



Federalism as an Institutional Device for Peace in Somalia: Prospects and Challenges

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DECLARATION

I declare that the thesis for the degree of Doctor of Philosophy at the University of Cape Town, hereby submitted, has not been previously submitted by me for a degree at this or any other university. This thesis is my work in design and execution, and all the materials contained herein have been duly acknowledged.

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ABSTRACT

Since the turn of the 20th century, there has been intensified use of federalism as a tool for conflict resolution. Scholars are divided, however, about the potential of federalism to manage conflict. Some argue that it can accommodate the aspirations of both national and regional actors. Others see it as a road to conflict or state disintegration. The debate over the pros and cons of federalism is undecidable as both sides make reasonable theoretical claims and can point to some evidence in support of their propositions. Hence, the lesson drawn from divergent views on federalism is that there is no single federal formula for peace in divided societies. Instead, the degree to which federal institutions can contribute to preserving peace depends on how these institutions respond to the characteristics of the societies they govern.

The findings of this study are that Somalia's Provisional Constitution makes provision for a number of significant institutional features of federalism that, if correctly embraced, could enhance peace in Somalia. However, most of these provisions are defective. Some need follow-up legislation, while others need to be agreed upon by both the federal government and the federal member states. This thesis further reveals that Somali societies are inherently federal. For instance, practices such as negotiation and reconciliation, decentralised decision-making, and transparent dispute resolution form part of the governance system in the traditional Somali society. If properly adapted and utilised, these features of the Somali traditional governance system can help to strengthen the federal political system in Somalia.

The major argument of this dissertation is hence that in view of the peculiarities of the Somalia state, the federal values inherent in the Somali traditional governance system should be included in a new federal constitution. Only a federal system built on such traditional values will be conducive to peace and stability in Somalia and help stem the tide of secession currently threatening to tear the federation apart.

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perceptive comments, questions and suggestions have helped immensely in making this thesis a better work.

LIST OF ABBREVIATIONS

AIAI	Al-Ittihad Al-Islamiyya
AMISOM	AU Mission in Somalia
ARS	Alliance for Re-Liberation of Somalia
AU	African Union
BFC	Boundaries and Federation Commission
CAC	Constituent Assembly Convention
CoE	Committee of Experts
CRC	Constitutional Review Committee
FCC	Federal Constitution Commission
FGS	Federal Government of Somalia
FMS	Federal Member State
FMSs	Federal Member States
HDM	Hizbia Dighil Mirifle
HDMS	Hub al-Dastuur Mustagil al-Somali
HoP	House of People
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICU	Islamic Courts Union
IFCC	Independent Federal Constitution Commission
IGAD	Intergovernmental-Authority on Development
IJA	Interim Juba Administration
NC	National Charter
NCA	National Constituent Assembly
NFD	Northern Frontier District
NGO	Non-Governmental Organisation
NIEC	National Independent Electoral Commission
NLF	National Leaders Forum
ONLF	Ogaden National Liberation Front
PC	Provisional Constitution
SC	Somali Compact
FGS	Somali Federal Government
SNA	Somali National Army
SNL	Somali National League
SNM	Somali National Movement
SOSAF	Somali Salvation Front
SPM	Somali Patriotic Movement
SRC	Supreme Revolutionary Council
SRRC	Somalia Reconciliation and Restoration Council
SSA	Somali Salvation Alliance
SSDF	Somalia Salvation Democratic Front
SSF	Somali Salvation Front
SYL	Somali Youth League
TFC	Transitional Federal Charter
TFG	Transitional Federal Government
TFI	Transitional Federal Institutions
TFP	Transitional Federal Parliament

TGS	Traditional governance system
TNC	Transitional National Council
TNG	Transitional National Government
TTE	Titled Traditional Elders
UIC	Union of Islamic Courts
UK	United Kingdom
UNDP	United Nations Development Programme
UNOSOM	United Nations Operation in Somalia
UNPOS	United Nation Political Office for Somalia
USA	United State of America
USC	United Somali Congress
WSLF	Western Somali Liberation Front

TABLE OF CONTENTS

DECLARATION.....	ii
ABSTRACT.....	iii
ACKNOWLEDGEMENTS	iv
TABLE OF CONTENTS	viii
CHAPTER 1: INTRODUCTION.....	1
1.1 Introduction.....	1
1.2 Problem statement	3
1.3 Aim and research questions	6
1.4 Significance of the study	7
1.5 Scope of the study.....	7
1.6 Theoretical point of departure and research methodology.....	9
1.6.1 Theoretical point of departure.....	9
1.6.2 Research methodology.....	10
1.6.3 Chapter outline	12
CHAPTER 2: FEDERALISM AS AN INSTITUTIONAL DEVICE FOR PEACE AND CONFLICT RESOLUTION	14
2.1 Introduction.....	14
2.2 Concept and characteristics of federalism and federation.....	14
2.3 Theoretical approaches to the analysis of federal systems.....	18
2.3.1 The institutional or constitutional approach.....	19
2.3.2 The sociological approach	20
2.4 Approaching federalism as a process	23
2.5 Political and ideological approaches	23
2.6 Essential institutional features of federalism	25
2.6.1 Supreme constitution is difficult to alter	27
2.6.2 Distribution of power between the federal government and constituent units	29
2.6.3 Two layers of government: federal and state government.....	33

2.6.4	Sovereignty of the states	35
2.6.5	An independent judicial guardian of the constitution.....	36
2.7	Various forms of federal systems.....	38
2.7.1	Symmetrical federal model	39
2.7.2	Asymmetrical model	39
2.8	Federalism and conflict management	41
2.8.1	The notions of shared rule and self-rule	44
2.8.2	Federalism and minority protection	46
2.8.3	Fiscal distribution	47
2.8.4	Contextualising the challenges to and prospects for federalism in Africa	48
2.9	Concluding remarks	53

CHAPTER 3: Somalia's socio-cultural, historical and political

background	54	
3.1	Introduction.....	54
3.2	Geographical location.....	54
3.3	Social and culture structure	55
3.3.1	Social institutions and cultural norms	55
3.3.2	Territorial distribution of clans	56
3.3.3	Somali language and clan identities	57
3.3.4	Somali lineage system and political constituents	58
3.3.5	Clan relationships	61
3.3.6	Minority communities	63
3.4	Socio-economic activities	65
3.4.1	The pastoral nomadic communities	65
3.4.2	Agricultural community	66
3.4.3	The business community and growth of private sector	67
3.4.4	Natural and productive resources	69
3.5	Somali traditional leadership and governance systems.....	69
3.6	Conflict management norms and Somali customary law.....	72
3.6.1	Somali customary law (<i>Xeer</i>)	72
3.6.2	Sharia law as practised in Somalia.....	73
3.7	The role of traditional institutions in conflict management.....	74

3.7.1	The role of traditional institutions in state-building.....	75
3.7.2	Conflict management and dispute resolution.....	76
3.7.3	Women’s role in conflict management in Somalia	78
3.8	Other factors contributing to conflict management	81
3.8.1	Decentralised, traditional social structure.....	81
3.8.2	Consensus-based democratic decision-making	82
3.9	Limitations of the TGS in Somalia	84
3.10	Islamic religion in Somalia	85
3.11	The rise of political Islam in Somalia	88
3.11.1	Al-Ittihad Al-Islamiyya (AIAI).....	90
3.11.2	The rise of Al-Shabaab	92
3.12	Concluding remarks	96

CHAPTER 4: SOMALIA’S GOVERNANCE CONTEXT from THE COLONIAL PERIOD TO THE ADAPTiON OF the FEDERAL SYSTEM		98
4.1	Introduction.....	98
4.2	Colonial rule	98
4.2.1	British Somaliland	101
4.2.2	Italian Somalia	102
4.2.3	The impact of colonialism on Somalia	104
4.3	Pan-Somali nationalism and liberationism.....	106
4.4	Independence government (1960–1969).....	111
4.4.1	Pan-Somali nationalism and its ambitions	115
4.4.2	Rule of law and democracy	117
4.4.3	The fall of the government	118
4.5	Military rule (1969–1990).....	119
4.5.1	Socio-economic development	120
4.5.2	The rule of law and state institutions	123
4.5.3	The weakening authority of traditional leaders and the <i>Xeer</i>	124
4.5.4	Pan-Somali ambitions.....	125
4.5.5	The military regime’s move from scientific socialism to clannism	126
4.5.6	The opposition movement and fall of the military regime	128

