampant corruption, weak institutions, misuse of power, and a half-baked democracy that does not go far beyond the questionable periodic elections which the International community often hails as free and fair for the obvious reason of avoiding to upset the delicate equilibrium. In other words calling a spade a spade could encourage losers to reject the outcome and undermine the stability in the region. If the peace process and state building are to be successful, they have to be inclusive and to reform context specific undertakings.

References


Somalia Flag

Photo | Kylos85
HYDROCARBON EXPLORATION IN PUNTLAND: WHO HAS THE LEGAL RIGHT TO ENTER INTO AGREEMENTS?

WHILE PUNTLAND HAS SIGNED AGREEMENTS WITH INTERNATIONAL OIL COMPANIES, THE SOMALIA FEDERAL GOVERNMENT CONSIDERS SUCH OPERATIONS AS ILLEGAL. THE PUNTLAND STATE CONSTITUTION AND THE SOMALIA FEDERAL PROVISIONAL CONSTITUTION HELP FIND AN ANSWER TO THE CURRENT LEGAL AND POLITICAL DEBATE BETWEEN THE TWO ENTITIES.

Introduction

Hydrocarbon explorations in Puntland, a federal member state of the Somali Federal structure, reached a high point with the spudding of Shabeel 1 on 16 January 2012 in the Dharoor Valley by Horn Petroleum (a consortium of Africa Oil, Range Resources and Red Emperor).¹ The controversial Contract of Work (CoW) with the Puntland Government in Dubai. In 2005, that company sold 50.1% of the rights of that CoW to Range Resources Limited, a resources exploration company, based in Australia, and now listed on London’s Alternative Investment Market (AIM: RRL) and the Australia Securities Exchange (ASX: RRS). Range bought all of the remaining rights of the CoW in August 2007. In January 2007, a Production Sharing Agreement (PSA) was signed between the Puntland Government, Range Resources Limited and Canmex (Bermuda) II Limited, which is registered in Bermuda. Currently the PSA is owned by three companies; Horn Petroleum, registered on the Toronto Exchange, owns 60%, Range Resources Limited owns 20% and Red Emperor Resources NL, registered on Australia Securities Exchange (ASX: RMP), owns the remaining 20%.

¹ On August 31, 2005, Consort Pty Ltd, an unknown company, registered in the Indian Ocean Islands of Maldives, signed a
Puntland diaspora across the world, because these activities represented a brighter future and hope for everybody. Aside from the financial and technological capabilities of Horn Petroleum and its partners, the people of Puntland made it possible because they gave the operations their full support. In addition, successive leaders of the Somali Federal Government had fully supported the hydrocarbon and mineral explorations in Puntland. Only the election of President Hassan Sheikh Mohamud, in 2012, ushered in a period of unprecedented attacks against Puntland’s operations.

Today, the Federal Government’s position is that Horn Petroleum’s operations in Puntland are illegal and that they are operating under an invalid contract. The only competent authority with the legal right to enter into agreements with them is the Somali Federal Government and not a Somali Federal Member State such as Puntland. The Puntland Government challenges this right and counter claims that, as the constitutions (both Federal and State) stand, it has the legal right to enter into agreements with international oil companies willing to conduct hydrocarbon and minerals exploration. The question I seek to answer in this paper is who has the legal right to sign hydrocarbon and mineral agreements with international oil or mining companies that might be interested in exploring, developing and producing in Puntland’s territories. To answer this, it is important to look closely at the key legal and political issues that underpin Puntland’s hydrocarbon explorations within the context of the Federal Provisional Constitution and Puntland’s State Constitution.

Although there have been times when the previous Transitional Somali Federal Governments in their various forms did not wholly support hydrocarbon exploration in Puntland, they generally developed a very strong relationship with the Puntland Government and recognized the rights of the Puntland Government as enshrined by the State Constitution. The last two Presidents and their Prime Ministers significantly supported and encouraged the continuation of hydrocarbon exploration in Puntland. However, the current Federal Government opposes the exploration activities, claiming that only it has the legal right to deal with international oil companies.

POLITICAL ISSUES: Material Facts

In 2004, after protracted negotiations and years of false dawns, a representative group of Somali politicians, community elders, intellectuals and civilians determined to set the country down the path of a democratic federal political system. This agreement was made possible as all the Somali factions had participated in the negotiations. In the past boycotts from one faction leader or another had derailed the process. Furthermore, this conference shifted Somalis to a new framework whereby political power was to be distributed to the lowest levels. In the past, all economic and political power had been centralized and concentrated in the hands of a few in the country’s capital, Mogadishu. This agreement instead allowed both economic and political decisions to be made at member state level.

The selection of this particular system must be understood and contextualized by the years of conflict and brutal violence that Somalia has endured since the country had spiraled into civil war. During this period Somalis fought bitterly against each other, with conflict perpetrated and justified along family, clan and religious lines. It is this fundamental well of anger that has shaped the modern psyche of the Somali people. To dismissively brush this factor aside totally ignores the lasting impact this protracted conflict, which brought about brutal violence, mistrust, and ultimately, the disintegration of the Somali nation-state, has had on the Somali ability to set the past aside and build a new united future. That is why it is imperative to discuss the socio-political and economic issues that underpin the natural resources debate between the Puntland State of Somalia and the Somali Federal Government.

Historical Perspectives

The Somali Democratic Republic consisted of two colonies that were brought together by their own wishes to unite and build a nation state. These two colonies themselves where the product of colonization; the British and Italians created British Somaliland and Italian Somaliland respectively, in the 1920s, after a long period of dogged resistance by the Somalis and their Italian counterparts. These two colonies joined together and became an independent state on July 1, 1960. From 1960 to 1969 a civil war raged in Puntland, and after the Somalia President Abdirashid Ali Sharmarke was assassinated on October 21, 1969, a military junta, led by Major General Mohamed Siyad Barre overthrew the civilian government in a bloodless coup d’etat. The military suspended the Somali constitution, banned all political parties and imprisoned members from the former regimes. The military junta ruled the country from 1969 to 1991 with an iron fist, by brutalizing the people and centralizing the economy of the country. As a result, a number of armed oppositions waged war against the government, openly supported by neighbouring countries.

The regime, after its total failure to deliver political and economic security to Somali citizens, economically weakened by failed military campaigns against its neighbours, and politically wounded by the successful guerrilla campaign of the armed oppositions, finally collapsed in 1991. As a result of the total collapse of government institutions and the lack of law and order, the country entered into a brutal civil war. While the struggle was initially opposition to the regime, it later transformed itself into a tribal war conducted by warring factions. Subsequently, hundreds of thousands of Somali civilians and combatants were brutally killed simply for belonging to the wrong tribe and being in the wrong place. Thousands were forcefully removed from their homes in southern and central Somalia, becoming internally displaced people.

2 Although there have been times when previously held hydrocarbon exploration agreements have been respected, the current Federal Government is not complying with the spirit of agreements that have been made.

3 From 1991 to 2004, there were 14 failed peace and reconciliation processes for Somalia.


within the country, or refugees forced - through conflict and starvation - to cross the border into Kenya, Yemen, Ethiopia and Djibouti. Unfortunately, the carnage that began in 1991 continues, albeit in different areas and in different forms through the activities of Al-Shabaab.

The collapse of the Nation-State and the subsequent civil war swept away the legal and political framework of the country. The Somalia Democratic Republic (SDR) ceased to exist politically, physically and spiritually, and of particular relevance to this paper, the nascent oil industry, that was just starting to gain momentum, was abruptly halted with the International companies declaring *force majeure* and abandoning their operations.

In its place emerged new self-rulled administrations, directly related to the great tribal population movements that occurred as a result of the war. Somali tribes who had lived for a long time in the south of Somalia, particularly in Mogadishu and surrounds, fled north, returning to the territories of their ancestors. Large numbers of people returned to the northwest of the country, and established a new country called Somaliland in 1992. Similarly, communities that returned to the northeast established the Puntland State of Somalia in 1998.

Today, 23 years after the collapse of General Mohamed Siyaad Barre's regime, Somalia consists of five distinct and different areas: Somaliland, which has seceded from the rest of Somalia; Puntland, a semiautonomous state within the Somalia federal political system;

7 Juba Administration; a weak Somali Federal Government that controls a small area of the country around Mogadishu with the support of African Union troops; and central and southern Somalia which is controlled by Al-Shabaab, a ruthless radical religious group. These changes and the complete rejection of the structures and framework of the SDR has significant implications when considering the legal position of hydrocarbon activities and contracts in Somalia today.

The birth of Puntland’s Federalism

Puntland State was born out of the ashes of the SDR, when in 1998, 480 delegates, consisting of community elders, intellectuals, politicians and civil society members, representing 5 regions from the northeast of Somalia met in Garowe and decided to establish a new state government that could represent the people from these regions. This was a bottom up process with the impetus coming from the grass roots of society, the citizens. The government was to be a democratic government that consisted of an executive, independent judiciary and parliament. The government was to look after the economic and political interests of the people from the Bari, Nugaal, Mudug, Sool, and Sanaag regions that decided to unite and join together to form the State of Puntland. This was a significant and progressive step as it ushered in democratic governance, law and order, a relative peace and economic development that had not previously existed in the area. Importantly, it established the principle that the Government was there to serve the people and ensure equitable access to the commercial development of the State. This forgotten corner of Somalia was determined not to return to a system of politics that centred power and wealth in the hands of a few at the expense of the majority.

From the first Charter in 1998, via the 2001 Transitional Constitution to the current Constitution, the Puntland State of Somalia has consistently sought a semiautonomous political structure. For example, Article 2.0 of the 2001 constitution claimed that Puntland was an independent state (2.2); but that it would be an integral part of Somalia (2.4).

These articles were further re-enforced by Article 10, which envisioned the ways powers would be shared between the Puntland State of Somalia and the future Somalia Federal Government, while the latter was yet to be established. The article “Negotiations and Federalism” stated that Puntland would be ready to negotiate with any Somali political faction that was willing to restore a national government that was based on a Federal Political System (10.1). The assumption is that the Puntland State of Somalia was not willing to secede from the rest of Somalia, but it was also not willing to return to the previous centralized political arrangements which had marginalized and impoverished the people of the northeast. As a result, the Puntland State Government wanted to retain a substantial number of powers while willing to hand over to the Somali Federal Government powers such as immigration, foreign relations and international co-operation, postal system, currency board, measurement and units (10.2). Puntland State would retain all other powers, but it was willing to negotiate over the sharing and allocation of them when the envisioned Somali Federal Government was effectively established (10.3). In April 2012, a Constitutional Assembly held in Garowe replaced the 2001 Puntland Transitional Constitution with the current Puntland Constitution.

9 Puntland Development Research Centre, *Roots of Good Governance*, Garowe, Puntland, Somalia,

(November 2006), p. 6


12 For more, please see 2nd Section, Article 10. Negotiations and Federalism

1. Puntland Regional State shall be part of a Somali Federal State, and shall negotiate with any party of the Somali factions who truly believe in the restoration and the membership of a Somali Government based on the Federal System.

2. Puntland Regional Government shall hand over to the Somali Federal State the institutions including immigration affairs, defense, foreign relation and co-operation, postal official stamp, currency board and measurement units.

3. Besides the issues mentioned here, other required issues shall come through negotiations between the Federal Government of Somalia and the Regional State of Puntland.
Constitution. This document and those before reflected the aspirations of the people of Puntland. They entrusted the management of the State’s economy and internal politics to the elected Government of the Puntland State. The political principles enshrined in these constitutions have guided Puntland’s political relationships with the rest of Somalia and any Somali governments that have been established ever since. In addition, during this period, the state government saw the development of the hydrocarbon and mineral sector as a significant aspect of the region’s economic development. The first government, led by Abdulahi Yusuf, actively engaged with international oil companies seeking to encourage investment in the hydrocarbon and minerals sector. As a result a small number of companies visited the country to inspect the abandoned oil exploration wells in Nugaal and Sool regions. A classified document belonging to the government shows a number of Asian and European companies arriving in the country and seeking contracts. It is clear this did not include companies who entered contracts with the SDR prior to the civil war.

THE LEGAL ISSUES: Somali Federalism and the Hydrocarbon Exploration

When there is a legal issue between the Puntland State of Somalia and the Somali Federal Government, it is very important to start with the constitutions of the Somali Federal Member States and the Somalia Federal Government. Therefore, Puntland State Constitution and the Somalia Federal Provisional Constitution should help find an answer to the legal issues concerning Somalia’s natural resources, particularly the hydrocarbon and minerals operations in Puntland.

The Puntland Constitution

The 2012 Puntland State Constitution covers the issues concerning the ownership, administration and the revenue matters of the hydrocarbon and minerals operations in Puntland. The Constitution provides the legal right for the State to enter into contracts with International Oil Companies (IOC) that are willing to explore, develop, and, if commercial discovery is attained, extract hydrocarbons and minerals. Article 54(1) of the Puntland State Constitution states that the Puntland people own the Puntland’s natural resources. Article 54(2) gives the Puntland government responsibility for its administration. In addition, Article 54(3) gives the Puntland government responsibility to negotiate agreements and issue petroleum exploration contracts to foreign or national companies. Furthermore, article 54(4) gives the executive branch the right to prepare the necessary documentation for these contracts, which the parliament must approve after the government’s competent agency and the international oil company sign the contracts. Article 54(5) says that the Puntland Government will promulgate a specific law to govern revenue sharing should there be a commercial discovery. When that law is finalized, the Puntland Parliament needs to approve it.