4.5.7	The fall of the military regime	130
4.6	Anatomy of Somali conflicts	132
4.7	The transitional period: A chronology of peace-building and constitutional development conferences	136
4.7.1	The Djibouti Conference (1991)	137
4.7.2	The Addis Ababa peace conference (1993).....	139
4.7.3	The Galkayo Peace Process.....	141
4.7.4	The Sodere Conference (1996–1997).....	143
4.7.5	The Cairo Conference (1997).....	143
4.7.6	The Arta Peace Process (2000).....	144
4.7.7	The Eldoret/Mbagathi Peace Process (2004).....	147
4.7.8	The Djibouti Peace Process (2009)	149
4.8	Comments on peace-building conferences.....	151
4.9	Transitional government	153
4.9.1	Transitional National Government	153
4.9.2	Transitional Federal Government.....	155
4.9.3	Union of Islamic Courts (UIC)	157
4.9.4	The second TFG and the rise of Harakat Al-Shabaab	159
4.9.5	Somali Federal Government	160
4.10	Concluding remarks	161
 CHAPTER 5: Federalism in Somalia- Formative Stage.....		163
5.1	Introduction.....	163
5.2	The origin of the federal system in Somalia	163
5.3	Negotiations towards the adoption of a federal system	165
5.3.1	Arguments for and against federalism.....	171
5.3.2	Proponents of federalism.....	171
5.3.3	Opponents of federalism	174
5.4	Recent studies on the viability of federalism in Somalia	176
5.5	Research methodology and methods.....	177
5.5.1	Data collection, analysis and reporting.....	178
5.5.2	Validity and reliability.....	180
5.5.3	Limitations.....	181

5.5.4 Ethical consideration	182
5.6 Findings of the field research.....	183
In this section, research findings are reported in four categories, as follows: suitability of a federal system; inclusivity and minority protection; federalism and conflict resolution; and resource and power-sharing.....	
5.6.1 Suitability of a federal system.....	183
5.6.2 Inclusivity and minority protection.....	184
5.6.3 Federalism and conflict resolution	187
5.6.4 Resource- and power-sharing	188
5.7 Concluding analysis	189

CHAPTER 6: Autonomous regions in Somalia – Somaliland and Puntland perspectives.....	192
6.1 Introduction.....	192
6.2 Somaliland	193
6.2.1 Background	193
6.2.2 Somaliland as part of the union.....	194
6.2.3 Somaliland under independent government (1960–1969).....	196
6.2.4 Somaliland under military rule	197
6.2.5 Traditional mediation approaches and the constitution-making process	202
6.2.6 The Somaliland National Charter for the transitional period.....	208
6.2.7 Somaliland’s Constitution	210
6.2.8 Political parties in Somaliland	212
6.2.9 The traditional governance system, democracy and role of Islam.....	213
6.2.10 Somaliland’s argument for statehood	216
6.2.11 The status of Somaliland in the Somali federal system	219
6.3 Challenges of Somaliland state-building processes.....	221
6.4 Puntland-Perspective.....	222
6.4.1 Social-cultural and political background	222
6.4.2 Brief historical background	223
6.4.3 Puntland State and constitutional-building.....	229
6.4.4 General elections and political parties	234
6.4.5 Structure of government	235

6.4.6	The role of traditional authorities	236
6.4.7	Puntland's relationship with the Somali Federal Government	237
6.5	Boundary conflict between Somaliland and Puntland	238
6.6	Concluding remarks	238

CHAPTER 7: Towards the development of shared rule, self-rule and constitutionalism in Somalia		241
7.1	Introduction.....	241
7.2	The constitutional strategy of nation-building in Somalia.....	241
7.3	Territorial organisation of the state	243
7.4	The federal structure in Somalia	243
7.4.1	The federal-government level	243
7.4.2	Federal Member States	245
7.4.3	Local government level.....	246
7.5	Shared rule	246
7.5.1	Bicameral legislation.....	246
7.5.2	The Upper House of the Federal Parliament	247
7.5.3	The HoP of the Federal Parliament – Lower House.....	250
7.5.4	General revisory powers of the Federal Parliament.....	252
7.5.5	Inclusivity and minority representation in the Federal Parliament	253
7.5.6	Informal representation	255
7.5.7	Constitutionalism in Somalia	256
7.6	Self-rule.....	263
7.6.1	Introduction.....	263
7.6.2	Federal Member States	264
7.6.3	Geographical configuration of the FMS	264
7.6.4	Process of FMS creation – boundary demarcation and formation	265
7.7	Assessment of the established FMS regions.....	266
7.7.1	Jubaland Federal Member State	266
7.7.2	Galmudug Federal Member State.....	272
7.7.3	South-West State of Somalia.....	274
7.7.4	Hirshabelle Federal Member State	276
7.8	Autonomous regions – Puntland and Somaliland.....	278

7.9	Functional areas of the FMS	279
7.10	Fiscal and financial powers of FMS	281
7.10.1	Sub-constitutionalism in FMSs.....	283
7.10.2	The constitutional space allotted to FMSs	283
7.10.3	Recognition and protection of fundamental human rights and freedoms... 285	
7.10.4	Judicial independence and the rule of law.....	286
7.10.5	Separation of powers and limitations of state government.....	286
7.11	Concluding remarks	288

CHAPTER 8: THE CONSTITUTIONAL FRAMEWORK OF CONFLICT RESOLUTION..... 289

8.1	Introduction.....	289
8.2	Conflict management in the Somali federal system.....	289
8.3	Division of powers and functions.....	290
8.3.1	Assessment of the implementation of the division of power and competency	292
8.3.2	Design features that can enhance peace.....	295
8.3.3	Competencies should be clearly allocated	295
8.3.4	Symmetry and asymmetry	297
8.4	Fiscal autonomy and sharing of resources	298
8.4.1	Assessment of fiscal autonomy in Somalia	301
8.4.2	Design features that can strengthen federalism	302
8.5	Intergovernmental relations	306
8.5.1	An assessment of IGR.....	308
8.5.2	Design features to enhance IGR	309
8.6	Mechanisms of dispute resolution	309
8.6.1	Assessment of mechanisms of dispute resolution.....	310
8.6.2	Design features of dispute resolution	311
8.7	Protection of sub-units and the principle of equity.....	312
8.7.1	Assessment	312
8.7.2	Design features for enhancing peace.....	314
8.8	Protection of minorities	315
8.8.1	Assessment	317

8.8.2 Design features that can protect minorities.....	318
8.9 Elections and the electoral system	318
8.9.1 Assessment.....	319
8.9.2 Design features that can enhance peace.....	320
8.10 Shared rule and self-rule	322
8.11 Concluding remarks	322
CHAPTER 9: CONCLUSION AND RECOMMENDATIONS.....	323
9.1 Introduction.....	323
9.2 Essential institutional features that may contribute to peace in Somalia.....	325
9.2.1 Two layers of government.....	325
9.2.2 Division of powers and functions.....	325
9.2.3 Distribution of resources and fiscal autonomy.....	327
9.2.4 Protection of sub-units.....	329
9.2.5 Mechanisms of dispute resolution	331
9.2.6 Protection of minorities	332
9.2.7 Shared rule and self-rule.....	334
9.3 Constitutionalism as implied in the Provisional Constitution	335
9.3.1 Provisions for fundamental human rights.....	336
9.3.2 Judicial independence and rule of law	337
9.3.3 Democracy, inclusivity and accountability	339
9.3.4 Separation of powers and limitations of government.....	340
9.4 Somali societal aspects that can strengthen federalism.....	341
9.4.1 Introduction.....	341
9.4.2 The traditional governance system	343
9.5 Challenges to federalism and constitutionalism in Somalia.....	349
9.5.1 Endemic corruption.....	349
9.5.2 Lack of security	349
9.5.3 Financial resources	350
9.5.4 Fragile and non-existent government institutions and administrations.....	351
9.5.5 Lack of federal ideals in Somalia.....	351
9.5.6 External interference	353
9.6 Recommendations.....	355

9.6.1 Strengthening the rule of law	355
9.6.2 Constitutional safeguards	356
9.6.3 Building state institutions and infrastructure	358
9.6.4 Finalising the review of the Constitution	358
9.6.5 Somaliland’s status	360
9.6.6 Strengthening the role of the traditional governance system	361
9.6.7 The role of external actors should be advisory only	366
9.7 Concluding remarks	366
BIBLIOGRAPHY	368
Appendices	407

LIST OF TABLES

Table 7.1 Regional representatives in both houses of parliament	249
Table 7.2: Geographical configuration of Federal Member States in Somalia.....	265
Table 7.3. Inclusivity and representation in the FMS	275
Table 7.4: Economic activities of FMSs.....	285
Table 7.4: Sub-constitutionalism, Somali FMSs	276

CHAPTER 1: INTRODUCTION

1.1 Introduction

African countries have been beset by crises ranging from political instability, secessionism and authoritarian regimes to human rights violations and seemingly endless ethnic conflicts.¹ The crises, however, have become increasingly devastating: as Makua Mutua remarks, ‘It is as though the African state has gone from the frying pan into the fire.’² A number of African countries have experienced violent upheavals such as genocide, the disintegration of the state, and gross violations of human rights.³ Somalia is one such place. In the last two decades it has gone from famine to brutal civil war, from failed state to base for international piracy, and, recently, back to a famine zone. It is now also regarded as a safe haven for organised crime and terrorism.⁴

Since the fall of President Mohamed Siad Barre’s government, Somalia has been a war zone and a fragile state. From 1991 to 2000, there was no government authority to provide governance and services to the population; most government institutions were depleted, and economic livelihoods were destroyed.⁵ Major battles and killings in this period resulted in an environment of chronic conflict, lawlessness and poverty. Repeated attempts by the international community to unite Somalia under a viable national government failed.⁶ A number of peace and

¹ A Adedeji (ed) *‘Comprehending and Mastering African Conflicts: The Search for Sustainable Peace and Good Governance’* (1999); A Aroaye ‘Hegemonic agendas, Intermesticity and conflict in the post-colonial Africa’ (2012) 12 *African Journal on Conflict Resolution* 33–60.