Somalia Federalism

After a long period of colonization, military dictatorship and 23 years of civil war, the Somali people decided to unite in 2004 under the umbrella of a federal political structure. This political system is enshrined in the Somali Federal Provisional Constitution, which was adopted by a Somali constituent assembly, consisting of Somali civil society, community elders, religious leaders, intellectuals and Somali politicians on August 1, 2012 in Mogadishu, Somalia. This constitution, as it stands now, is still incomplete as numerous significant powers are deferred until all the federal member states are established. Thus the constitution requires further amendments with respect to power and responsibilities allocated to the federal government as opposed to federal member states. Any amendment drafted will be subjected to referendum.

The Somali Federal Constitution shapes a federal system, which allows two levels of government; the national and the federal member states. Article 1(1-3) states that Somalia is a federal, democratic, and inclusive country, and the sovereignty of the country is inviolable. Article 48 further states that the Somali state “is composed of two levels of government (a) Federal Government level; (b) The Federal member States level, which is comprised of the Federal Member State government, and the local governments.”

Under this definition and as noted above by choice through the State Constitution, Puntland is one of the Somali Federal Member States.

The Federal Constitution

The Puntland Government argues that the current Somali Federal Provisional Constitution (Article 54) allocates only four legislative powers to the Federal Government. The Article states that:

15 Please see Articles 132-137 of the Somali Federal Provisional Constitution (adopted in 2012)
16 In a nutshell, in a federalism political system power and responsibilities are divided between the national government and the federal member states. Within this political system the federal member states have their own parliament, executive and judiciary branches that will make, enforce and interpret laws for a better governance of their citizens. In addition, members of the federal parliament, particularly the Upper House or the Senate, represent the interests of the federal member states. This means, that the constitution gives the federal member states certain autonomy, confidence and trust. This constitutional power will also give the member states the ability to govern themselves, while, at the same time, to be part of a national government.

14 This was not a rushed or lightly taken decision. Years of UN, EU and AU sponsored negotiations resulted in Somalia’s refusing to come together under any other political sys- tem.
“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 [all] the 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.”

Furthermore, the Somalia Federal Provisional Constitution postpones the matters of natural resources until all Somalia’s Federal Member States are established. Article 44 states that “[T]he allocation of the natural resources of the Federal Republic of Somalia shall be negotiated by, and agreed upon, by the Federal Government and all the future Federal Member States [when the remaining states are established], editor’s note” in accordance with this Constitution.” 19 This article operates parallel to Article 142 of the constitution, which stipulates that:

“1) Until such time that all the Federated States of Somalia are established and the adopted Federalated State Constitutions are harmonized with the Somali Federal Constitution, the Federated States existing (such as Puntland) prior to the provisional adoption (2012) of this Federal Constitution by a National Constituent Assembly shall retain and exercise powers endowed by their own State Constitution.” 20

This means that the Somalia Federal Government does not have any constitutional rights with respect to hydrocarbon explorations. Under these provisions, therefore, the Puntland Government has the right to enter agreements and continue its hydrocarbon and minerals operations until such time that (a) all Somali Federated States are completely established, and that (b) all the Federated States come together of their own free will, to establish and agree upon, in a negotiated settlement, a system of management and revenue sharing from natural resources, which is to be incorporated into the finalized Federal Constitution.

In addition, this is conclusive legal and constitutional evidence which shows that the Somalia Federal Government does not have any powers to legislate on natural resources whatsoever. However, it continues to intervene and hamper hydrocarbon exploration in Puntland. For example, in May 2013, the President of the Somali Federal Government claimed that international oil companies should stop signing oil and gas exploration contracts with Somaliland and Puntland. 21 In October 2013, the Somali Federal Minister for Natural Resources claimed 22 that all regional contracts with international oil companies are invalid. 23

Currently, the Puntland Government has no relationship with the Somali Federal Government after severing its relationship on August 5, 2013, accusing the Somalia Federal Government of tampering with the Federal Provisional Constitution, ignoring national reconciliation efforts, and refusing to share power and foreign aid. 24

Conclusion

The Puntland Government and its International Oil Companies have been successful in conducting onshore hydrocarbon exploration operations. Collectively, the partners have conducted seismic operations and two wildcat wells in Dharoor Valley. The previous Somali Federal Government leaders were able to support and encourage hydrocarbon exploration in Puntland, but the current President is against it. The Federal Government claims that it has the legal right to issue hydrocarbon exploration licenses to international oil companies. International oil companies must deal with it, rather than the State Governments. Despite that, the Puntland Government continues its hydrocarbon exploration activities in Dharoor and Nugaal Valley. Furthermore, the Puntland Government made it clear to the Federal Government, the international community and international businesses that it has the constitutional right to enter into contracts with international oil companies. It appears that these different views will continue until proper agreement is reached between the Federal Government and the existing Somalia Federal Member States.
Somalia: Friday prayers

Photo | G. A. Hussein
Professor Mohamed Said Samantar teaches Economics at Puntland State University, Garowe (Somalia). He was born in Mogadishu on July 1, 1946; between 1973 and 1990 he served at Somali National University, he then relocated to Puntland following the outbreak of the civil war in January 1991. His extensive experience and long-lasting testimony of the Somali affairs make his insights and understanding of the issues currently at stake remarkable. He was interviewed by Michele Gonnelli on November 27, 2013.

As an economist, what do you consider to be the Puntland Federal State’s priorities in order to work as an efficient administrative apparatus? What are the main services offered by the State? Are there any competing non-state actors in this respect?

Puntland’s main priority is to accelerate GDP growth with stability, through rapid increase in productivity and industrialisation of all activities whether livestock, crop production, construction or services. The major service rendered by the Puntland Government is to strengthen the security situation of the state as more than 70% of its budget is earmarked to this sector. There are a good number of non-state actors such as non-governmental organisations, traditional elders as well as religious leaders who play a relevant role.

What are the leading/strategic sectors for a viable development in Puntland?

The leading economic sectors in Puntland are livestock, fisheries and service-
Somaliland is experiencing some challenges at this stage of its development. The Somaliland experience and the model also for Puntland. Yet it seems on-going state building process is of the nature rather than individually. Remittances play an important role in the survival of many households in Puntland. Remittances not only comprise the largest contributor to the household budget of migrant-sending households, in several cases they are actually the only source of income for them. On average they account for the 60% of Puntlanders’ spending capacity. Indeed, without remittances, a large proportion of the households would have fallen deeper into poverty.

While Puntland elders and clan leaders are designating the members of the future Parliament (lower house), the parliament is expected to elect a new president on 8 January 2014. However, composition and formation of the legislative power reflect more a ‘clan formula’ rather than the existence of a proper party system. How much a modern party system possibly fit into the Puntland context? And in Somalia in general?

As long as the largest portion of the Somali population live in the rural/pastoral nomadic area it would be difficult to establish a proper political party system following the example of Somaliland. After a popular outcry the process has reverted to the traditional system of selecting members of parliament. A way out of this situation can only materialise if the socio-economic structure of Somalia changes. In any event you need to changes the old system with something of value for Somalia as the old Basuto (actually, Lesoto) proverb says: If a man does away with his traditional way of living and throws away his good customs, he had better first make certain that he has something of value to replace them.

How would you describe the relationship with Somalia Federal Government? Where do the main causes of concern and reasons for friction lie?

At this moment in time the relationship is stuck waiting for renewed talks between the two. The major obstacle reflects the adherence of the federal constitution on the part of Federal government according to the claims put forward to the international press by Puntland authorities.

Do you think federalism is an actual option for Somalia nowadays or a federation of states would better match the current scenario while overcoming the south-central impasse? What is the role that the international community in general and the AU in particular could play in this respect?

Federalism is the only option remaining for Somalis after the bad experience of the last military-authoritarian central government, which collapsed in 1991. My experience of living in Switzerland in early 1960s tells me that federation of states is an advanced system for rural Somalia.

The Somali culture is predominantly oral, in fact the country still “teems with poets”, as explorer Richard Burton observed and wrote already in 1854. The role played by poems and songs remains unchallenged, even today, as means for conveying knowledge, traditions, criticism, political support or opposition. Gaariye, a nationally reputed poet, who among others opposed the military regime of Siyad Barre, wrote in one of his works “he who fosters clannism is a fool and foolishness is a disease”. Gaariye represented that portion of the Somali poets engaged with freedom and social justice beyond clan disputes. Are there any new remarkable trends in the poetry of the last 20 years? Can we speak of a Somalilander or Puntlander poetry? Or better of Isaaq, Daarod, Hawiye, Dir, Digil/Rahanwayn etc... poetry?

It is true that poetry plays a vital role in Somali culture. There are poems composed specifically for specific regions using specific dialects. These versions of poetry are not very popular among Somalis. The most quoted poems are those composed to reach Somalis living in all Somali spoken regions of the Horn of Africa.
Somalis gather around a well under reconstruction by the African Union mission, AMISOM, in the district of Hamar Jabjab, Mogadishu. The new well will make the water both safer and more easily accessible for the district’s residents.

Mogadishu, Somalia. UN Photo/Tobin Jones
A RENEWED ROLE FOR THE UNITED NATIONS IN SOMALIA?

FOR YEARS, AFTER 1995, THE UN HAS SHOWED A CAUTIOUS APPROACH TO THE EVENTS IN SOMALIA. WITH UNSC RESOLUTION 2102 THEY HAVE REAFFIRMED THEIR WILLINGNESS TO PLAY A MAJOR ROLE IN SECURING THE FUTURE OF THE COUNTRY.

Introduction

The relations between Somalia and the UN have been very troubled and difficult in the last 20 years, especially after the failure of the two previous field operations deployed by the UN in Somalia: the United Nations Operation in Somalia I (UNOSOM I) in 1992 and United Nations Operation in Somalia II (UNOSOM II) in 1993-95. The recent decision of the UN Security Council to deploy, after a long period of uncertainty, the United Nations Assistance Mission in Somalia (UNSOM) could represent a new sign of hope for the future of the Country; provided that lessons learnt in the past, from the region, are duly taken into account and that the implementation of the mandate of the Mission is carried out with the full involvement of all relevant stakeholders and fully respects the notion of local ownership.

The recent problematic history of UN-Somalia-relations.
The United Nations has been involved in the history of Somalia from 1950 when the UN decided to create the Italian Trusteeship Administration in a territory called Italian Somaliland (the southern part of the present Somalia) to prepare it for independence over a ten-year period. However, British Somaliland (which corresponds to the present Somaliland) remained a British protectorate till 1960 when it gained independence and merged with the trust territory to form the Somali Republic.
A new wave of attention to the situation in Somalia was registered at the very beginning of 1990 when Somalia was suffering a terrible humanitarian crisis, due not only to the ongoing civil war but also to a severe drought. From 1992 the UNSC adopted several Resolutions imposing first, a general and complete arms embargo on Somalia and later, deployment of a small UN Operation (UNOSOM I) to monitor the ceasefire agreed in Mogadishu and to prepare for a bigger UN force to perform additional tasks. Due to the specific nature of the situation in Somalia, the obstacles which were created by the different opposing fac-
tions to the distribution of humanitarian assistance, and the attacks directed against it, the mission was almost unable to achieve the mandate. The UNSC decided, therefore, to adopt a new acting under Chapter VII of the UN Charter. UNSC Resolution 794 (1992) authorized the UN Secretary General (UNSG) and member States wishing to cooperate, “to use all necessary means to establish as soon as possible, a secure environment for humanitarian relief operations in Somalia”. The new mission, led by the USA, was called Unified Task Force (UNITAF) and operated more or less successfully in Somalia between 5 December 1992 and 4 May 1993 deploying approximately 37,000 troops in southern and central Somalia. On March 26, 1993 the SC adopted Resolution 873 (1993) establishing UNOSOM II, a new UN Peace-keeping which replaced UNITAF. With 30,000 personnel, including 22,000 troops and 8,000 logistic and civilian staff, UNOSOM II was involved in several major incidents, suffering severe losses, including many casualties mainly among US soldiers. After which the United States President Clinton decided to withdraw all US forces from UNOSOM II, the UNSC decided to close the mission by 31 March 1995.

In subsequent years the UN adopted a much more cautious approach to the events in Somalia: the UN concentrated its activities related to Somalia on two main areas. First, the UN supported the continuing efforts to find a political and diplomatic solution to the internal situation in the country (authorizing the deployment of the Africa Union Mission in Somalia – AMISOM - and adopting a sophisticated system of targeted sanctions, including an arms embargo and a charcoal ban). The second issue which has been constantly and actively monitored by the UN is the fight against piracy in the waters off the Somali Coasts. The UNSC adopted several innovative Resolutions to reinforce the fight against piracy and to authorize member States to deploy their navies to prevent and suppress piracy. The recent decision of the SC to deploy UNISOM has to be analysed against this background.

The recent decision of the UN Security Council to deploy UNISOM

UNISOM was established for a period of one year which could be renewed for further periods as appropriate through UNSC Resolution 2102 (2013) of May 2, 2013. Technically, UNISOM should have been called a “political mission” rather than a “peace-keeping” or “peace-building mission”; in any case the terminology is not of fundamental importance, as the differences among these typologies of operations are minimal. The mandate of UNISOM is indicated in para 2 of the Resolution which identifies 5 different areas which are entrusted to the mission.

First of all, UNISOM is expected to “provide United Nations ‘good offices’ functions, supporting the Federal Government of Somalia’s peace and reconciliation process.”

The second task assigned to UNISOM is, to “support the Federal Government of Somalia, and AMISOM as appropriate, by providing strategic policy advice” on the following matters, amongst others:

(i) Governance; (ii) security sector reform, rule of law (including police, justice and corrections within the framework of the United Nations Global Focal Point), disengagement of combatants, disarmament, demobilization and reintegration, maritime security and mine action; (iii) the development of a federal system; (iv) the constitutional review process and subsequent referendum on the constitution; and preparations for elections in 2016”.

The third component of the mandate concerns the task to “assist the Federal Government of Somalia in coordinating international donor support, in particular on security sector assistance and maritime security, working with bilateral and multilateral partners, and in full respect of the sovereignty of Somalia”.

The fourth component of the UNISOM mandate concerns the delivery of help to build the capacity of the Federal Government of Somalia to promote respect for human rights, and especially to protect the rights of the more vulnerable part of the population.

The fifth task assigned to UNISOM is to monitor, help investigate and report to the Council on, and help prevent any abuses or violations of human rights or violations of international humanitarian law committed in Somalia, through the deployment of human rights observers and other means and any violations or abuses committed against children and women in Somalia.

The physical protection of the UNISOM personnel and of its infrastructures in Somalia is provided by AMISOM, which has committed itself to provide a guard force of 311 troops. They will have to work in close coordination with the Federal Government and with the directives of the Integrated Security Management Structure of AMISOM within the offices of the UNSRSG, who is designated responsible for UN staff security in Somalia.

Future challenges for the UN and the International Community in Somalia.

UNOSOM undoubtedly represents a clear signal about the renewed willingness of the UN to play a major role in shaping the future of Somalia. The challenges the UN and the International Community will be facing in the short and medium term are complex and require a coherent and integrated approach and an active contribution from all main stakeholders. Among the relevant issues which need to be dealt with in the coming weeks and months the following seem the most sensitive:

Security of the Mission and of its personnel in cooperation with AMISOM.

The continuing insecurity and the recent increase in targeting of the international personnel, and of UNISOM more specifically, contribute to making the good cooperation and coordination between AMISOM, UNISOM, and the local security forces a critical aspect on which the success or the failure of the UN Mission will depend to a large extent.

Working cooperation modalities among UNOSOM, AMISOM and AU.

The close relations between the two missions and, more generally, between the UN and AU in the Somali theatre is fundamental not only for the security related aspects but for the
political implications as well. It is well known that the UN did make promises to the AU, for a long period, to replace AMISOM with a UN Mission. This promise has not been kept for several years, notwithstanding the repeated assurances of the UN Security Council in several Resolution dealing with Somalia. The deployment of UNSOM represents a first step in this direction (although much more has to be done before the actual replacement can take place) and creates a better condition for a reinforced and mutually beneficial cooperation between the UN and the AU.

Cooperation mechanism with local authorities (including the Federal Government and the local administrations). As UNSOM is a mission based on the full respect for the concept of local ownership, another major challenge it will face is to develop sound and strong relations not only with the Federal Government but with the local authorities, be they tribal leaders or representative of the self-proclaimed autonomous territories (such as Puntland, Somaliland, and the Juba Interim Administration, the administrations of Galmudug, Hiraan, Himan and Heeb).

Humanitarian assistance to those in need in all parts of Somalia (especially to vulnerable groups). The lengthy Somali crisis has had a tremendous impact on the civilian population, causing millions of IDPs and refugees (mainly, but not exclusively, in neighbouring countries). According to the UNSG, more than 260,000 people died as a consequence of the 2011 famine. The situation has improved only slightly, there is still a desperate need of an additional effort by the whole humanitarian community to provide basic goods for the survival of the affected population, and especially of the children.

Promotion of local development projects. There is general agreement that the stabilization and peaceful reorganization of the Somali States and the initiation of the national reconciliation process will depend, to a large extent, on the restarting of the economy and the launching of small and quick-impact projects. It is expected that the EU will play a major role in this. The EU is very much involved in the reconstruction process in Somalia; the Joint Strategy Paper for Somalia for 2008-2013 provided an allocation of EUR 215, 8 million from the EC’s 10th European Development Fund (EDF). It covers three main sectors of cooperation: governance, education and rural development. This holistic approach to the Somali problem, linking security with development, rule of law and respect for human rights, gender-related aspects and international humanitarian law, has turned out to be the only way to address a very complicated situation. The recent Conference on Somalia which took place in Brussels in September 16, 2013 co-hosted by the European Union and Somalia, must be welcomed as a major positive step in this process.

The UN and its members States, together with all relevant regional and national stakeholders, need to act cautiously, fully respecting the local traditions and values in order to make the Somali people the real actors of change. If this result is to be achieved, the UN will regain its credibility in the country, and Somalia will face a more promising future after its long period of suffering.
EU Naval Force flagship ITS SanGiusto captures suspected pirates 2 - Nov 2012

European Union Naval Force Somalia Operation Atalanta | Photo EU Naval Force Media & Public Information Office
OFFSHORE SOMALIA: PIRACY, NAVAL MISSIONS AND PRIVATE SECURITY

IF INTERNATIONAL CONTRASTING STRATEGIES TO PIRACY HAVE SHOWN THEIR LIMITS, PRIVATE MARITIME SECURITY INSTEAD SEEMS SUCCESSFUL. THE BOOMING ARMED CONTRACTORS SECTOR IS A PROFITABLE BUSINESS, BUT IT RAISES SEVERAL INTERNATIONAL AND HUMAN RIGHTS LAW ISSUES, WHILE FOREIGN AND ONSHORE ROOT CAUSES OF THE PHENOMENON ARE LARGELY LEFT UNATTENDED.

Introduction

On the 12th of October 2013 the Seaman Guard Ohio, a Sierra Leone-flagged fishery patrol vessel, owned and operated by AdvanFort, an US-based Private Maritime Security Company (PMSC), was detained at a port in Tuticorin, Tamil Nadu, for illegally entering Indian waters (yes, India, again) with a cache of 31 assault rifles and about 5,000 rounds of ammunition. The vessel was engaged in an anti-piracy protection service in the so called High Risk Area (HRA). On October 18, 2013 the crew, composed of ten sailors and twenty-five security guards of different nationalities, was arrested by coastal authorities. The episode caused a strong reaction by place. For the purpose of BMP the High Risk Area is an area bounded by Suez and the Strait of Hormuz to the North, 10°S and 78°E; see ibidem, p. 4.

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1 See http://www.bbc.co.uk/news/world-asia-india-24606031
2 According to the above mentioned BMP 4, “the High Risk Area defines itself by where pirate activity and/or attacks have taken place. For the purpose of BMP the High Risk Area is an area bounded by Suez and the Strait of Hormuz to the North, 10°S and 78°E”; see ibidem, p. 4.

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be clear is that a purely public contrasting strategy has not proven to be sufficient and functional in terms of its cost-effectiveness and, most importantly, is not sustainable in the long term. This article aims at putting the international naval presence in Somali waters in a critical perspective, while highlighting the characteristics and controversies of the employment of privately contracted armed security personnel (PCASP) on merchant ships as counter-piracy measure.

Contractors in the Gulf of Aden: the privatization of maritime security as a response to the costs of Somali piracy

The magnitude of the problem posed by Somalia-based piracy, with the number of attacks reaching its peak in 2011 with 243 reported attacks, has generated an impressive concerted deployment of naval forces in the Gulf of Aden. The latest figures highlight a significant reduction of the pirate activities off the Horn of Africa and in the Indian Ocean. Indeed, according to the International Maritime Bureau Piracy Reporting Center, in 2013 the number of successful pirate attacks has reached the lowest rate: eleven reported incidents including two hijackings. The general improvement of the Somali political scenario coupled with the massive international naval presence have surely contributed in addressing the issue by diminishing the frequency and the overall number of pirate attacks off the coasts of the country, at least in terms of deterrence. Moreover, the adoption by the shipping industry of the so-called Best Management Practices to fend off the attacks has played a significant role. Nevertheless, piracy is still dangerous in both human and economic terms. It is worth remembering that still “more than 90% of global trade is carried by sea” and it is, therefore, easy to imagine the multi-billion interests at stake. Not surprisingly, pirate attacks have relevant economic impacts on shipping industry causing significant capital loss. Moreover, one must also consider the payment of ransom in case of hijacking of the crew. The average ransom payment has increased dramatically: “in 2006, the average ransom was estimated at a few hundred thousand US dollars, rising to $0.5 million in 2007, $1.5 million in 2008, $3.4 million in 2009 and up to $5.5 million in 2010”. However, due to the above-mentioned reduction in the number of successful attacks, the overall amount of money paid in ransoms in 2012 (31.75 million USD) has declined by 80.1% from 2011 (159.62 million USD). Additionally, one of the most problematic effects has been the increase of insurance premiums for companies travelling through the HRA that generates additional costs for the industry. The global estimated

Interestingly, AdvantFort claims that the authorization to enter into the port was granted by Indian coastal authorities, who also checked the regularity of all the paperwork needed to carry the weapons on board. see http://www.advantfort.com/Indian-Authorities-Favorably-Respond-to-Seaman-Guard-MV-OHIO-documentation.pdf


4 See *AdvantFort*, that claimed that all the procedures to lawfully enter Indian territorial waters have been duly respected.

5 The International Maritime Organization (IMO), the UN specialized agency, has been engaged in the debate regarding piracy, setting up a reporting mechanism and issuing recommendations and guidelines. In particular, the IMO has proposed the Best Management Practices (BMP) which includes some non-lethal protection measures to be applied on ships in order to avoid an attack. The latest version of the BMP is contained in Circular n. 1339, Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia, Best Management Practices for Protection against Somalia Based Piracy (MSC.1/Circ.1339, BMP 4, 14 September 2011).

6 See ibidem. p. 7.

7 For example, the losses may be caused by the delays in shipment deliveries, or by the loss of the cargo value, or the costs sustained in order to increase the speed to fast steam through the HRA.

8 Given the “ransom-centered” model of Somalia-based piracy, i.e. the large majority of its revenues derives from the ransom paid to release the hijacked vessels, the dramatic increase that occurred under this line is significant. Indeed, “the Somali pirate business model relies heavily on onshore support infrastructure to conduct ransom negotiations. Generically a pirate operation consists of armed offshore operations with onshore support that provides shelter for returning pirates and access to markets for stolen goods and for the goods, services, and manpower needed for pirate attacks”, see *The World Bank*, *The Pirates of Somalia: Ending the Threat, Rebuilding a Nation*, p. xiv.


cost of Somali piracy, which encompasses a variety of indicators such as: the costs related to insurances, military operations, security equipment etc., was between $5.7 and $6.1 billion in 2012, with a drop since 2011 of about $850 million11.

Despite these impressive figures, the human costs of Somali piracy are even higher. It has been calculated that in 2012, a total of 851 seafarers have been attacked with firearms by Somali pirates, out of which 381 have experienced the boarding of their vessels and 349 have been taken hostage (plus 240 hostages remaining from 2010-11, for an overall total of 589). Although, as said, attacks have decreased significantly since 2011, “there was a rise in the reported success rate of pirate attacks in 2012 (from 14% of seafarers fired upon by Somali pirates to 41%). This may be an indication that piracy tactics have improved, or that reporting anomalies have distorted the true picture at sea. Furthermore, all hostages remaining in captivity have been held for over one year and are considered to be at High Risk”12.

Although piracy is undoubtedly as old as sea trade itself, and also the set of norms international law have developed against it are in large part consolidated as customary law, the practice of resorting to contractors as an anti-piracy measure is a pretty recent development. Since 2008 there has been a real “boom” in the maritime private security business; with existing companies adding security services to their menus or new companies being set up. Providing exact figures remains a challenge, but according to the 2013 Security Association for the Maritime Industry (SAMI) Annual Review, “the international membership of SAMI encompasses almost 180 maritime security providers, consultants, trainers, and maritime security equipment, technology and hardware manufacturers from across 35 different countries […]. These membership companies range in size from independent consultancies to major multinationals”13.

Concretely, PMSCs offer a variety of services to shipping companies, which may vary from risk assessments, consultancy, and training of the crew to the deployment of armed and unarmed guards. It has been estimated that in 2012 the global expenditure for armed guards was between 1.15 and 1.53 billion USD, while in 2011 was around 530.6 million dollars14. The rate of armed guard use is estimated to be around 50% therefore it has doubled if compared to 201115. The cost shipping companies have to sustain to hire PCASP seems to range from 772.95 to 2,569.73 USD per guard per day, with an average of 1,115.94 USD16.