² MW Mutua, ‘Putting humpty dumpty back together again: The dilemmas of the African Post-colonial state’ (1995) 21 *Brooklyn Journal of International Law* 505.

³ O Emeh, *‘Africa and the Crisis of Instability’* (2004); Adedeji (1999) n1.

⁴ Robert I Rotberg, *‘Battling Terrorism in the Horn of Africa’* (2005). See also Shaul Shay *‘Somalia- between Jihad and Restoration’* (2008); M Omar, *‘The Road to Zero: Somalia’s Self-destruction; Personal Reminiscences’* (1992).

⁵ Ahmed I Samatar lists the following among the consequences of the civil war in Somalia: 350,000 people have died since the outbreak of full-scale civil war in 1988; millions were displaced and millions are kept alive through emergency assistance; 60 per cent of Somalia’s basic infrastructure has been destroyed; 80 per cent of all social services (such as schools and hospitals) have been rendered non-operational; and social and political institutions have been shattered. Ahmed I Samatar, ‘The Curse of Allah: Civic disembowelment and the collapse of the state in Somalia’ in Ahmed I Samatar (ed) *‘The Somali Challenge: from Catastrophe to Renewal’* (1994) 95–146. See also Ken Menkhaus and John Prendergast ‘Conflict and crisis in the Greater Horn of Africa’ (1999) 98 (628) *Current History* 213–217.

⁶ David Axe, ‘Somalia, Redux: A more hands-off approach’ (2009) 649 *Policy Analysis* 1–17. K Makhubela, *‘Reflections on the Somalia Peace Process’* (2012); P Woodward, ‘Somalia and Sudan: a tale of two peace processes’

reconciliation conferences were held in and outside the country, but none of them produced inclusive and desired mechanism that could bind Somalis together.⁷ Between 2000 and 2012, three transitional governments were formed, but all made only slow progress towards peace and stability.⁸

Nevertheless, the country began emerging from conflict and prolonged instability after the formation of a federal government in 2012 and subsequent adoption of the Provisional Federal Constitution. Somalia is now gradually moving towards a federal system and a democratic state. A number of federal member state (FMS) regions were established, including Jubaland, South-West, Galmudug and Hirshabelle. In the same period, the autonomous region of Puntland continued to participate in the Somali Federal Government (FGS) and affirmed its support for the federal government.

The adoption of the Provisional Federal Constitution was a milestone in Somali politics. The Constitution envisages federalism as a system of government founded on the inclusive representation of people and a multiparty system of social justice.⁹ Among other things, it provides a legal foundation for the existence of the republic¹⁰ and makes provision for two levels of government: the federal and the federal member state. In its core founding principles, the Constitution affirms that the ‘Federal Republic of Somalia is founded upon the fundamental principles of power-sharing in a federal system’.¹¹ The Constitution contains all the essential features of federalism and constitutionalism (see the detailed discussion in Chapter 7).

(2004) 93 (375) *The Round Table: The Commonwealth Journal of International Affairs* 469–481; W S Poole, ‘*The Effort to Save Somalia: August 1992-March 1994*’ (2005); K Menkhaus et al., ‘*A History of Mediation in Somalia since 1988: The Search for Peace, Somali Program Interpeace and the Center for Research and Dialogue*’ (2009).

⁷ See Chapter 4.

⁸ See Chapter 4; also see A A Mohamoud, ‘*State Collapse and Post-Conflict Development in Africa: The Case of Somalia (1960–2001)*’ (2006).

⁹ Article 1(1) of the Provisional Federal Constitution of Somalia (2012) states: ‘Somalia is a federal, sovereign and democratic republic founded on the inclusive representation of the people, a multiparty system and social justice.’

¹⁰ Section 1 of the Provisional Constitution of the Federal Republic of Somalia.

¹¹ Article 3(3) of the Provisional Federal Constitution of Somalia (2012).

In early 2017, the world witnessed the peaceful transfer of power from one civilian government to another. Direct elections were impossible due to the security situation. However, indirect elections were held, wherein members of both the Senate (the Upper House of Parliament) and the House of People (the National Assembly of Parliament) voted to elect the speaker of the National Assembly and the President of the Republic.¹² The entire indirect election process was, however, reported to be corrupt.¹³

1.2 Problem statement

The long absence of stable government in Somalia sheds unique light on the complications that arise from state collapse. The federal government is dealing with major, manifold internal and external challenges. Internal challenges include the colonial legacy,¹⁴ clan conflicts,¹⁵ power struggles among elites,¹⁶ threats from Al-Shabaab, economic and financial problems, severe

¹² BBC News, 'Somalia's Mohamed Abdullahi Farmajo chosen as President' (2017) available at www.bbc.com/news/world-africa-38904663. Accessed 4th August 2018.

¹³ I Harun, 'Impact of endemic corruption on constitutionalism and peacebuilding in Somalia', 5th Stellenbosch Annual Seminar on Constitutionalism in Africa, *Corruption and Constitutionalism in Africa: Revisiting Control Measures and Containment strategies* 19–22 September 2017, Stellenbosch, South Africa. See also McGregor 'Are corruption and tribalism dooming Somalia's war on Al-Shabaab?' *Terrorism Monitor* (2017).

¹⁴ Colonial powers divided Somaliland between France, Italy and Great Britain, with these parts variously becoming British Somaliland; Italian Somaliland; Djibouti (under French colonial power); Socotra Islands (under South Yemen administration); Ogaden and Liban (under Ethiopian rule); and the Northern Frontier District, or NFD (under Kenyan authority). The colonial powers took advantage of the lack of centralised authority in the clan-based system and ruled the lands separately through classic divide-and-conquer strategies. The imposition of meaningless borders dividing the traditional grazing lands of the Somalis created long-term instability in the Horn of Africa. For instance, the war between Ethiopia and Somalia (the Ogaden war) was fought over Ethiopian-occupied Ogaden regions in Somalia (elaborated on in Chapter 4), and today tension exists because Somaliland is seeking independence from the Somali federal government. Both of these conflicts were consequences of colonial rule. See P Tripodi, *The Colonial Legacy in Somalia: Rome and Mogadishu – from Colonial Administration to Operation Restore Hope* (1999); H Adam, 'Somalia: A terrible beauty being born?' in W Zartman (ed) *Collapsed State: The Disintegration and Restoration of Legitimate Authority* (1995); A M Issa-Salwe, *The Collapse of the Somali State: The Impact of the Colonial Legacy* (1994).

¹⁵ AA Elmi, and A Barise, 'The Somali conflict: Root causes, obstacles, and peace-building strategies' (2006) 15 (1) *African Security Studies* 32–54.

¹⁶ H Bulhan, *A politics of Cain: one hundred years of crises in Somalia politics and society* (2008).

droughts,¹⁷ secessions,¹⁸ conflicts over territorial boundaries,¹⁹ and growing conflict over water and grazing land.²⁰ The availability of weapons and the large numbers of unemployed youth have fuelled conflict in the country. On the other hand, external challenges include direct interference in Somali affairs by neighbouring countries,²¹ Gulf countries,²² the US,²³ multinational

¹⁷ Droughts have been a big challenge in Somalia, with pastoralists being the ones most affected by severe droughts. See J Mosley, 'Translating famine early warning into early action: an East African case study' (2012) *EEDP/Africa Programme Paper 2012/04* and R Marchal 'Situation Report: Changing Paradigm in Somalia' (2009).

¹⁸ Somaliland declared unilateral independence from Somalia shortly after the collapse of the military government (elaborated on in Chapter 5) (B R Farley 'Calling a state a state: Somaliland and international recognition' (2010)); 24(2) *Emory International Law Review*. See also M Bryden 'Somalia and Somaliland: Envisioning a dialogue on the question of Somali unity' (2004) 13(2) *African Security Review* 23–33.

¹⁹ Conflict over territorial boundaries is still challenging the federal government. For example, the recent fighting between Puntland and Somaliland over land for which both claimed ownership resulted in a number of deaths and casualties. There are also other reported cases of boundary conflicts (see Chapter 7 and M Hoehne, 'Between Somaliland and Puntland: Marginalisation, Militarisation and Conflicting Political Visions' (2015)).

²⁰ Gundel describes how violence in Somalia is underpinned by land, resources and identity conflicts. See Gundel, J 'Assisting Structures of Violence? Humanitarian assistance in the Somali Conflict', in *Shadow Globalization, Ethnic Conflicts and New Wars – A political economy of intra-state war*, Dietrich Jung (ed.) (2003).