Some legal considerations: piracy in the international law of the sea

The disturbing nature of the acts of piracy: causing a breach of the “good order at sea” and troubling maritime traffic, has led since antiquity to identify pirates as hostis humanae generis and to look at piracy as a crimen iuris gentium that is, a crime which negatively affects all mankind. Indeed piracy is, historically, the first crime in relation to which the concept of universal jurisdiction has been elaborated17 and has to be considered as an exception to the general principle of freedom of navigation in the high sea18. International law has developed a set of norms aiming at criminalizing and suppressing piracy at sea, which has been incorporated as customary law in the 1958 Geneva Convention on the High Seas19 and the 1982 United Nations Convention on the Law of the Sea (UNCLOS)20. The cornerstone of the rules regarding piracy is the principle of collaboration among States to repress piracy “on the high sea or in any other place outside the jurisdiction of any State”, stated in Article 100 of the UNCLOS. As for the following Article 101, piracy at sea consists in:

“[…] (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with a knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)”. By reading this definition, some legal features appear crystal-clear: the intrinsically private nature of the ends and the means by which the pirate activity is conducted; the requisite of its occurrence in international waters, in which the high sea, the contiguous zone21 and the exclusive economic


14 See International Shipping Facts and Figures – Information Resources on Trade, safety, Security Environment, International Maritime Organization Maritime Knowledge Centre, 6 March 2012, p. 7; available at http://www.imo.org/ KnowledgeCentre/ShipsAndShipping- FactsAndFigures/TheRoleAndImportanceofInternationalShipping/Documents/International%20Shipping%20-%20Facts%20and%20 Figures.pdf. It is further specified that “the observed increase comes as the result of an increased proportion of ships employing armed guards (30% in 2011 and at least 50% in 2012) as well as a revised estimate of the number of commercial transits through the HRA each year. Controlling for that latter methodological factor, the cost of armed guards increased 79.7% in 2012”, ibidem.


16 Ibidem.
zone are included. Acts of violence and depredation occurring in territorial, internal or archipelagic waters, as defined by Resolution A. 1025 (26) of the International Maritime Organization (IMO), are to be considered “armed robbery at sea”, falling under the jurisdiction of the coastal State.

The above-mentioned duty of collaboration imposed on States to repress piracy is further specified by Art. 105; which states the faculty of every State to seize a pirate ship or aircraft and arrest the persons and seize the property on board over which it has the faculty (and not the obligation – the non-binding nature of the provision has created a lot of issues with reference to the actual prosecution of pirates) to exercise its jurisdiction, provided that the pirate activity is ongoing on the high seas, or in any other place outside the jurisdiction of any State. What appears to be relevant in order to legally frame and problematize the employment of contractors for anti-piracy purposes is that the UNCLOS attributes the legitimate title to seize pirate ships only to “warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect” (Art. 107). It is therefore clear that, from a legal perspective, the active contrast and seizure of pirates through the use of force is attributed only to the organs of States, excluding therefore any proactive operation by private subjects, which possibly may only act in self-defense.

The usual international response to the upsurge of piracy in the Horn of Africa: naval operations in the Gulf of Aden and a critical evaluation of their outcomes/cost effectiveness

Although rightly seen as an unprecedented example of good cooperation among States, international organizations and institutions, the naval presence in the Gulf of Aden is problematic. The international community has given a rather late response, not immediately understanding the criminal potential of the new version of piracy operations in the Gulf of Aden. This counter-productive solution has been often justified in the light of a presumed “insufficient legal basis”, which “results from difficulties with determining the appropriate jurisdiction, conflict of laws, the inadequacy of domestic laws, evidentiary procedures, and the cost of the judicial consequence” (see OSIRO D., Somali Pirates Have Rights too, Judicial Consequences and Human Rights Concerns, ISS Paper 224, July 2011, p. 1). Specific agreements have therefore been signed with coastal States able and willing to exercise extraterritorial jurisdiction, such as Kenya and the Seychelles, also in the light of the impossibility to extradite pirates to Somalia, given the evident inability of Somali judicial authorities to prosecute nationals involved in piracy.

Indeed, “although on earlier occasions, the international community mainly relied on the coastal states to deal with the piracy problem, the commitment of the international community to countering Somali piracy is significant. This shift reflects the geopolitical importance of the region and the fact that the sea lines of communication under threat in this case partly run through the territorial waters of nations that do not have the capabilities to effectively address the problem”, see Van Ginkel B., Landman L., In Search of a Sustainable and Coherent Strategy, cit., p. 728.

Addressing all the specific features of the three international naval task forces is beyond the purpose and the limits of this work. Nevertheless, some features can be highlighted. First of all, a simple but critical issue: at operational level, the vastness of the HRA in which the navies operate challenges the possibility to effectively intervene. The patrolling area is about 2 million square miles. Indeed, although the institution of an Internationally Recommended Art. 35 of the UNCLOS: “1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.2. The contiguous zone is limited to a breadth of 24 nautical miles from the baselines from which the breadth of the territorial sea is measured”. 105; which states the faculty of every State to seize a pirate ship or aircraft and arrest the persons and seize the property on board over which it has the faculty (and not the obligation – the non-binding nature of the provision has created a lot of issues with reference to the actual prosecution of pirates) to exercise its jurisdiction, provided that the pirate activity is ongoing on the high seas, or in any other place outside the jurisdiction of any State. What appears to be relevant in order to legally frame and problematize the employment of contractors for anti-piracy purposes is that the UNCLOS attributes the legitimate title to seize pirate ships only to “warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect” (Art. 107). It is therefore clear that, from a legal perspective, the active contrast and seizure of pirates through the use of force is attributed only to the organs of States, excluding therefore any proactive operation by private subjects, which possibly may only act in self-defense.

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Transit Corridor, where warships are pre-positioned to assist transiting shipping convoys, has proven to be a smart solution, one of the side effects of the international naval patrolling in the area has been the pursuing of new routes by pirates, who have shifted their attacks further into the Indian Ocean. Moreover, since the average duration of an attack is about thirty minutes, it is easy to imagine the difficulty of timely intervention while it is taking place. Another issue of concern is the long-term sustainability of this naval endeavor: in 2012, the overall cost of piracy-related military activities in the Gulf of Aden was around 1.09 billion USD. EUNAVFOR Atalanta and Ocean Shield have prolonged their mandate up to the end of 2014, even though they have already downsized their commitment by reducing the number of deployed vessels (from 5-10 vessels in 2011 to 4-7 in 2012 in the case of Atalanta and from 4 in 2011 down to 2 by the end of 2012 in the case of Ocean Shield).

What appears clear in relation to Somali piracy is that a purely military response can be appreciated only on a tactical level. A strategic long-term solution must necessarily address the root causes of this criminal phenomenon, enhancing the capacity building elements of the international commitment. In this sense, particularly enlightening are the words by Colonel Richard Spencer, the EUNAVFOR Chief of Staff in February 2011: “The military resource is finite and only treats the symptoms. We’re only holding the line”.

An open (new) issue: effectiveness, business imperatives and legal considerations on maritime contractors

It is necessary to make clear that the growing employment of PCASP has one, very simple, reason: it works. To date, no vessel with armed contractors on board has been hijacked and the above-mentioned increase of insurance prices is mitigated by the fact that there are premium discounts if armed guards are on board. Although, until about two years ago the common approach of the shipping industry and of the IMO was far from endorsing the employment of PMSCs on ships, the attitude towards it has changed since it has become clear that it was becoming a common practice. The IMO has failed to keep up with the pace of the phenomenon, still affirming that the authorization of the use of PCASP on board is essentially a flag state issue, even if in May 2012 it released the last version of the Interim Guidance to private maritime security companies (PMSC) providing contracted armed security personnel on board ships in the High Risk Area. At the moment, however, the key role in regulating the issue is still played by States and self-regulatory instruments.

There are various legal issues at stake. First and foremost, the lawful use of force: in general terms, “the right of PMSC personnel to use force is typically restricted to lawful acts either in self-defense or in the defense of others”. But the acts and the degree of force that could lawfully be encompassed in the self-defense category vary from State to State. Secondly, many concerns arise in relation to the carriage of arms, especially when it comes to those States providing “flags of convenience” and thus very limited inspection regimes. Moreover, the norms regulating the type and the amount of arms PCASP can use may vary a lot among States. Compliance with International Traffic in Arms Regulations and with different governments’ obligations is actually complicated and expensive for PMSCs. This fact had led to the solution of floating armoured ships: personnel are embarked in port and firearms and equipment are picked up from those ships waiting outside territorial waters. From a legal perspective, as well, the practice of armed patrol boats is very enlightening. They operate in a more aggressive way by establishing exclusion zones around client ships and challenging suspicious boats. This solution is pretty attractive for shipping companies because it does not imply the carriage of firearms on board and therefore it does not compromise the right to innocent passage through territorial waters. From the point of view of international law, however, these armed patrol boats could be defined as pirate ships themselves as they use aggressive force in the high sea without having government authority.

Given this concentration of potentially aggressive force, it is easy to understand that the respect of human rights law standards is clearly challenged. Highly equipped and trained personnel operating in the high sea in protection of private interests without any, or very little, control are more likely to use force in a disproportionate way. There are already videos on the Internet that are witnesses to the indiscriminate shooting of the pirates by the contractors. Therefore, the concrete activity conducted in the high sea by PCASP is clearly not easy to monitor. This fact constitutes a serious threat to the respect of the most fundamental right, the right to life, which even pirates, who are engaged in a criminal activity, obviously enjoy. Moreover, in case of violation, a question arises on the real possibility that perpetrator of abuses can be held accountable, provided that the contractors may also be subjected to multiple jurisdictions (their national law, the
law of the flag state, or the law of the coastal State if they operate in territorial waters). In any case, the commitment of private security providers, in cooperation with the International Organization for Standardization’s, towards the elaboration of standards for PMSC providing contractors on board must be looked at as a sign of good will and self-consciousness.

**Final remarks: the future of maritime security in Somalia**

With a 3.025 km long coastline, it is clear that the future of Somalia is also bound to the destiny of its coasts and sea. This concept has been clearly reiterated by President Hassan Sheikh at the Fourteenth Plenary of the Contact Group on Piracy held in New York on May 1st, 2013. The public debate has frequently shaped the issue in the wrong manner; often failing to pinpoint that piracy is only a dramatic consequence of the negligence that the international community has shown towards the twenty-years long crisis of the country. Moreover, the illegal exploitation of sea resources by different actors experienced by Somalia has played a crucial role in favoring the upsurge of piracy and the issues that Somalia have to face nowadays in the maritime domain.

The deployment of EUCAP Nestor, the capacity-building mission of the EU testify an increased consciousness over the necessity to address the piracy problem in a comprehensive regional perspective and must be seen as a good step forward on the way to stable and safe waters off the coasts of Somalia. An effective maritime security strategy should bring Somali political actors and international stakeholders such as donors, States, international organizations, and maritime industry representatives to aim not only at the suppression of piracy but also at the development of maritime infrastructures and law enforcement forces.

This means that law enforcement has to also aim at avoiding any kind of future criminal exploitation by various non-Somali actors, as it has shamefully happened in the past. In this context, it seems appropriate to recall the clear-cutting idea that, in Somalia, there are two kinds of piracy: the one we all know and the so called “foreign fishing piracy”, which has been “poaching and destroying the Somali marine resources for the last 18 years following the collapse of the Somali regime in 1991”.

Therefore, beside the military engagement, the employment of contractors and the advancement of Somali maritime policy, the elimination of the endemic poverty in Somalia is required to defeat the country-based pirate activity: providing young Somalis with valid alternatives to make a living in a safe environment will probably be more effective than any kind of counter-measure.

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Somalia Famine Food Aid Stolen / Human Black Hole

By Surian Soosay
HUMANITARIAN ACTORS’ STRUGGLE FOR ACCESS, IMPARTIALITY AND ENGAGEMENT WITH ARMED NON-STATE ACTORS

WHILE BEING DENIED OR GRANTED ONLY LIMITED ACCESS IN MOST OF THE COUNTRY REMAINS A REALITY, THE UN INTEGRATED MISSIONS’ APPROACH RISKS COMPROMISING THE PRINCIPLE OF IMPARTIALITY OF HUMANITARIAN ACTION. WITHIN THIS FRAMEWORK, HUMANITARIAN ORGANIZATIONS ARE ALSO CONFRONTED WITH DILEMMAS OF ENGAGEMENT WITH ARMED NON-STATE ACTORS.

Introduction

Almost 20 years after the 1991 events, Somalia adopted a new provisional constitution. The first regular parliament was established in August 2012 as a result of a consultative process that involved Clan Elders and a Committee composed of Clan representatives supported by international assistance. The process, despite being contaminated by corruption allegations is considered by most observers as a landmark attempt to exclude warlords and a step toward a more peaceful future.

A variety of actors

The federal government is not the only player in today’s Somalia. Clans, insurgents, autonomous movements, self-declared independents1, international...
national militaries, diplomats and international aid organisations are key actors in contemporary Somalia. The main clans of the South Central regions, Hawiye, Darood, Dir, Rahanweyn, Somaliland’s Isaaq and the sub-clans, have always played a crucial role in defining community life, exercising power sharing and in many cases, replacing an inexisten or ineffective government experiencing two decades of turmoil. Clans and sub-clans provided services, authority, security and were seen by a large part of the population as a fundamental ingredient to the livelihood of the country. Yet, the early stages of the hardliner opposition armed group al Shabab, that for years has controlled almost 90% of the Southern and Central Somalia, constituted an exception, having been organized with an unusual non-clanic structure and chain of command.

Somalia’s armed opposition and insurgency is made up of a plethora of actors. The country suffers from growing criminal groups and activities, but al Shabab is still considered the most organized, effective and by far the deadliest of these. Despite the ‘tactical withdrawal’ announced in August 20112, the group has demonstrated on several occasions its capacity to carry out devastating attacks with complex attacks in the capital Mogadishu and in neighbouring countries. The prominent international military presence, represented by the 17,000 uniformed personnel of the UN-mandated African Union Mission (AMISOM) has so far significantly contributed to enhancing the Federal Government’s territorial control, but a sizeable part of the country remains exposed to extreme risk due to a very volatile security environment where military gains are often not followed by stable control or political legitimacy. On the international side, governmental actors have changed over the years, to include players such as Turkey and China, while internally, the map of Somalia shows an intricate net of federal actors and separatist movements, active also in the South Central zones3. Despite instabilities, Somalia’s momentum has attracted the private sector. Many members of the Somali diaspora decided to invest in the country, benefiting from trading opportunities and the construction boom. The diaspora has always played a crucial role, with remittance exceeding the amounts normally needed to fund the humanitarian response in the country4. Remittances to Somalia are in fact seen by many as a reliable indicator of the interest, business propensity and engagement of the diaspora within its country of origin. Somalia has a longstanding international aid community presence5. Many actors were present even before 1991, and continued their activities over the last two decades of chaos. The national civil society organizations6 also played a fundamental role, in some cases with fatal consequences for many of their workers and leaders7.

The numbers of a crisis

In this context, the conditions of the local civilian population remain precarious. The humanitarian situation is extremely dire, with some of the worst indicators in the world, especially as far as the health sector is concerned. 870,000 persons are in need of humanitarian emergency aid and 2.3 million are in severe distress. A worrying indicator is the acute malnutrition rate, which afflicts over 200,000 children under the age of five8. Current conditions, with a physician available for every 25,000 persons, cause 70,000 children’s deaths every year and reproductive health lies in a desperate state, with more than 30% of women of reproductive age dying due to pregnancy-related causes. In other words, a pregnant woman dies every two hours. In such a scenario, 2.1 millions are displaced, 1.1 million within the country’s boundaries and the remaining as refugees, mainly in the Horn of Africa and in Yemen. Yet, for the first time in years, considerable numbers of refugees have voluntarily crossed the borders, returning to Somalia from neighbouring Kenya and Ethiopia but it is too early to set a trend given the volatile security conditions9.

The struggle for access

The aid community works under extreme pressure to deliver humanitarian relief in a territory that remains one of the world’s most extreme environments. The so-called Southern and Central Zone, roughly from Galkayo to the Kenyan border, remains highly unstable. If born and raised in the rural areas of Somalia, young people under the age of 20 have practically never experienced the tangible presence of the government nor of the rule.

\[2\] The group’s spokesperson Sheikh Ali Mohamed Rage announced a tactical retreat from Mogadishu in early August 2011, as a result of intense fighting with the African Union Peacekeeping force AMISOM: http://www.theguardian.com/commentisfree/2011/aug/08/al-shabaab-mogadishu-somalia

\[3\] In August 2013 a reconciliation agreement was signed between the administration of the Jubaland and the Federal Government.

\[4\] Senior lecturer Laura Hammond at SOAS University, London, estimates that the amount of remittances of the Somali diaspora totals annually 1.3 to 2 billion US dollars. http://www.soas.ac.uk/news/newsitem85230.html

\[5\] For a list of the main humanitarian actors present in Somalia, consult the Consolidated Appeal Process at http://reliefweb.int/sites/reliefweb.int/files/resources/Somalia%20Consolidated%20Appeal%202013-2015%20MYR%202013.pdf

\[6\] Among the most active organizations: IDA – Women development organization SWDC – Somali Women development Center, SSWC – Save Somali Women and children, WOCCA – Women and Child Care Organization OSPAD – Organization for Somali Protection and Development

\[7\] Examples involving media and NGOs are the assassinations of Ali Shamkar, founder of Horn Afrik Media, assassinated by an Improvised Explosive Device (IED) arranged by militants in August 2007 in Mogadishu as he returned from the burial of Mahad Ahmed Elmi, a fellow journalist and producer of Horn Afrik Radio shot earlier that day. NGO WOCCA Executive Director and founding member of the Peace and Human Rights Network (PHRN), Mohammed Abdiile Mahdi, was assassinated in Mogadishu in June 2008.


\[10\] According to UNHCR Movement tracking 30,000 refugees have returned only temporarily or seasonally. On November 10th a ‘Tripartite Agreement’ between the Governments of Kenya and Somalia and the United Nations High Commissioner for Refugees (UNHCR) has been signed. This agreement sets the support and assistance to Somali refugees in Kenya who wish to voluntarily return to their homeland.
of law. For all of their life, they have been the object of competing interests of various armed groups, and, as a result, many of them play an active role as perpetrators or serve as witnesses to massive human rights abuses and incredible atrocities. This is still occurring in today’s Somali society, coupled with a marked mistrust in the capacity and transparency of the government, which undermines the government’s capacity to expand control and obtain a tangible support from communities. To deepen the problem, government troops and agents reportedly harass communities, which adds friction and slows any government attempt to gain acceptance and legitimacy.

After 1991, access became more complicated in Somalia. The international community was forced to leave the country on various occasions, as a consequence of serious security threats and incidences. The most affected areas, mainly concentrated in the South and Central Zone, have experienced instability that resulted in expansions and sudden contractions of the capacity of humanitarian actors to deliver aid, as well as alternate donors’ interest in funding the action. As an example, a comparison of the humanitarian access maps of June 2009 and January 2012 show a dramatic increase of the areas considered extremely restricted or inaccessible. This has forced actors, particularly NGOs, to develop new tools to ensure minimal implementation of life-saving programmes, relying in most cases on the presence and work of national staff, who, in some cases, are the object of political pressure and interference. The proliferation of “remote management protocols” and increased collaboration with local actors has become the norm for many organizations. On the other hand, this limits the capacity of organizations to independently monitor humanitarian needs and response, but on the other hand, this stimulates an increased ownership and development of capacity by local actors, with national personnel and local organizations growing in competence and thus in weight in the humanitarian fora.

2012 marked a slow change. Following AMISOM’s military successes and possibly some internal fragmentations, al Shabab reduced its presence, concentrating on rural areas and limiting its control in towns and cities. After more than three years of little to no access, the relief effort today enjoys limited access that allows essential movement of aid workers in several southern and central regions, particularly in the cities and surrounding areas. The international community resumed and intensified missions and visits to the country programmes. This enables a slow but progressive improvement of the delivery of aid, almost exclusively limited to life saving actions, aimed to provide urgent and essential aid such as basic health care, including nutritional programmes for heavily malnourished children, water and sanitation to reduce the impact of waterborne diseases and food security. The aid community is cautiously trying to expand its capacity to deliver, considering the fragility of the access gained thus far. Today, it is estimated that almost 2 million persons are in need of safe water in Somalia and pertinent programmes have reached only 31% of them. Similarly, only 25% of the persons in need of food assistance this season have been reached by the assistance thus far. Other activities related to education and protection show different results, with 19% and 0.8% of beneficiaries reached out of the total population in need. This shows how the assistance in Somalia is still unbalanced and incomplete, a trend confirmed also by the current humanitarian funding, with only 41% of the needed sum actually funded by donors.

11 A comparison of the access maps is available at: http://reliefweb.int/sites/reliefweb.int/files/resources/DB3EC-D222307AC4FF5257FC005073C9-map.pdf

12 As in other countries, the organizations have developed tools to ensure an effective management of programmes, while part of the staff is located outside the area of operation, normally for security reasons. Among the tools counted are detailed planning, implementing and monitoring procedures to be adopted also by the part of the team still able to remain in the field.

13 Source of data: OCHA. 2.1 m persons in need of Food Assistance, and 400,000 per month reached

14 For an updated status of humanitarian figures in Somalia see: http://reliefweb.int/sites/reliefweb.int/files/resources/Somalia%20Humanitarian%20Dashboard%20October%202013.pdf


16 With a document published by the Al Shabab Office for Supervising the Affairs of Foreign Agencies (OSAFA) 16 NGOs and UN agencies were expelled from Somalia in 2011. Al Shabab accused aid groups of disseminating information on the activities of Muslims and militant fighters, financing, aiding and abetting “subversive” groups seeking to destroy the Islamic penal system, and of “persistently galvanizing the local population” against the full establishment of Shariah law. Among the agencies: UNICEF, the World Health Organization, UNHCR, the Norwegian Refugee Council, the Danish Refugee Council, German Agency For Technical Cooperation (GTZ), Action Contre la Faim, Solidarity, Saacid and Concern. The text is available at the following url: http://www.somaliweyn.org/pages/news/nov_11/28nov12.html

17 Between 2006 and 2011, there were incredible atrocities. This is still occurring this season have been reached by the assistance thus far. Today, it is estimated that almost 2 million persons are in need of safe water in Somalia and pertinent programmes have reached only 31% of them. Similarly, only 25% of the persons in need of food assistance this season have been reached by the assistance thus far. Other activities related to education and protection show different results, with 19% and 0.8% of beneficiaries reached out of the total population in need. This shows how the assistance in Somalia is still unbalanced and incomplete, a trend confirmed also by the current humanitarian funding, with only 41% of the needed sum actually funded by donors. Access remains perilous. In fact, as the Al Shabab transitioned from conventional fighting to asymmetric warfare, using guerrilla and terrorist attacks against its targets, particularly the Federal Government, the humanitarian personnel and more importantly the civilian population, are exposed to lethal consequences in the rural areas as well as in the main urban areas, including Mogadishu. Analysts find many similarities between the group’s current military tactics and the ones rolled out by armed opposition groups in Afghanistan and in the Middle East. This brings enormous challenges to the humanitarian community who seeks access to people in need of assistance. Denied or limited access in most of the country remains a reality, with a number of humanitarian actors, both international non-governmental organizations and United Nations agencies frequently expelled from the opposition controlled terri-
some cases were not authorized to carry out essential activities such as vaccination campaigns and children nutrition programmes. Movement outside of cities was often denied (with heavy consequences) and caused reductions in access to affected populations.

The principles & the blurring of lines
In the current context, with slow improvements and windows of opportunity for the delivery of aid, two main issues arise and are the object of an international debate: 1) the risk of compromising the principled aid as a consequence of the United Nations integrated missions, and 2) the framework of engagement with opposition armed groups listed as main terrorist organizations.

1) UN Integrated Missions: The humanitarian aid bases its action on the principles of humanity, neutrality, impartiality and independence. The adherence to these principles is considered fundamental for humanitarian action and is seen by many as essential to negotiate access to the affected population and to contribute to the safety of the humanitarian personnel and beneficiaries. The concerns related to the unanimously approved UN Security Council (UNSC) resolution 2102, on the UN Assistance Mission in Somalia (UNSOM), setting up an integrated mission, operational from early June 2013, are linked to the blurring of the lines between the UN Political and Humanitarian Affairs in Somalia. This occurs by concentrating the responsibility on the UN Special Representative of the Secretary General (SRSG). The fears are based on the risk of compromising the principle of impartiality. In fact, due to its direct ties and support to the Federal Government and AMISOM, the opposition groups, particularly Al Shabab, see the Assistance Mission, as a political partisan. Subsequently, humanitarian actors lose the ground to negotiate access as neutral and impartial players. This generates an immediate misperception of all humanitarian aid controlled by the SRSG, by considering any agency or organization as a political tool in spite of their efforts to ensure compliance to the principles, leaving politically motivated programmes, such as state building, to dedicated bodies of the UN system. If UN humanitarian aid work is considered subordinate to the UN political authority, the predictable result is restricted access and aid blockage. In conclusion, the perception of humanitarian operations as a tool to achieve political ends and not strictly aimed at saving lives and reducing suffering, is likely to seriously affect Non-Governmental Organizations (NGOs) on the basis of the source of their funding, undermining their capacity and ending in a shrinking humanitarian operating space.

2) The prolonged control of large parts of the territory by opposition groups, the impossibility for a significant number of agencies and NGOs to operate, combined with massive humanitarian needs, results in multiple pressures on the remaining humanitarian actors to implement expanding aid programmes and equally heavy pressure and ingénérance on the armed opposition groups. These groups often deny access to rural areas under their control, and attempt to divert aid toward unverified needs or add requests for registration fees and taxation to the humanitarian organizations.

As a matter of fact, the presence of Al Shabab in the main cities, even if today more confined to the rural areas, is often referred by the Somali as ‘local authority,’ even though code of conduct and counter-terrorism measures and laws limit engagement with such groups, particularly by regulating the concept of material support as described later. This dichotomy is evidenced in the constant negotiations with these groups by humanitarian actors in order to ensure access and protect funding from key donors who are concerned that public money may end up fuelling terrorist activities. This has serious implications at an operational level, as well as legal consequences, leading to a self-censoring tendency by many NGOs boards and in some cases, time-consuming procedures for procurement and activities that may fall under the concept of material support to designated groups or individuals.