²¹ Neighbouring countries involved in Somali affairs include Ethiopia, Kenya, Djibouti, Eritrea, Uganda and Burundi. Ugandan and Burundian soldiers form part of AMISOM. Ethiopia remains a central military and political player in contemporary Somalia; its forces withdrew from the country in 2009, but returned in 2011 to bolster AMISOM and the TFG's tenuous hold on Mogadishu. Ethiopian and Kenyan relations with Somalia are primarily related to their domestic stability. Kenya's intention is to create a buffer zone to prevent the spread of al-Shabaab into Kenya. For Addis Ababa, the potential spread of political Islam from Somalia represents a threat to stability and the political status quo in Ethiopia, which has a large Somali population. Ethiopia has also frequently suggested that Islamist and other groups in Somalia have provided or hope to provide support to irredentist rebel groups in Ethiopia, particularly in the Ogaden. See Luckystar Miyandazi 'Kenyan military intervention in Somalia: An intricate process policy and practice brief' *The African Centre for the Constructive Resolution of Disputes* (2012) 19 (available at www.accord.org.za/publications/policy-practice-briefs/1013-kenya-smilitary-intervention-in-somalia, accessed on 17 July 2018); Bjørn Møller 'The Somalia conflict, the role of external actors' *Danish Institute for International Studies* (2009), 34. PP3. (available at <http://en.diis.dk/home/research/defence+and+security/news/the+somali+conflict>, accessed on July 2018; M Kidist, 'The Role of Regional and International Organisation in Resolving the Somali Conflict, The Case of IGAD.' (2009); C Barnes and H Hassan, 'The rise and fall of Mogadishu's Islamic courts' (2007) 1 (2) *Journal of Eastern African Studies* 151–160 (elaborated on in Chapter 4).

²² Qatar and the United Arab Emirates are also increasingly important political and economic players in Somalia, with Harper noting that the former is rumoured to have assisted Hassan Sheikh Mohamud financially in his successful 2012 campaign for the Somali presidency (M Harper, 'Getting Somalia Wrong: Faith, War and Hope in a Shattered State' (2012) 163). This reflects a general observation in recent literature that the Somali Federal Government (FGS) is looking beyond traditional Western donors and institutions in its approach to international relations and securing external support. J Mosley, 'Translating famine early warning into early action: an East Africa 8-n case study' (2012) 11 *EEDP/Africa Programme Paper 2012/04*; F Grunewald 'Aid in a city at war: The case of Mogadishu, Somalia' (2012) *Disasters* 36 (S1) S105–S125; L Hammond, 'Somalia rising: things are starting to change for the world's longest failed state' (2013) *Journal of Eastern African Studies* 7(1) 183–193.

²³ The US is the most influential non-African external power in Somalia and has been pivotal in financing and facilitating AMISOM. Washington has also provided crucial intelligence and logistical support to AMISOM troops since 2007 and continues to fund the training of AMISOM and Somali forces (K Menkhaus 'The crisis in Somalia: tragedy in five acts' (2007) *African Affairs*).

organisations,²⁴ as well as the internationalisation of Somali conflict by piracy and anti-terrorism measures.²⁵ It is hoped that federalism will address at least some of the above-mentioned challenges.

There has been remarkable international consensus on the desirability of federalism in Somalia, with support for it coming from donor agencies, the US, the UK and neighbouring states, including Kenya and Ethiopia. However, the ideological commitment necessary to make federalism work is sorely lacking in Somalia itself. This is so because, since the country's formative years, Somali leaders have demonstrated much scepticism about it, with the result that many in the country lack a full appreciation of the benefits of federal practice. The opinions of the Somali people are thus divided on the viability of the federal system. Some factions view the current federal structure as a solution to the chronic problems of Somali politics, while others see it as liable to cause problems that could transform internal conflicts into even deadlier inter-clan wars (see Chapter 5).²⁶

The federal system currently being implemented in Somalia is intended to serve a number of objectives. These include:

- serving as an institutional mechanism for bringing about peace and conflict resolution;

²⁴ International actors and organisations hold considerable influence in contemporary south/central Somalia as providers of development and humanitarian assistance to civilians and political, financial, logistical and military support to the FGS and its nascent security forces (Hammond (2013) 183).

²⁵ What draws international attention to Somalia is the perceived threat that terrorist groups within it, such as al-Shabaab, pose to the rest of the world. Al-Shabaab became part of al-Qaeda in February 2012. The incorporation of al-Shabaab into global terrorist networks extends their activities and engagement much further than Somalia. The group has been able to recruit members from Somali communities in Europe and the USA, as well as enlist non-Somalis men who then pursue suicide missions in Somalia and neighbouring countries. Actions like these and the potential harm militant groups such as al-Shabaab can inflict on the rest of the world require the engagement of the international community (see Chapters 3 and 4; also see Michael Taarnby and Lars Hallundbaek (2010) 'Al-Shabaab: The internationalization of militant Islamism in Somalia and the implications for radicalization processes in Europe' available at www.justitsministeriet.dk; Abdul Kadir Khalif 'Defiant Al-Shaabab reaches out to Somalis in diaspora' *Daily Nation*, 19 September 2009.

²⁶ Abdirazak Haji Hussein (2011) and Omar Salad (2008): Hussein argues that factors and characteristics that warrant federalism, including geographical and language barriers, are absent in Somalia. Similarly, Salad contends that federalism is alien to Somalis, saying it is neither desirable nor feasible in the context of Somali homogeneity (Omar Salad, *Federalism and Decentralization - Options for Somalia* (2008)).

- enhancing shared rule and self-rule, which allows Somalis to exercise their political will through multiple levels of government instead of having recourse only to the central authority; and
- taking services closer to the people
- increasing grassroots political participation
- protecting minorities and marginalised communities.

This thesis, therefore, examines whether the Somali federal system

- has the institutional features necessary for attaining these objectives; and
- holds potential solutions to any of the problems identified above.

1.3 Aim and research questions

Against the backdrop sketched in the problem statement, and taking into account the ability of federalism to work for or against peace-building and conflict resolution, this study examines federalism and its key principles, with a view to determining whether a federal institutional model and design could contribute to conflict management and peace in Somalia.

The central question to be answered by this thesis is: Does the federal system that has been adopted and is being implemented in Somalia have the necessary institutional features for managing political division and establishing peace in Somalia?

Apart from this overarching question, a number of sub-questions will be answered:

- What is the source of the present concern over the adaptability of the federal system in Somalia and what are the possibilities of achieving a politically stable Somalia through the practice of federalism? Will federalism as it is presently formulated enhance peace and regulate conflict in Somalia?
- How could Somalia's federal system be designed to address internal conflicts resulting from resource- and power-sharing and ensure the protection of vulnerable groups (through means such as the rights of minority and marginalised clans)? Do all clans and regions share the desire for self-rule or shared rule?
- What are the challenges that impede the realisation of federalism in Somalia?

- What role are the Somali Traditional Governance systems (TGSs) and norms such as customary law (*Xeer*) and Sharia law to play in strengthening Somali federalism, and what aspects of Somali society correspond with key federal principles?
- Will federalism as it is presently formulated enhance the relationship between Somalia and Somaliland? What is the ideal institutional model that would be acceptable to both Somaliland and Somalia? Would the latter be conferred with special autonomous status?

1.4 Significance of the study

This study explores and analyses federalism in Somalia in order to ascertain the relevance of a federal design to the political crisis and constitution-related tensions in Somalia. Despite the growing interest of academics and policy-makers in the peace-preserving potential of federalism, little work has been done to establish its applicability and suitability to the Somali situation.²⁷ The application of federalism in enhancing peace and regulating conflicts in Somalia thus deserves closer examination and analysis. It is therefore hoped that this study will further understanding of the potential of employing federalism in conflict resolution in Somalia.

1.5 Scope of the study

The focus of this research is on analysing the constitutional design of federalism in Somalia rather than exploring the practical aspects and efficacy of its implementation. The Somali federal system of government was not yet fully operational at the time of writing this thesis, and thus the analysis and assessment of its constitutional design has not drawn on the actual experience in Somalia.

The study will appraise the extent to which the FGS is able to realise the aims of the Constitution, and particularly the federal system, in the following dimensions. First, it will consider, from a theoretical perspective, those conditions under which and processes by which nation-state-makers can adopt federal institutional forms and design political entities. Secondly,

²⁷ There is a growing body of literature on Somali conflicts. According to Otheino (2007a, 7b), this interest is informed by the desire of international communities to assist in creating a stable Somalia. Scholars on the topic include Menkhaus (2003, 2004, 2018), Rutherford (2008), Lewis (1994, 1999, 2002, 2009), as well as Osman (2007) and Elmi (2006). Very few scholarly works have dwelt on the root causes of the conflicts or the prospects and viability of federalism in Somalia.

the study will examine, from a historical perspective, the current status, prospects and perils of federalism in Somalia, bearing in mind the fragility of Somali politics and the tendency of Somali society to cohere as clans.