There are interactions that are worth pointing out. In the Bay region for instance, the rural areas are still controlled by Al Shabab, while the regional capital Baidoa is under Federal Government control. The International NGO INTERSOS is among the main international actors directly involved in the assisted voluntary return of Internal Displaced People (IDPs) to their places of origin. Humanitarian organizations are not always authorized to directly deliver aid in remote areas, while community elders are allowed to collect it from Baidoa, according to a distribution mechanism that selects and prioritizes the beneficiaries on the basis of vulnerability criteria, such as age, gender, conditions of the family and number of disabled persons in the household. In many cases, the organization is permitted to carry out post-distribution monitoring activities to ensure that aid is not diverted. Clearly, this imperfect methodology raises questions about the protection of the beneficiaries and at best, confines humanitarian aid to the limited and insufficient delivery of core relief items. Aware that this constitutes an option of last resort, and while care...
fully ensuring that the aid reaches the intended persons, the organizations are today dedicating energy and resources to ensure that engagement with the present actors (al Shabab) and the activities carried out do not fall under the aforementioned material support. In short, in particular circumstances, humanitarian organizations are not only concerned and busy regulating aid, but also focusing on the legal consequences of their forced engagement with actors designated as terrorists. Failing to engage would result in a dramatic deterioration of the humanitarian conditions of thousands of people. Engaging recklessly would end diverting aid from taxpayers and private resources.

While the situation and access may appear slightly better in regions under the Federal Government’s control, with less implications related to the counter-terrorism prescriptions, the situation is far from simple. The lack of discipline, the tendency to concentrate governmental efforts in gaining control of the territory, and a poor knowledge of people’s real needs, common to many newly-established institutions, provokes a dangerous mix of frustration among communities who see their needs unaddressed and worry about the future. In such circumstances, the role of national staff is crucial to an international NGO. Normally, national staff are profoundly exposed to local dynamics, have greater leverage with nationals, better knowledge of their interests, their roles in the society and a sounder understanding and compliance with the principle of neutrality. This is essential for a NGO, international or local, hoping to maintain an effective presence.

Operational restrictions and legal limitations are the basis of a growing concern for humanitarian effectiveness in complex crisis. The combination of the aforementioned factors jeopardise the delivery of principled aid in Somalia, as a consequence of blurred lines between political agenda and humanitarian imperative.

Conclusions

In a country at war, where the death rate for pregnancy-related issues exceeds the death rate due to the conflict, access to populations in need of urgent life-saving services constitutes a priority for humanitarian organizations. There is a obvious need to reconcile independent coordination of humanitarian aid and counter-terrorism measures, as well as a need to resolve the growing requests of legal exemptions for selected humanitarian action, recognizing the operational circumstances where the action is carried out, and the presence and often-undeniable territorial control of organizations designated as terrorist.

Currently, the situation is slowly improving, with expanded access and appeals to fund humanitarian activities to consolidate the results thus far achieved. This comprises a distinctive aspect of the complex and prolonged crisis and institutional void, where humanitarian action and state-building efforts are urgent and simultaneous. The identity and the mandate of the actors becomes of utmost importance as it appears extremely easy for frontline actors, such as NGOs, to be the unintended recipients of the above-mentioned blurred lines. Particularly for multi-mandated organizations, humanitarian action is often not perfectly compatible with a set of other priorities on the agenda of other actors involved, namely government, opposition groups, traditional authorities, federal administrations, international institutions and donors.

State building priorities, long-term development and foreign policy may easily conflict with the strict adherence to humanitarian principles, which more than ever constitute the only asset that leads to acceptance by and access to the people in need of life saving aid.

While in the case of Somalia, it is nearly impossible to set a priority between humanitarian and state building needs, a clearer policy for their distinction should be embraced soon. To start, it is extremely important for each actor, including NGOs, to define sharply and publicly their role in Somalia, and to clearly assert OCHA’s leadership on humanitarian issues, in order to mitigate the negative effects of perceived particularistic agendas as described above.

In multiple ways, Somalia is challenging the international community. In the last 20 years, the country has pushed humanitarian action and state building activities to their limits and probably beyond. The aid community, representing one of the few international actors present in the country, has often acted as a replacement for the broader international community. This has contributed to remarkable results in assisting the population in need and to avoiding further puzzles. Conversely, the distinction between the mandate and priorities has been excessively loosened, generating a perception of non-neutrality and partiality. Growing global concerns of terrorism, donor’s fatigue to fund a prolonged crisis and a changing global environment are new challenges that Somalia and the International Community cannot afford to face.

Today, the priority is to deal with the complexity of the situation, and to adapt and rethink many of the operational approaches so as to comply with humanitarian principles of humanity, neutrality, impartiality and independence. This should be pursued without abandoning the plan for the reconstruction of a state able to control its territory to provide safety and dignity by serving its population. The current mapping of stakeholders shows an interconnection of actors diverse in nature, status, power, ideology, objectives, approaches and means. To ensure that the Somali will not surrender to a violent imposition of power and control, a careful restructuring around the diversity of actors according to their contribution may bring reorganization to Somalia as a whole. A specific role, recognition and operation, as well as legal space, should be guaranteed by all parties genuinely active in the delivery of a neutral, transparent and accountable humanitarian relief. This is the only realistic answer to the life-threatening risks millions of Somali face.

22 In the majority of cases, NGO activities are funded by a mix of privately raised funds and institutional funds provided by Governments, UN, Regional Institutions, etc.
Somalia: Jowle camp for the displaced in Garowe. Humanitarian activities run by Polish Humanitarian Action and funded by the European Commission’s Humanitarian Aid and Civil Protection department (ECHO). These are elders of the community having a meeting on water and resource management.

European Commission on DG ECHO | Photo Agata Grzybowska
THE EU COOPERATION WITH SOMALIA: CHANNELS OF IMPLEMENTATION

THE COOPERATION BETWEEN THE EU AND SOMALIA ADDRESSES SECURITY, DEVELOPMENT COOPERATION AND HUMANITARIAN AID. DESPITE PROFESSED COUNTRY-OWNED AND COUNTRY-LED PATHWAYS OUT OF FRAGILITY, LOCAL NON-STATE ACTORS AND NGOS ARE RARELY INVOLVED, WHILE ENGAGEMENT WITH REGIONAL AUTHORITIES REMAINS UNOFFICIAL.

Introduction

The EU approach to Somalia is deemed ‘comprehensive,’ but the concept of a ‘comprehensive approach’ still lacks a precise definition. What is clear is that it cannot be reduced to a civilian-military approach to crisis management, as designated by the 2010 NATO Strategic Concept.

In the EU framework, the blurred boundaries of this expression allow for its adjustment to various dimensions. The approach towards a third country or region can be deemed ‘comprehensive’ with a reference to the fields of cooperation involved, the time frame considered, the instruments deployed and the stakeholders engaged.

In the case of Somalia, the extent of EU engagement is comprehensive (both broad and inclusive) insofar as it encompasses the following three areas of cooperation: 1) short-term as well as long-term aims; 2) civilian and military instruments; and 3) involvement of multiple stakeholders. The general framework and the aims of cooperation are set in various documents, among which the most relevant, listed from the broadest to the most specific, are the Joint Africa-EU Strategy, the Strategic Framework for the Horn of Africa and the Joint Strategy Paper EU-Somalia, to which the recent Somali Compact must be added. As an expression of its deep

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involvement in regional dynamics, the EU maintains an EU Special Representative for the Horn of Africa3, alongside whom, since 2012, it has appointed an EU Special Envoy to Somalia, accredited as the first EU ambassador to the country6.

The first way in which the EU is involved in development cooperation with Somalia is by being far the largest donor of Official Development Assistance; the EU has provided €521 million over the period 2008-2013. The funds, mainly addressed to the areas of governance, economic development and education, are currently allocated both under the 10th European Development Fund (EDF, 2008-2013) and under different thematic programmes as part of the EU budget (including food security, civil society and human rights).

The second field of cooperation is humanitarian aid, that, compared to development assistance, is by its own nature aimed at short-term objectives including the treating of acute malnutrition, the setting up of primary healthcare services and the provision of shelter for displaced persons. The funds for humanitarian aid come from both DG ECHO and the humanitarian title of the Development Cooperation Instrument. DG ECHO allocated about €310 million over the period 2008-2013. A peak of €77 million was reached in 2011, and it then decreased to €60.8 million in 2012 and €46.6 million in 2013.

Thirdly, the EU is engaged in security cooperation. Over the period 2007-2013, €594 million, plus an additional €124 million announced in September 2013, have been provided to the AMISOM peace enabling mission, covering both allowances for military, police and civilian components and the operational costs of the Nairobti headquarters. Moreover, the EU is carrying out three missions under the CSDP: the EUTM Military Training Mission, the EU NAVFOR mission ‘Atalanta’ and the EU CAP NESTOR. The EUTM mission, launched in 2010 with a mandate that was later extended until March 2015, provides training to Somali soldiers, as well as political and strategic advice to members of security institutions, including the Ministry of Defence. The EU NAVFOR mission ‘Atalanta,’ launched in 2008 to support various UNSC resolutions, is aimed at the repression of acts of piracy and the protection of WFP vessels carrying food aid and vulnerable vessels sailing off the Somali coast. Finally, the complimentary EU CAP NESTOR mission is a civilian, non-executive mission. It was launched in July 2012 for regional maritime capacity-building. This mission addresses five countries and has a specific focus on Somalia as far as strengthening the rule of law sector, namely the development of a coastal police force. Currently, the EU is providing a total of €49.5 million for the three missions.

Multiple stakeholders
The EU’s comprehensive approach includes different stakeholders and multiple actors (state, regional and non-state) at various levels, both in the planning and in the implementation phase. The ACP-EC Cotonou Agreement, while recognizing central governments as the main partners in cooperation activities, acknowledges the need to engage not only local authorities, but the private sector and civil society organizations. Indeed, the Joint Strategy Paper, which constitutes the basis of cooperation under the EDF and the strategic framework of EU-Somalia cooperation in all fields, follows these guidelines. This is also due to the fact that the Joint Strategy Paper is based on the Reconstruction and Development Programme (RDP), which in itself represents the output of a process of Joint Needs Assessment carried out since 2005 by international experts along with federal and regional authorities, as well as Somali citizens (including members of the Diaspora).

State actors
As far as cooperation at a state level, the problem to overcome, since the very beginning, was the lack of an internationally recognized government since the collapse of Siad Barre’s regime in 1991. This prevented Somalia from ratifying the 2000 Cotonou Agreement; however, cooperation under the 10th EDF was made possible under article 93.6 of the agreement, providing for the possibility of the Council of Ministers ‘to accord special support to ACP States who are party to previous ACP-EC Conventions, which in the absence of normally established government institutions, have not been able to sign or ratify this Agreement’. As a consequence, the grounds for cooperation were laid by the Memorandum of Understanding signed by the European Commission and the Somali Transitional Federal Government in March 2006, followed by the drafting of the Joint Strategy Paper EU-Somalia in 2008. The EC was also a major donor


http://ec.europa.eu/echo/about/annual_reports_en.htm


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in supporting the National Reconciliation Conference, which took place in Mogadishu in July-August 2007, in the aftermath of the confrontation between the TFG and the Union of Islamic Courts (UIC), the intervention of Ethiopian troops and the consequent deployment of AMISOM.

The Joint Strategy Paper acknowledges that ‘fully functioning state structures are not in place’22. As a consequence, cooperation at a state level has taken place in the form of creating and reinforcing state actors (statebuilding) more than simply engaging pre-existing institutions. The main areas in which the process of statebuilding has been carried out are those of institutional support, stabilisation, reconciliation, accountability, outreach, democratisation and electoral assistance23.

In the initial phase, institutional support has been provided to the Federal Constitutional Commission and the National Commission for Reconciliation set up by the Transitional Federal Charter24. Then, with the establishment of the new Federal Government in 2012, the EU provided financial and technical aid to the Federal Government, the Federal Parliament, the civil service and the police, judicial and military sectors. Apart from the training of the military, carried out by the EU through the CSDP Mission EUTM Somalia, most of the aid is channelled through implementing partners. Interpeace25 and AWEPA26 are partners in the programmes dealing with the Federal Government and the Federal Parliament, whereas programmes focused on the civil service (SIDP programme) and the police and judicial sectors (ROLS/GROLS programme) are implemented by UNDP27. The UN has been the main partner in the process of constitution-making, leading to the Constitution of August 2012 which has been implemented through the UNDP Constitution Making Support Project (SCMSP), of which the EU was the main donor.

Such policies follow the OECD Guidelines for Good International Engagement in Fragile States and Situations, which set statebuilding as the ‘central objective’28. This principle has been transposed by the EU into the European Consensus on Development, stating the commitment to ‘supporting the prevention of state fragility through governance reforms, rule of law, anti-corruption measures and the building of viable state institutions’29; however, as recognized by the OECD in its 2011 report on Somalia30, the Somali case is exceptional insofar as the traditional paradigm of a strong central state has largely proved unsuitable for the social and cultural context of the country31. As a consequence, the statebuilding approach is necessarily complemented by projects aimed at strengthening regional and civil society actors.