Some major works in the literature will provide frameworks for examining the process of instituting federalism, including the legal and constitutional approaches;²⁸ they also provide frameworks for considering institutional design; political and ideological approaches to federalism;²⁹ ethnic conflicts³⁰ and their management; and state-formation. Demonstrating the diverse ways scholars have examined key questions regarding federalism, the thesis also discusses the approach to federalism and ethnic conflict taken by Rotimi Suberu;³¹ the federal structure as understood by Horowitz³² and Lijphart;³³ state and society relations as understood by Naomi Chazan et al.; the legal and constitutional approach of Duchacek;³⁴ and the political and ideological approaches of Burgess,³⁵ Riker³⁶ and Stephan.³⁷ The thesis is also informed by the writing of

²⁸ These approaches emphasise the role of the constitution in providing institutional frameworks governing the division of power between the central and regional governments (see G Sawyer, *Modern Federalism* (1969) and C Wheare, *Federal Government* 4 ed (1964)). While legal and constitutional approaches identify bicameralism as an important feature of federal polities, they also underscore the importance of constitutional courts responsible for the adjudication of constitutional disputes. Some of the shortcomings identified in these approaches include rigidity, legalism and inflexibility Wheare (1964)).

²⁹ These approaches examine the ideological and philosophical foundation of federalism and the links between federalism and other matters such as democracy, freedom and political parties (Burgess (2006), Stephan (1999), Kymlicka (1998), Elazar (1987) and Riker (1964)).

³⁰ Ethnicity is a historically recent analytical construct that refers to the essence of an ethnic group or the quality of belonging to an ethnic community or group. This concept will serve as a point of reference in describing Somalia, particularly the clan nature of the Somalian community, which some scholars equate with ethnicity (D Horowitz, *Ethnic Groups in Conflict* (1985)). Clans and sub-clan fighting have been a major source of instability in Somalia.

³¹ R Suberu, 'Federalism in Africa: The Nigerian experience in comparative perspectives' (2009) *Ethnopolitics*, 8:1, 67–86.

³² D Horowitz, *Ethnic Groups in Conflict* (1985) 598–9.

³³ A Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* (2012).

³⁴ I Duchacek, *Comparative Federalism: the Territorial Dimension of Politics* (1970).

³⁵ M Burgess, 'Managing conflict and diversity; conceptual lenses and comparative perspectives' in Alain G Gragnon (ed) *Contemporary Canadian Federalism: Traditions, Institutions* (2009). See also M Burgess 'Introduction' (with Alan Tarr) in M Burgess and A Tarr (eds) *Constitutional Dynamics in Federal Systems: Comparative Perspectives* (2010).

³⁶ W Riker, *Federalism: Origin, Operation, Significance* (1964). See also W Riker, 'Six books in search of a subject or does federalism exist and does it matter' (1969) 2 (1) *Comparative Perspective* 135–46.

³⁷ AC Stephan, 'Federalism and democracy: beyond the US model' (1999) 10 (4) *Journal of Democracy* 32. Also AC Stephan, *Arguing Comparative Politics* (2001).

Somali scholars, including Issa-Salwe,³⁸ Abdi Ismail Samatar,³⁹ Mukhatar,⁴⁰ and the work of Lewis,⁴¹ Menkhause,⁴² Le Sage,⁴³ Elmi, A⁴⁴ among others.

1.6 Theoretical point of departure and research methodology

1.6.1 Theoretical point of departure

This study will be underpinned by a number of research assumptions. These include notions concerning the design of political institution or state structures. Both Horowitz⁴⁵ and Lijphart⁴⁶ assume that the design and structure of political institutions through which conflicts can be peacefully channelled are of crucial importance to the politics of a divided country. Kalu rightly notes:

A fundamental prerequisite for the democratic process is that critical institutions should be in place, so as to enable the assimilation of the core values of democracy. While democracy creates values, institutions enable democratic values to be assimilated and sustained within society. Where such institutions are not present, the democratisation process either stays stalled or is rejected outrightly by opposing forces.⁴⁷

Successful nation-building and cohesive national sentiments must therefore be built within the framework of stable institutions. Without a viable state to provide basic public services such as security, a judicial system and infrastructure, people will look to whatever group, militia or

³⁸ Issa-Salwe, *AM The Collapse of the Somalia State: The Impact of the Colonial Legacy* (1994)

³⁹ Prof Abdi Samatar works is discussed throughout the thesis this include AI Samatar (1988, 1997, 1997, 2000, 2008, 2018, 2019)

⁴⁰ Mukhtar works includes. Mukhtaar, MH 'Islam in Somali History: Fact and Fiction' in the *Invention of Somalia*, AJ Ahmed (ed) (1995).

⁴¹ Lewis has written extensively on Somalia; his works include Lewis, IM *A pastoral democracy: a study of pastoralism and politics among the Northern Somalia of the Horn of Africa* (1982)

⁴² Menkhause's works include 'Somalia: Political Order of a Stateless Society' (1988) 9197) 619 Current history.

⁴³ His works include Le Sage A' Prospects for al-ithad and Islamist radicalism in Somalia' (2007) 27 *Review of African Political Economy* 89.

⁴⁴ Elmi, A (2014).

⁴⁵ L Horowitz, 'A Democratic South Africa? Constitutional Engineering in a Divided Society' (1993); L Horowitz, 'Democracy in divided societies' (1993) 4 (4) *Journal of Democracy* (1993) 36; L Horowitz, 'Ethnic Groups in Conflict' (1985) 628.

⁴⁶ A Lijphart, 'Consociation and federation: conceptual and empirical links' (1979) 12 (3) *Canadian Journal of Political Science* 506; A Lijphart, 'The wave of power-sharing democracy' in A Reynolds (ed) 'The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy' (2002).

⁴⁷ K N Kalu, 'State power, autarchy, and political conquest in Nigerian Federalism' (2008) 211.

identity offers them the best chance of survival. The result is a fracturing of the polity, with local, sub-state and ethnic identities providing the immediate basis for political re-organisation.⁴⁸ The absence of inclusive, democratic and stable state institutions is the greatest impediment to establishing federalism and the peace-building process in Somalia.

1.6.2 Research methodology

This study adopts doctrinal and qualitative research methodology. The reviewed material includes Somalia's legal and policy documents, both at the primary- and secondary-source levels. The materials canvassed include books, journal articles, research reports, government publications and conference papers, both in print as well as online. The desktop review also involved collecting information from a variety of sources, including Somali and English news outlets, academic articles, non-governmental (NGO) reports and other materials related to Somalia and federalism.

A qualitative design was preferred because it allowed for evolution as the research progressed, such approach permitted the respondents to share their experiences and knowledge of the complexity of the federal system, peace-building and associated experiences without being confined to the statistical rigor. Lijphart and Yin rightly noted that this method is useful when cases are too few for statistical analysis, and the issues being studied cannot be easily manipulated, and the questions posed tend to begin with how and why.⁴⁹ Yin further noted that, qualitative approach permits an in-depth examination of a phenomenon in its everyday context by drawing data from multiple sources utilising multiple methods.⁵⁰ Yet again, the qualitative approach was imperative because the target groups (the Somali community) is predominantly situated in oral traditions, where accounts of communities experiences, knowledge, history and events are primarily conveyed through oral communications such as descriptive oral recollections and events

⁴⁸ T Dodge, ' *Inventing Iraq: The Failure of Nation Building and a History Denied* (2004) 569.

⁴⁹ A Lijphart, 'Comparative Politics and the Comparative Method,' (1971) 54 (3) *American Political Science* 682-693; R Yin, *Case Study Research: Design and Methods*, 2nd edition (1994).

⁵⁰ R Yin (1994).

narrations from generation to generation. Thus, in-depth examination of a phenomenon in its everyday context by drawing data from multiple sources was an advantage.

Two approaches were taken to interview respondents. First, interviews were conducted by means of telephone and social media including WhatsApp video calls, and Skype calls to 21 respondents in Somalia (Mogadishu-Benaadir, Dhusamareb-Galmudug, Hiran-Hirshabelle, Buale, Gedo & Kismayu-Jubaland, Sool-Somaliland, Bokol-South-west and Bari –Puntland).⁵¹ Secondly, interviews were held with selected Somali communities residing in South Africa,⁵² amounting to 20. Initially face to face interview was to be conducted in the months of March to July 2020 in (Pretoria, Johannesburg, Port Elizabeth, Durban and Cape Town). However, due to COVID-19 pandemic and resultant national lockdown, that approach was changed and the interview was conducted using social media outlets such as Facebook, what's App video and telephone calls. Faces to face interview was only conducted in Cape Town, and Pretoria and Johannesburg. Face to face interview was conducted following strict observance of Covid-19 regulation as set out the by South African government such as social-distancing, use of mask and hand sanitizing. (Chapter 5 discusses details of research methodology, methods and findings of the field work).

⁵¹ Many researchers have identified that telephone interviews can overcome a number of practical problems and can be as effective at collecting data as face-to-face interviews (Greenfield et al., 2000; Miller, 1995). Specifically practical concerns such as the geographical location of the participants (Sweet, 2000), the cost of conducting the interview face-to-face (Sturges & Hanrahan, 2004), the safety of the researcher (Carr & Worth, 2001) and also the ease of organising a suitable time with the participant (Sturges & Hanrahan, 2004) have been alleviated through the use of telephone interviews. Furthermore De Vaus (1991) argued that the responses given by a participant in a telephone interview may be of a better quality than compared to a face-to-face interview as factors such as characteristics of the researcher have been partially removed (e.g. age, ethnicity, attractiveness) and the participant is less likely to be reactive towards such factors.

⁵² Somalis have been residing in South Africa for years. The United Nation Higher Commissioner for Refugees (UNHCR) estimates the Somali population to be about 27,000 people. The BBC, quoting the Department of Home Affairs in South Africa, estimates the number of the Somalis in South Africa to be about 32,000. However, the chairperson of the Somali Organisation Amir Sheikh put the figures of Somalis at about 60,000. Aikomus, M ' UNHCR Special envoy for Somalia commends South Africa for generously hosting thousands of Somalis' available at <https://reliefweb.int/report/south-africa/unhcr-special-envoy-somalia-commends-south-africa-generously-hosting-thousands> accessed 4 April 20.

1.6.3 Chapter outline

Chapter 1 sets out the background to the study and its problem statement, outlines its aims and objectives, describes its research methodology, and presents the chapter outlines of the study.

Chapter 2 sets out the theoretical framework for the study, examines the role of federalism in conflict resolution, identifies the design and institutional features of federalism considered essential for conflict resolution and peacebuilding, and appraises the links between federalism and conflict management. Finally, Chapter 2 highlights the challenges and prospects for federalism in Africa.

Chapter 3 explores the socio-cultural, historical and political dimensions of the Somali context as well as the country's governance systems, including Somali customary and Sharia laws. The chapter focuses too on traditional methods of conflict management.

Chapter 4 examines Somalia's political history and governance from the colonial period to present day, giving coverage to, inter alia, to state-building, pre- and post-independence. It also reflects on the rise and fall of military regimes and the processes that led to the adoption of Somalia's federal system.

Chapter 5 discusses the debates that have surrounded federalism in Somalia, explains how the research methodology was applied and discusses findings of the fielded research.

Chapter 6 is divided into two parts. The first part evaluates state-building processes in Somaliland; examines the process of peace-building that led to the formation of Somaliland; highlights Somaliland's grievances under both the first government and military regimes; appraises how Somaliland merged traditional and Western institutions; and evaluates its commitment to self-determination and relationship with the FGS. The second part evaluates Puntland's state-building process; examines its peace-building processes; highlights the role played by traditional institutions in building peace; and appraises its commitment to self-determination and relationship with the FGS.

Chapter 7 deals with the development of shared rule and self-rule. The first part of the chapter looks at institutions of shared rule. It examines formal and informal institutions; the functions and powers of the two houses of parliament; and the inclusivity and representation of minorities, women and marginalised groups. The chapter also appraises constitutionalism in Somalia and the challenges to it. The second part appraises self-rule as enshrined in the Federal Constitution and the progress made in its implementation. This part briefly looks at processes and progress in the formation of federal member states (FMSs), their institutional structures and their relationship with FGS governments and its institutions. Chapter 7 also examines the fiscal, financial and other functional aspects of the FMSs.

Chapter 8 considers the constitutional framework regarding conflict resolution. It focuses on the constitutional strategy of nation-building in Somalia and appraises essential federal features in Somali federal system that are significant in conflict resolution, before going on to evaluate their implementation and recommend design features that could strengthen the federal system.

Chapter 9 presents the study's conclusions and overall recommendations.

CHAPTER 2: FEDERALISM AS AN INSTITUTIONAL DEVICE FOR PEACE AND CONFLICT RESOLUTION

2.1 Introduction

As Somalia moves towards a fully-fledged federal system, the FGS and its international partners have been deliberating on the institutional designs or federal models most suitable to it.⁵³ The FGS is, in other words, faced with the daunting task of creating its own federal model. The present study began with the hope that it could result in a model of federalism applicable to Somalia, but it became clear that, due to the great diversity of examples around the world, it would not be feasible to formulate a general model. Instead, it seemed more useful to highlight the main features of a federal institutional model and its various forms – so as to indicate the principles and options that could possibly fit situations in Somalia – rather than prescribe a particular model.

Against this background, the aim of this chapter is to provide a theoretical framework for analysing federalism and conflict management in Somalia. It examines the concept and characteristics of federalism, its key institutional features, the forms it takes, the role it plays in conflict management, and its challenges and prospects in Africa. The federal features and institutions discussed in this chapter provide a general framework for the examination of the Somali federal system in subsequent chapters.

2.2 Concept and characteristics of federalism and federation

Many scholars have acknowledged the complexity of defining federalism.⁵⁴ The terms *federalism*

⁵³ Once the decision is made to adopt federalism, the next question to consider is its optimal design. How many levels of government should there be? What should the boundaries at each lower level be? What should the form of representative government be at each level? These are difficult and interrelated questions, and no single set of answers would be an ideal fit for all countries.

⁵⁴ One scholar identified 267 different conceptions of federalism: W Stewart, *Concepts of federalism* (1984). Gamper notes that despite a 'long history and plethora of literature written about federalism, there is no settled common denominator of federalism'. A Gamper, 'A global theory of federalism: the nature and challenges of a federal state' (2005) 6 (10) *German Law Journal* 1297. See A Sbragia, 'Thinking about the European future: the uses of comparison' in Sbragia Alberta (ed) (1992); Michael Burgess and Alain G Gagnon (eds), '*Comparative Federalism and Federation: Competing Traditions and Future Directions*' (1993); D McKay, '*Designing Europe: Comparative Lessons from the Federal Experience*' (2001); Kincaid J (ed) *Federalism* (2011); Laursen Finn (ed) '*The EU and Federalism: Politics and Policies Compared*' (2011).

and *federation* have been used interchangeably. There is, however, an important distinction between them: Ronald Watts defines *federalism* as a normative term and *federation* as a descriptive one. As a normative term, *federalism* embodies the idea of self-rule and shared rule between at least two levels of government. It accommodates, preserves and promotes distinct identities within a larger political union.⁵⁵ Therefore, ‘it is the maintenance of both union and non-centralization at the same time’.⁵⁶ *Federation*, as a descriptive term, refers to the institutional make-up of the federal nation. It embodies such principles as the division of powers, a written constitution, regional representation at the centre, equality of both central and regional governments, and regional autonomy.⁵⁷ Both federalism and federation are not equal terms. The former implies some combination of self-rule and shared rule. Moreno and Moreno noted in this regards that the institutionalisation of this principle can be seen only in federations but also in federal –like systems of government and as such federalism and federation are concomitant concepts but can not be made synonymous.⁵⁸

William Riker’s classic definition of a federal state consists of three elements. First, two levels of government must rule the same people. Secondly, each level must have at least one ‘area of action’ in which it has autonomy. Thirdly, there must be a guarantee of autonomy for each level in its own sphere.⁵⁹ Elazar in turn defines federalism as a system in which powers are distributed among multiple centres of powers, and where none of the centres is higher or lower in importance than any other.⁶⁰ Wheare defines federalism as ‘the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate (that is, equally important) and independent.’⁶¹ Ivo Duchacek employs a similar notion of federalism, describing it as a system

⁵⁵ R Watts, ‘Comparing federal systems in the 1990s’ in *Kingston, Ontario: Institute of Inter-governmental Relations* (1996) 6.

⁵⁶ Ibid.

⁵⁷ See also P King, ‘*Federalism and Federation*’ (1982)

⁵⁸ Moreno, L & Moreno C ‘Introduction: Diversity and Unity in Comparative Perspectives’ in Moreno, C, Moreno, I & Kincaid, L (eds) *Diversity and Unity in Federal countries*’ (2010).

⁵⁹ W Riker, ‘*Federalism: Origin, Operation, Significance*’ (1964) 14–115.

⁶⁰ D J Elazar, ‘*Exploring Federalism*’ (1987) 239

⁶¹ Wheare (1946) 11; (1963) 10.

where there is a constitutional division of power between one government that has authority over the entire territory and a series of subnational governments that have their independent authority over their own territories.⁶²

According to Galligan, federal systems are defined, first, by the existence of two levels of government, namely national and state (or provincial); secondly, by the guarantee that neither has sovereignty over the other; and, thirdly, by some allocation of powers between the two. He argues that in a federal democracy, the people are citizens of both jurisdictions and are also the primary source of constitutional power.⁶³ According to Watts,

Federations represent a particular species in which neither the federal nor the constituent units of government are constitutionally subordinate to the other, i.e. each has sovereign powers derived from the constitution rather than another level of government, each is empowered to deal directly with its citizens in the exercise of its legislative, executive and taxing powers and each is directly elected by its citizens.⁶⁴

On the other hand, federations have been categorised as integrative, ethnic-based or hybrid. The integrative federation, such as the United States, establishes constituent units on the basis of geographical size and other socio-economic factors and aims to foster the individual rights of its citizens. It focuses on limiting and balancing the power of the federal and regional institutions in exercising their authority. The ethnic-based federation focuses on accommodating the ethnic groups in a country. It devolves powers along ethnic lines and enables ethnic groups to participate equally at the federal level, as found in Ethiopia and Belgium. The third type, a hybrid of the integrative and ethnic-based federations, aims to foster individual rights but also devolves powers to territorially based ethnic groups. Examples are the Nigerian and Swiss federations.⁶⁵

The ongoing formation of a federal system in Somalia shows that Somalia has two layers of government, federal government and federal member states. So far Somali federal system has 5

⁶² I Duchacek (1970).