Regional actors
In the Joint Strategy Paper, the European Consensus on Development states that ‘Somalia and the Horn of Africa’ in World Peace25 and AWEPA26 are partners

The Somali Institutional and Development Project (SIDP) is aimed at training staff in central ministries and agencies working in the field of public works, social affairs and accounting. Moreover, it supports the Public Financial Management through the development of macroeconomic and financial frameworks. The Rule of Law and Security Programme (ROLS/GROLS) is in charge of the training of the police and the judiciary sectors. Moreover, it is aimed at providing access to justice for the most vulnerable communities.


Nevertheless, some form of cooperation with regional actors has indeed been established, according to what has been named the ‘variable geometry’ approach35. One major example of cooperation with regional authorities has been democratization support in Somaliland and Puntland, through the Democratization Programme Steering Committee (DSC), made up of seven donors (EU, Denmark, UK-DfID, Norway, Sweden, Switzerland and USAID), among which the EU is the greatest contributor and co-chair along with the US. The Committee supported the local council elections in Somaliland in November 2012 and the Constitution’s revision process in Puntland, which resulted in the adoption of the revised Puntland State Constitution in April 2012. Moreover, the EU finances the UN Joint Program on Local Governance and Decentralized Service Delivery, established in April 2008 by the ILO, UNDP, UN-Habitat, UNCDF and UNICEF with the aim to improve transparency and

23 http://www.eeas.europa.eu/delegations/somal/iaeu_somalia/development_coope-

ration/governance_and_rule_of_law/index_en.htm
24 http://www.so.undp.org/docs/Ttrans-

25 Interpeace was created in 1994 by the UN, with which it maintains a partnership even if it is an independent organization since 2000. It promotes peacebuilding projects and it is headquartered in Geneva. http://www.inter-

peace.org/about-us/fast-facts
26 AWEPA is the Association of Euro-

pean parliamentarians with Africa. Its origins goes back to the Association of West-European Parliamentarians for Action against Apartheid, created in 1984, which, after the overthrow of the apartheid regime, shifted its focus to the promotion of democracy and human rights in many African regions. http://www.awepa.org/about-us/
27 The Somali Institutional and Development Project (SIDP) is aimed at training staff in central ministries and agencies working in the field of public works, social affairs and accounting. Moreover, it supports the Public Financial Management through the development of macroeconomic and financial frameworks. The Rule of Law and Security Programme (ROLS/GROLS) is in charge of the training of the police and the judiciary sectors. Moreover, it is aimed at providing access to justice for the most vulnerable communities.
accountability, increase public investment in basic services and strengthen civic awareness and participation in the three regions\textsuperscript{36}.

**Non-state actors**

In accordance with the ACP-EC Cotonou Agreement, the Joint Needs Assessment, the Reconstruction and Development Programme and the EU-Somalia Joint Strategy Paper, the EU supports the engagement of Non-State Actors (NSA)\textsuperscript{37} in different fields of the cooperation framework, with a particular focus on marginalised communities and women\textsuperscript{38}. The EU, in partnership with the international NGOs Interpeace and Saferworld, has also contributed to the development of three regional NSA platforms: SOCS CENSA (South/Central Somalia), PUN SAA (Puntland) and SONS AF (Somaliland)\textsuperscript{39}.

EU aid targeted to NSA is given under the EDF, the Development Cooperation Instrument (DCI) and the European Instrument for Development Cooperation and Human Rights (EIDHR). In all three cases, the EU finances projects implemented by IGO or NGO partners. For instance, projects under the EDF are currently implemented by Minority Rights Group, Saferworld, Vétérinaires Sans Frontières (VSF)\textsuperscript{40} and African Development Solutions (ADESO)\textsuperscript{41}. Under the EIDHR, ongoing projects are implemented by Heinrich Boll Stiftung, International Labour Organization (ILO) and UNICEF\textsuperscript{42}. Aid given under the DCI is channelled through the specific thematic programme ‘Non state actors and local authorities in development’\textsuperscript{43}. Assistance provided under this programme is, in the case of Somalia, addressed exclusively to NSA, since projects in support of local authorities are financed only under the EDF. In addition to some direct agreements, most contracts for projects to be financed under the NSA thematic programme are awarded on the basis of calls for proposals. Proposals can be submitted by NSA from both European countries and ACP partner countries. However, since Somalia could not ratify the Cotonou agreement until June 2013, Somali organisations have not been able yet to fulfil the eligibility criteria\textsuperscript{44}. As a consequence, projects under the NSA thematic programme, like projects under the EDF and EIDHR, are implemented by partner international NGOs, including Cesvi, Relief International UK and Terre Solidali ONLUS\textsuperscript{45}.

Some weaknesses of the EU NSA engagement strategy have emerged from the Civil Society Consultation Meeting organised in March 2010 in Brussels by the European Peacebuilding Liaison Office (EPLO)\textsuperscript{46}, as well as from the Final Report ‘Strengthening Civil Society in Somalia’ issued in March 2012 by the European Consultants Organisations (ECO)\textsuperscript{47}. In the Civil Society Consultation Meeting, participants advocated for a more active involvement of the Diaspora, NSA engagement in the Security Sector Reform, more regular meetings between EU representatives and local NSA, and an effective strategy to phase out the EU and give local NGOs control over the projects\textsuperscript{48}. The ECO Final Report stressed the difficulty of local NSA to access information (all official information and communications on projects are in English) and the unbalanced relationship between international and Somali NGOs.

**The Somali Compact**

On the 16th of September 2013, the EU and Somalia, co-hosting in Brussels the ‘New Deal for Somalia Conference,’ signed the ‘Somali Compact’ with the purpose of reviewing the cooperation strategy during ‘a crucial time for the Somali people.’\textsuperscript{49} The Compact follows the framework of the New Deal for Fragile States, established by the International Dialogue on Peacebuilding and Statebuilding\textsuperscript{50} and endorsed by the EU in 2011 at the Busan OECD High Level Forum for Aid Effectiveness.\textsuperscript{51} The New Deal strategy is based on the strengthening of the partnership principle and the principle of ‘country-owned and country-led pathways out of fragility,’\textsuperscript{52} which means that recipi-

\textsuperscript{36} http://mptf.undp.org/factsheet/fund/JS00
\textsuperscript{37} According to art. 6 of the Cotonou Agreement, the definition of ‘Non-State Actors’ encompasses ‘the private sector; economic and social partners, including trade union organisations and civil society in all of its forms according to national characteristics’.
\textsuperscript{38} The EU supports the UNDP’s Gender Equality and Women’s Empowerment Strategy. Moreover, it finances the project Empowering the Somali Women’s Agenda, implemented by COSPE, and it launched a Gender and Fragility Survey.
\textsuperscript{40} The projects are: “Overcoming multiple discrimination against Somali minority women” (Minority Rights Group), “Strengthening the participation of Somali Non-State Actors in decision-making on peace, security and development” (Saferworld) and “Promoting gender equality and women’s empowerment in Somalia” (VSF).
\textsuperscript{41} ADESO was founded in 1991 as the “Horn of Africa Relief and Development Organization,” and it took its current name in 2012. As far as support of civil society is concerned, ADESO is in charge of the project “Promoting Women’s Political participation for development of peace and security in Puntland”. Moreover, the EU finances another project implemented by ADESO in the field of rural development and food security.
\textsuperscript{42} The projects are: “Institutionalizing Democracy in Somaliland: Strengthening Civil Society for Effective Participation” (Heinrich Boll Stiftung), “Prevention of child recruitment and reintegration of children associated with armed forces and groups in south central Somalia” (ILO) and “Beyond Emergency: Building a Child Protection System in Somalia” (UNICEF).
\textsuperscript{43} Introduced in 2007 to replace the NGO cofinancing and decentralised cooperation budget lines.
\textsuperscript{44} They could apply as co-applicant or affiliated entity, but not as applicant.
\textsuperscript{45} The projects are: “To strengthen the capacity of Somalilander Civil Society on how to plan and develop integrated approaches in favour of the most vulnerable children” (Cesvi), “Media Education for Development, Inclusion and Awareness” (Relief International – UK) and “Support to Vulnerable Groups in Somalia” (Terre Solidali ONLUS).
ent countries should cooperate with donors both in the phase of programming and implementation, in order to improve the effectiveness of projects and to avoid dependency on external aid through the development of autonomous structures for political and economic administration at the national level. Therefore, a major priority is the involvement of multiple local stakeholders in the phases of fragility assessment, the development of a plan to transition out of fragility and the implementation and monitoring. Accordingly, it remains important for the EU to actively engage state, regional and non-state actors.

In the statebuilding field, in addition to the renewal of the commitment in the security and justice fields and the call for a stronger cooperation between the Federal Government and the AMISOM mission, the EU endorses the roadmap approved by the Parliament to adopt a Federal Constitution by December 2015 and to hold elections by 2016. Moreover, a Somalia Development and Reconstruction Facility (SDRF) is established to enable the Somali Government to ‘oversee and guide the diverse activities of its development partners’\(^53\) so that aid is aligned with government priorities, designed and delivered in partnership with government institutions and channelled through preferred instruments of the government. The SDRF is made up of a High Level Partnership Forum and a Steering Committee, both of which include representatives of the Somali government, Somali regions, and international donors (the EU, the UN the Organisation of the Islamic Conference, the World Bank, the African Development Bank and bilateral donors).

As far as regional actors are concerned, in addition to the above-mentioned participation in the SDRF, the EU expresses support for the establishment of regional authorities, as set in the Provisional Constitution, in the view of creating federal States\(^54\). A Special Arrangement for Somaliland is provided, based on Somaliland’s Vision 2030, which set a strategy for development cooperation in the region.

Finally, non-state actors have been involved in the planning phase in rounds of consultations which took place in Mogadishu, Baidoa, Galkayo and Garowe. Then, in September 2013, the final multi-stakeholder consultative meeting took place in Mogadishu to validate the Compact\(^55\). The final text sets ‘inclusive politics’ as the first strategic objective, stating that ‘representatives from all segments of the communities in each region (women, youth, civil society organisations, traditional elders, religious leaders, diaspora and business communities) will have the opportunity to contribute to this process.’\(^56\) However, the involvement of non-state actors has evoked the most criticism. Indeed, some have claimed that the pre-conference consultations were too limited - they took place in only four towns - and that the content of the agreement is too focused on international concerns - such as piracy - rather than on issues that directly affect the lives of Somali citizens\(^57\).

Conclusions
The strategy of involving different stakeholders in cooperation activities is set by the European Union in official documents, both as a general statement (ACP-EC Cotonou Agreement, European Consensus on Development) and in the specific case of Somalia (Joint Strategy Paper for the period 2008-2013, The Somali Compact). Indeed, in the case of Somalia, this strategy has proven particularly valuable due to the long-lasting absence of a central authority and the particular social and cultural context of the country. As a result, along with core statebuilding activities, the EU carries out projects in support of regional and non-state actors, mostly by financing programmes implemented by IGO or NGO partners. However, some major criticisms remain, especially in regard to the scarce involvement of civil society in the planning phase and the preference given to international NGOs rather than local ones in the implementation phase.

\(^{53}\) The Somali Compact, p. 10.
\(^{54}\) The Somali Compact, pp. 4-5.
\(^{55}\) The Somali Compact, p. 3.
\(^{56}\) The Somali Compact, p. 5.
\(^{57}\) ‘Inclusivity is key to the success of the Somalia New Deal Compact’, http://www.saferworld.org.uk/news-and-views/comment/109_-_ftn2
Former Al-Shabaab Stronghold in Mogadishu now an Animal Market

13 April 2013, Mogadishu, Somalia, UN Photo | Tobin Jones
IS MOGADISHU A VIABLE “INTERNAL PROTECTION ALTERNATIVE”?

MORE AND MORE SOMALIS SEEKING ASYLUM IN EUROPE ARE CONFRONTED WITH THE RISK OF BEING SENT BACK DUE TO AN AVAILABLE ‘INTERNAL PROTECTION ALTERNATIVE.’ AN ANALYSIS OF RECENT CASE LAW FROM THE EUROPEAN COURT OF HUMAN RIGHTS AND OTHER NATIONAL COURTS CONFIRMS THIS TRENDS, ALTHOUGH THE RISK OF HUMAN RIGHTS VIOLATIONS REMAINS HIGH.

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Introduction

In 2012, according to the figures provided by UNHCR, Somalia was the second largest source country for refugees. More than one million of its nine million people live outside Somalia, while an estimated 1.3 million are displaced within Somalia.

Every year, thousands of Somalis, mostly from Central and Southern Somalia, make the dangerous journey towards Kenya, Djibouti, Yemen, or Libya. Refugee camps in Kenya host more than half a million Somali refugees, while more than 200 thousand are registered in Yemen. Both Yemen and Kenya recognize Somalis as prima facie refugees and do not require travel documentation. Often, however, Yemen and Libya are only staging points on the way to Saudi Arabia or Europe, provided smuggled migrants can survive the crossing of the Gulf of Aden or the Mediterranean Sea on leaky boats. Refugees fleeing from conflict, abuse, human rights violations, famine and dire living conditions are often at the mercy of unscrupulous smugglers. As the October events in Lampedusa have shown, many die during the journey, while others are victims of abuse.