⁶³ B Galligan, 'A Federal Republic: Australia's Constitutional System of Government' (1995) 32.

⁶⁴ Watt (1999).

⁶⁵ R Watts (2008).

federal member states (federation), systems also shows early signs of a hybrid federation based on geographical size and ethnicity (clannism). So far, there are five FMSs. (elaborated on in Chapter 7).

Given the foregoing discussion, and despite the absence of an objective definition of *federalism* and *federation*, there seems to be broad agreement that federal systems should have the existence of a central or national government of the federation.⁶⁶ They should also have sets of regional governments of the member units, in which no level is subordinate to the other or has the power to abolish the other, and where each level has the authority, enshrined in a constitution, to make some decisions independently.⁶⁷ In true federations, the constitutional division of power between levels of government cannot be amended unilaterally by any level of government. Federations also allow for shared rule through provision for the representation of regional views in the federal policy-making institutions, which is usually addressed in the form of a bicameral legislature, with second chambers representing the constituent units. The essence of federalism is therefore the notion of two or more orders of government combining elements of shared rule for some purposes and self-rule for others. It is based on the objective of combining unity and diversity, for instance by accommodating, preserving and promoting distinct identities within a larger political union.

This study will use the term *federalism* descriptively to refer to a constitutionally established system with at least two levels of governments, each of which has some autonomy and is accountable to its respective electorate. The characteristics described above will serve as a framework of reference for the constitutional analysis of the Somalia Federal Constitution in chapters 4, 7, 8 and 9.

⁶⁶ Elaborated at 2.6 essential features of federalism

⁶⁷ See William Riker, '*Development of American Federalism*' (1987) 13 and D Elazar, '*Exploring Federalism*' (1987).

2.3 Theoretical approaches to the analysis of federal systems

Theoretical approaches⁶⁸ to federalism reflect debates regarding the nature of federalism and its functions according to two categories referred to as normative and empirical (operational). Normative approaches usually discuss the presumed advantages and disadvantages of federalism, and associate federalism with peace, security, citizenship and democracy.⁶⁹ Empirical (operational) approaches focus on institutional features of federation, such as division of power between the general and constituent governments, variations among federal systems on a comparative basis, mechanisms through which federal systems operate, and the causes and effects of the establishment and dissolution of federal systems.⁷⁰ According to Burgess, empirical and normative approaches both embrace a host of dimensions – historical, philosophical, constitutional, legal, political, economic, sociological, ideological and cultural – which together constitute the federal totality.⁷¹

Scholars have also studied federalism from different angles or with different approaches, whether these are normative and empirical in orientation. Examples include the institutional or constitutional approach,⁷² the sociological approach,⁷³ the process or developmental approach,⁷⁴ the political approach,⁷⁵ and the structural approach. What follows is an examination of some of the theoretical approaches that have relevance to the present study.

⁶⁸ A growing number of scholars have acknowledged that there is no fully-fledged federal theory. This limitation has been attributed to the character of federalism, which is said to be one of strength, flexibility and adaptability. According to Burgess, this character has made it difficult to discuss it satisfactorily on a theoretical level. Additionally, Burgess, quoting from Elazar, attributes this to the fact that the federal principles of self-rule and shared rule have been successfully applied in a great many different ways, thereby complicating theory-building in regard to federalism (W Burgess (2008)).

⁶⁹ Burgess explains the ‘normative turn’ as essentially a moral debate about subnational identities, cultural minorities, linguistic communities and indigenous peoples (W Burgess (2008)). For more about normative perspectives in studies on federalism, see D Karmis and W Norman, ‘The revival of federalism in normative political theory’ in Karmis and Norman (eds) *Theories of Federalism: A Reader* (2005).

⁷⁰ Burgess (2008).

⁷¹ Ibid.

⁷² K C Wheare, *Federal Government* (4 ed) (1964).

⁷³ W Livingston (1956).

⁷⁴ C Friedrich, *Trends of Federalism in Theory and Practice* (1968) 7. See also M Deutsch, *The Resolution of Conflict: Constructive and Destructive Processes* (1973).

⁷⁵ W Riker, *Federalism: Origin, Operation, Significance* (1964) 114–5.

2.3.1 The institutional or constitutional approach

Theories classified under the institutional or constitutional approach are concerned with the system of government and institutional make-up of a country. This understanding of federalism concentrates on the division of power between the central government and the sub-units and the constitutional assurance that the two levels of government are both co-ordinate and independent.⁷⁶ Federalism, thus, is understood as the combination of shared rule and self-rule, which is expressed in a written constitution. Institutional and constitutional approaches make important contributions to the conceptual understanding of federalism. For example, they identify various of the features that distinguish federations from other (unitary) forms of government, such as the division of powers between the general and regional governments.⁷⁷ Moreover, they underline that federations require written constitutions that prohibit unilateral changes by either of the two orders of government.⁷⁸ In fact, almost all federal constitutions provide rigid procedures for constitutional amendments. Furthermore, these approaches underscore the presence of an independent agency (supreme/constitutional court) responsible for the adjudication of constitutional disputes.⁷⁹

Most federations delegate the task of constitutional interpretation to independent courts. Through constitutional interpretation (judicial review) in some federations like the US, the courts have managed to participate indirectly in the making of public policies. However, this remains controversial.⁸⁰ Institutional and constitutional approaches identify bicameralism as an important feature of federal polities. Indeed, the dominant trend in federal legislatures is that the lower house of parliament provides proportional representation to all citizens, while the upper house (the second chamber) provides equal or qualified representation to the federating units⁸¹. This is because second chambers help to articulate regional interests in the making of public policies.

⁷⁶ Sawyer (1969); Wheare (1963).

⁷⁷ Burgess (1993) 17.

⁷⁸ Duchacek (1970) 203.

⁷⁹ Wheare (1963).

⁸⁰ Duchacek (1970) 255–6.

⁸¹ I Duchacek (1970) 234; Elazar (1987) 183.

Nevertheless, the institutional approach to federalism has been criticised as rigid, legalistic and inflexible. Such criticisms mainly emanate from more emphasis on a formal division of power and also, from the notion that the two tiers of government are independent and coordinated.⁸² Scholars have also criticised Birch for treating the US as the prototype for all other modern federations.⁸³

Since 2012, Somalia has a written supreme constitution (albeit a first draft), two orders of government (federal government and FMSs), two houses of parliament, a House of People (providing representation of all people), and an Upper House (representing the FMSs). Somalia's provisional constitution envisages the creation of institutions to protect and safeguard the Constitution (elaborated on in Chapter 7). Chapters 7 and 8 discuss the institutional and constitutional theories that have informed federal thinking in Somalia. Chapter 4 enumerates key federal features, while Chapter 7 examines shared rule and self-rule as provided for in the Somali Provisional Federal Constitution.

2.3.2 The sociological approach

Theories of federalism under the sociological or functional approach stress the social make-up of a country when describing the degree of federalism in any one country. Federalism is understood as a tool or instrument for managing diversity and ensuring the self-expression or autonomy of a unit. Sociological approaches are concerned with the analysis of relationships between societal diversity and federalism. William Livingston⁸⁴ notes that the essential nature of federalism is to be sought not in the shadings of legal and constitutional terminology but in the economic, social, political and cultural forces that have made the outward forms of federalism necessary: 'The essence of federalism lies not in the institutional or constitutional structure but in the society itself. Therefore, a federal government is a device by which the federal qualities of the society are

⁸² W Livingston (1952) 81.

⁸³ A H Birch, *Federalism, Finance and Social Legislation in Canada, Australia and The United States* 2 ed (1957).

⁸⁴ W Livingston, 'A note on the nature of federalism' (1952) 67 *Political Science Quarterly* 81–95.

articulated and protected.⁸⁵ He also developed the concept of a federal society that implies the presence of geographically concentrated economic, social, religious and historical cleavages.⁸⁶

These approaches are understood as a multinational approach to the understanding of federalism. The emphasis of federalism is not on stability and order, but justice for communities, recognised as nations; from justice follows stability and order. This is secured through the recognition and management of diversity.

Conceptions of federalism of this kind go beyond discussion of the political structure of federalism to consider the social diversity that prompts the adoption of federalism and influences the make-up of the federal system in any given country. A federal society, according to Livingston, is one which has elements of diversity. Diversity is caused by differences in economic interests, religion, race, nationality and language; separation by great distances; differences in historical background; previous existence as independent states; and dissimilarity in social and political institutions. The understanding of diversity, therefore, is broadened beyond economic differences, to include socio-political differences.