Somalis, and more general, boat people travelling towards Europe constitute a complex phenomenon defined by Western countries as mixed migration flows. A mixed flow includes not only ‘genuine’ refugees and asylum-seekers, but also “irregular” migrants, defined as economic migrants or others travelling without the necessary documents. These migrants lack legal avenues to enter Europe and often pass through countries which offer...
no effective international protection.\textsuperscript{2} UNHCR has estimated that between 50% and 75% of those arriving on the European Union Southern shores by boat deserve some form of protection.

International protection recognition rates for Somalis in the European Union vary from 34% to 89%, with some countries, like Germany and United Kingdom, exclusively recognizing refugee status, while others, like the Netherlands and Sweden, mostly recognize subsidiary protection status.\textsuperscript{3}

However, more and more Somalis seeking asylum in Europe are confronted with the possibility of being sent back due to an available “internal protection alternative” (IPA). Since international protection is best seen as a “surrogate,” and not a substitute for meaningful protection from one’s own country, asylum-seekers would not qualify for international protection\textsuperscript{4} if another area exists within their country of origin where they can find a protection alternative, which they could reasonably be expected to reach and settle down in. An analysis of recent case law from the European Court of Human Rights (ECHR) and other national courts confirms this trend.\textsuperscript{5}

The present article surveys the criteria used in recent case law to determine whether an “internal protection/flight alternative” exists in Somalia, and will contrast it with the actual complicated military and political situation, especially in Mogadishu.

Seeking asylum in Europe or getting protection in Somalia: criteria for the Internal Protection alternative

The international protection system in the EU is governed by the Qualification Directive (QD).\textsuperscript{6} In a few words, the Directive sets uniform standards for the identification of people in need of international protection in the EU – either as refugees or as beneficiaries of subsidiary protection – and ensures a minimum level of benefits and rights throughout the EU for both categories of beneficiaries of international protection. Rights such as family unity, access to employment, and health care are recognized in each category. In regard to the duration of the residence permit, as well as access to social welfare and integration facilities, States can still differentiate between the two statuses, lowering benefits for beneficiaries of subsidiary protection. The Directive defines a refugee as any “non-EU country national or stateless person who is outside of her/his country of origin and who is unwilling or unable to return to it owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group.” In addition to refugee status, the Directive recognizes applicants who cannot return to their country of origin due to a real risk of suffering “serious harm” as defined in Article 15 QD, and their right to subsidiary protection, unless exclusion clauses apply.\textsuperscript{7}

In view of the ethnic and political division in Somalia and the conditions of single women, minority clans and internally displaced persons, many asylum-seekers fleeing Somalia have a well-founded fear of being persecuted based on one or more of the grounds outlined in Article 1 A(2) of the 1951 Refugee Convention. However, even in the absence of persecution based on one of the five Convention grounds, Somali asylum-seekers may qualify for subsidiary protection, either because they suffer inhuman and degrading treatment due to the frequent human rights abuses, or, in the areas of Southern and Central Somalia where there is still an ongoing conflict, they experience widespread and indiscriminate violence due solely to their presence there.

Nonetheless, as mentioned in the introduction, recognition rates for international protection of Somalis among EU countries vary significantly since the Directive is not applied in a consistent manner. A comparative analysis of EU Member States’ application of the QD falls beyond the scope of this research, although this issue has previously been addressed by the UNHCR, and revealed a wide divergence across and within jurisdictions. Yet, the presence of extensive and binding jurisprudence from the European Court of Human Rights (ECtHR) on the scope of Articles 2 and 3 – the protection of the right to life and the absolute prohibition of torture or cruel, inhuman and degrading treatment or punishment – clearly designates standards of protection. These

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\textsuperscript{2} Examples are Libya, Eritrea, Ethiopia, and Sudan.

\textsuperscript{3} Aggregated data from UNHCR study “Safe at Last? Law and Practice in selected EU Member States with respect to Asylum-seekers Fleeing Indiscriminate Violence,” July 2011.

\textsuperscript{4} The term “international protection” includes both refugee status and subsidiary protection.


\textsuperscript{6} Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Recast in 2011: Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. Member States bound by the Directive are required to bring into force domestic legislation necessary to comply with it by 21 December 2013.

\textsuperscript{7} Exclusion clauses apply both to refugee status and subsidiary protection. The Qualification Directive adds an additional exclusion clause to those already part of the 1951 Refugee Convention and contained in Article 14 QD, specific to subsidiary protection. This exclusion has its basis in Article 33(2) of the 1951 Refugee Convention and precludes from subsidiary protection status any person who “constitutes a danger to the community or to the security of the country in which he or she is.” See M. DAMAD J., Complementary Protection in Refugee Law, (Oxford, OUP, 2007), at 88.
standards require the assessment of both objective and subjective criteria, namely the situation in the country of origin and the personal circumstances of the individual. In assessing whether there are substantial grounds for believing that the applicant would face a real risk in the receiving country, as outlined by the standards of Article 3 of the Convention, the national and international jurisprudence on Somali asylum seekers in Europe points out several objective criteria to take into consideration in addition to the subjective situation of the applicant.

In 2011, the ECtHR delivered the Sufi and Elmi case, which involved two unsuccessful asylum seekers who were returned to Mogadishu. In this landmark case, the Court held that where the situation is particularly grave and violence is widespread, the general risk of torture or ill-treatment may be high enough that the requirement of personal risk dwindles, essentially resembling the interpretation of Article 15(c) QD given by the Court of Justice of the European Union (CJEU) in Elgafaji. Moreover, the Court provided some criteria to evaluate the intensity of the conflict, like the number of civilian casualties, the violation of international humanitarian law rules, and whether the conflict is localized or widespread.

In assessing the condition of Somalia at the time of the Sufi and Elmi judgment, the Court resorted to previous national case-law, and in particular United Kingdom case-law, where it was already clear that Mogadishu was not a viable internal flight alternative, and, due to the situation of general violence, it rejected the possibility that asylum seekers could be sent back there. The Court also used reports from various international organizations and NGOs, like UNHCR and Amnesty International, and governmental reports.

Yet, the Court did not confine itself to the assessment of the situation in Mogadishu. It went on to explore other viable solutions of repatriation to Somalia but it was unable to find any place without risk of ill-treatment or inhumane and degrading conditions. The Court deemed that the areas under al-Shabaab’s control were not safe since corporal punishment was inflicted on those who fail to comply with al-Shabaab’s draconian version of Sharia’a, and women were especially targeted, while young male adults and children faced forced recruitment. The Court found that while the self-declared Republic of Somaliland and the autonomous region of Puntland were relatively safe, the Court would only admit failed asylum seekers returning from European countries who originated from Somaliland and Puntland’s territory or those who have close affiliations to their territory through clan membership. Moreover, there were major protection concerns around internally displaced persons’ (IDPs) settlements, and minority groups continuing to suffer discrimination due to the fact that Somaliland’s government is essentially a power-sharing mechanism for the sub-clans of the Dir clan, namely the Isaaq, Gadabursi, Isaa and Bimaal.

The ruling in Sufi and Elmi was also a landmark judgment with regard to the evaluation of socio-economic and humanitarian conditions in a country of return. The Court stated that a situation of “serious deprivation or want” incompatible with human dignity might well establish responsibility under Article 3 if, like in the case of Somalia, the humanitarian crisis is not solely attributable to poverty, lack of resources, draught or famine, but is predominantly due to the direct and indirect actions of the parties to the conflict. In this specific case, the Court assessed the living conditions in IDPs’ camps in the Afgoye corridor in South-East Somalia and in the Daabab refugee camp in Kenya, finding that the lack of - or the very limited access to - water, sanitation facilities and shelters, the exposure to violent crime, exploitation, abuses and forcible recruitment, and the impossibility of any improvement of the situation represented dire humanitarian conditions, and any returnee forced to seek refuge in these places would be at real risk of Article 3 ill-treatment.

Moreover, whenever the “risk factors” in the country are not sufficient to give rise to a real risk, if taken alone, “background factors” that may increase the possibility of the applicant to be subjected to treatment contrary to Article 3 – namely the personal situation of the applicant, such as gender, or her/his belonging to a minority group, the absence of a family, or the fact of being a single woman –, should also be taken into account.

Be that as it may, a recent judgment from the ECtHR has marked a significant departure from the previous national and international jurisprudence, as well as from European countries’ general stance on the security situation in Mogadishu. Until last September, when the ECtHR delivered the K.A.B. v Sweden judgment, South-Central Somalia and its capital Mogadishu were generally recognized as a place where no civilian is safe due to indiscriminate violence and the flagrant violations of basic human rights and international humanitarian law rules committed by any party to the conflict, from al-Shabaab and other Islamic groups, to the govern-
ment forces and AMISOM troops; however, in this latest judgment of an unsuccessful Somali asylum-seeker claiming that his removal from Sweden would expose him to a real risk of being subjected to treatment in breach of Articles 2 and 3 ECHR, the Court concluded that the level of violence in Mogadishu had decreased, due to fewer civilian casualties and a fragile recovery process, so that the situation was no longer one where everyone in the city was at risk of ill-treatment solely on account of their presence there.

At first, the Court, reiterated that Article 3 ECHR does not preclude States to rely on the existence of an internal flight alternative – as long as the person in question can safely travel to the area in question, gain admittance and settle there. Yet, at the same time, it excluded again that the proposed repatriation to Somaliland would be possible, because Somali nationals would not be able to gain admittance there, unless they were born there or had strong clan connections to the region.

Then the Court assessed the feasibility of Mogadishu as a viable alternative for relocation, as the applicant appeared to originate from there. Gathering information from various reports, as it did in Sufi and Elmi, the Court stated that there have been improvements for the ordinary citizens and a certain normalization of the daily life in the city, even if al-Shabaab was still present and continued to perform attacks mainly targeted at governmental organizations, but which inevitably affected civilians caught in the crossfire. Pointing out the still fragile security situation and persistence of human rights violations, the Court found that the available country information does not indicate that the situation is of such a nature as to place everyone in the city at a real risk of treatment, contrary to Article 3 ECHR.

It seems, however, that the Court has given a premature conclusion on the basis of a flawed analysis, as expressed by Judge Power-Forde in his dissenting opinion. Even if, at present, the level of generalized violence in Mogadishu is not so compelling, the instability of the situation, the persistent attacks of al-Shabaab, together with the unresolved situation of human rights abuses and appalling living conditions in IDPs camps, should have suggested more caution in establishing that there was no risk of an Article 3 violation. The impression that the Court leaves is that it was trying to apply Article 15(c) QD to the present case, more than Article 3 ECHR. The court evaluated, in essence, only whether “the level of violence was such that, without anything to render them a particular target, civilians faced real risks to their lives or personal safety.”

It is odd to note that in Elgafaji, the CJEU held that Article 15(c) protection went beyond that of Article 3 ECHR, while in Sufi and Elmi, the ECtHR pointed out that Article 3 offered comparable protection to that afforded by Article 15(c) under the QD. However, in K.A.B., the ECtHR seemed to equate the two provisions and neglected to take into consideration other risks or potential inhuman and degrading situations that the applicant may face upon return. Like if the ECtHR was experiencing an identity crisis.

Conclusions
In conclusion, although the situation in South-Central Somalia and, in particular, in Mogadishu, is improving day-by-day, the risk of human rights violations is still high and the conditions of those living in IDPs camps are extremely dire and totally dependent on international humanitarian aid.

Government reports and reports issued by non-governmental organizations like Amnesty International and Human Rights Watch describe an improving situation in Mogadishu while emphasizing that the improvements and recovery underline the persistent massive internal displacement of persons, the unpredictability of the still volatile situation in the Somali capital, and the lack of a functioning system for addressing human rights violations.

Moreover, while the traditional clan protection mechanism is not viable in Mogadishu and other areas under the control of al-Shabaab, in the self-declared independent state of Somaliland and the autonomous region of Puntland, only those who originate from those territories or those who have close clan affiliations are admitted.

Therefore, in view of the objective situation of instability and violence, this article argues that meaningful protection in Mogadishu and Southern-Central Somalia is not yet available and persons should not be forcibly returned there, while returning persons to Somaliland or Puntland should be considered only when close clan affiliations make it possible. When evaluating whether a person can find meaningful protection in her/his country of origin, Article 3 ECHR jurisprudence requires a thoughtful examination of the personal condition together with the situation in the receiving country. Gender, age, clan affiliation, the presence of family members, region of origin, “ability to cater for most basic needs, such as food, hygiene and shelter, vulnerability to ill-treatment and the prospect of the situation improving within a
reasonable time,”¹⁹ and suitability of the place selected are all criteria that should be considered when evaluating an asylum-seeker’s application and the possibility to send him/her back to his/her country of origin, despite the ill-taken decision in K.A.B. v Sweden. The court’s oversight in considering whether Mogadishu is a viable “internal protection alternative” cannot overshadow what has so far been innovative and enlightened jurisprudence.

¹⁹ See M.S.S. v Belgium and Greece, application no. 30696/09, judgment of 21 January 2011 (§254) and Sufi and Elmi v United Kingdom, supra (§283-292).
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