In this context, federalism ‘seeks to maintain the unity of the larger state, while giving recognition and empowerment to minorities.’⁸⁷ Federalism is one way of managing diversity in a multinational state. Management of diversity means enabling diversity to flourish rather than suppressing it. The focus is, for the most part, not on stability but on justice in a federal system within a country that is sociologically diverse. The basic point arising from such theories is that federalism is a reflection of society and its diversity; it is not only about constitutional and legal matters.

⁸⁵ Livingston (1952) 22.

⁸⁶ Ibid.

⁸⁷ R Simeon and D P Conway, ‘Federalism and the management of conflict in multinational societies’ in *Multinational Democracies* A G Gagnon and J Tully (eds) (2001) 338.

What makes this approach particularly significant to this study is that Livingston was one of the first scholars to consider the role of federalism in conflict mitigation. He underlined that the success of conflict mitigation depends on how the congruence (streamlining) of governmental structures and underlying consensus is achieved.⁸⁸ How would a sociological approach be relevant in the Somali context? The Somali people are homogeneous in terms of ethnicity (Somali), religion (Sunni Muslim) and language (Somali). At the same time, they are divided into pastoralists and agriculturalists, with a slight variation in Somali dialect (this is discussed in detail in Chapter 3). Additionally, clan conflicts are among the longest-enduring types of conflict in Africa. Hence, these diversities in dialect, differences between pastoralists and agriculturalists, minorities within the country, and geographical distance between the regions could form the basis of the Somali federal character. The cultural aspects of Somali society are discussed in more detail in Chapter 3.

The sociological view taken by Livingston has not been spared critical scrutiny – critics contend that he has merely pointed out various kinds of diversity without explaining the factors that generate the desire among these diverse people to establish a government within a federal framework.⁸⁹ Geoffrey Sawer argues that the social diversity enumerated by Livingston is not specific to federalism – it can result in any kind of constitutional and political system, ranging from a confederal alliance to a centralised system with a good deal of de facto devolution.⁹⁰

In the light of these arguments, the distinctive institutions of federalism essential to federalism in Somalia are the traditional governance system, the differing colonial experiences of Somaliland and Somalia, and the differences between pastoralists and the farming community. Chapter 3 examines Somalia's social and cultural context, with a view to outlining the structures of its society and areas of diversity and unity that could strengthen the federal system.

⁸⁸ Ibid.

⁸⁹ G Sawer, *Modern Federalism* (1969) 181.

⁹⁰ Ibid.

2.4 Approaching federalism as a process

Approaches that see federalism as a process⁹¹ focus on the communication and transactions that occur between two levels of government seeking to resolve problems.⁹² Problems are understood as the tension created by the diversity of society and/or the sub-units, between the communities. From this perspective, federalism is regarded ‘as a political society in which the internal communication system plays a key role’. So, federalism is seen as a federalising process, with federal integration as its end goal. Friedrich⁹³ defines the process approach as either

- a process by which a number of separate political units enter into and develop arrangements for working out solutions together; or
- the reverse process through which a hitherto unitary political community, as it becomes differentiated into a number of separate and distinct political sub-communities, achieves a new order in which the differentiated communities become capable of working on their own decisions and policies.

This approach has also been criticised. Harman, for instance, regards it as ambiguous. According to him, it is difficult to recognise which processes are federal and which are not,⁹⁴ and approach does not provide any indication of the link between process and structure. Chapter 4 outlines the processes that led to the formation of federalism in Somalia.

2.5 Political and ideological approaches

Politico-ideological approaches to federalism emphasise the location of sovereignty, the protection of autonomy, and the genesis and evolution of the original federal contract.⁹⁵ These approaches examine the ideological and philosophical foundation of federalism and the link between

⁹¹ ‘Federalism as a process’ is a category used by Birch. See Birch (1957).

⁹² G Lalande, *In Defence of Federalism: A View from Quebec* (1978) 35.

⁹³ C J Friedrich, *Trends of Federalism in Theory and Practice* (1968) 177.

⁹⁴ Harman (1992) 348.

⁹⁵ L Thorlakson, ‘Comparing federal institutions: power and representation in six federations’ (2003) *West European Politics* (2003) 3.

federalism and other issues of politics such as democracy, freedom and political parties.⁹⁶ In viewing federalism as an ideological construct, what is emphasised is its contribution to the maintenance of individual and communal liberty through power diffusion.⁹⁷ The liberty argument for federalism posits that every government is a threat to individual liberty and that the proliferation of levels of government and the counterweights so created hence favour liberty.⁹⁸ However, this argument is seemingly contradicted by the creation of different majorities and minorities at national, regional and local levels.

According to William Riker, federalism cannot guarantee majoritarian freedom, but on the contrary may be an impediment to it.⁹⁹ The effect of allowing ultimate decisions at two levels of government, which is the essence of the federal relationship, is that the losers at the national level may reverse the decision at the constituent level. Thus, the losers nationally may become the winners locally, which of course negates the national decision in portions of the federal nation. Therefore, the freedom of the national majority is infringed upon by local majorities.

Riker was one of the earliest scholars to examine the relationship between federalism and political parties. He attempted to explain the maintenance of the federal system in the US by looking at the decentralisation within its party system.¹⁰⁰ In his view, this prevented national leaders from centralising power in that the structure of the parties parallels the structure of federalism. When parties are fully centralised, federalism also becomes fully centralised (for instance, in the Soviet Union and Mexico); however, when parties are somewhat decentralised, then federalism is only partially centralised.¹⁰¹ Political parties have been referred to as great

⁹⁶ W Kymlicka, *'Multinational Federalism in Canada: Rethinking the Partnership, beyond the Impasse, toward Reconciliation'* (1998).

⁹⁷ Gagnon and Charles, 'Ethnic nationalism and international conflict: The case of Serbia' (1999) *International Security* 19 (3).

⁹⁸ R William, 'Federalism and environmental regulation: A public choice analysis' (2001) *Harvard Law Review* 76.

⁹⁹ Ibid.

¹⁰⁰ R William R, 'Federalism and Environmental Regulation: A Public Choice Analysis' (2001) *Harvard Law Review*.

¹⁰¹ Ibid.

centralisers or decentralisers of a federal system.¹⁰² Their number, internal structure, ideology, leadership commitment to pluralism or unitary centralism, and actions are evidently related to the actual workings of federalism.¹⁰³

In recent years, there have been no vibrant political parties in Somalia as there were in the early 1960s. While Somalis lack ideological aspects to establish federalism, it is interesting to note how federalism is gradually taking shape and what the role of clans and traditional governances in strengthening it. (Chapter 7 discusses the processes of FMS-formation and the role played by traditional authorities.)

2.6 Essential institutional features of federalism

Federalism requires a self-sustainable and robust institutional design. As mentioned in the introduction to this chapter, federalism varies widely: no two federal systems are identical. Nevertheless, growing numbers of scholars have identified institutional features common to most federations,¹⁰⁴ such as the following:

- Two orders of government acting directly on the affairs of the citizens.
- A formal constitutional distribution of legislative and executive authority and the division of revenue resources between two orders of government, ensuring some areas of genuine autonomy,
- Provision for representation of regional views in federal policy-making institutions, usually via a federal second chamber;
- A supreme written constitution not unilaterally amendable and requiring the consent of a significant proportion of the constituent units.
- An umpire (in the form of the courts or provisions for a referendum) to rule on disputes between governments.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ See R Watts (1999) 6–4; R Blindenbacher and R Watt ‘Federalism in a changing world – A conceptual framework for the conference’ in R Blindenbacher and A Koller (eds) *Federalism in a Changing World: Learning from each Other* (2003) 7–25.

- Processes and institutions to facilitate inter-governmental responsibilities are shared or inevitably overlap.

According to Ronald Watts, the essential characteristics of federalism are:

- Two orders of government (federal and regional), each in direct contact with its citizens.
- An official, constitutional sharing of legislative and executive powers, and a sharing of revenue sources between the two orders of government to ensure that each has certain sectors of true autonomy.
- Designated representation of distinct regional opinions (regional interests, rights, welfare) within federal decision-making institutions, usually guaranteed by the specific structure of the federal second chamber (Senate).
- A supreme written constitution that is not unilaterally modifiable but requires the consent of a large proportion of federation members.
- An arbitration mechanism (in the form of courts or a referendum) to resolve intergovernmental disputes.¹⁰⁵

According to Geoffrey Sawer, successful federalism requires:

- An independent country with a central government that has the institutionalised power to govern the whole of the country.
- The country to be divided into separate geographical regions which have their own institutions of government to govern their particular regions.
- The power to govern is to be distributed between central and regional governments.
- The distribution of power between the central and regional governments is set out in a constitution and rigidly entrenched by the constitution so that it cannot be amended by the central government or any region or regions.
- The constitution must contain rules to resolve any conflict of authority between the centre and the regions. In most constitutions, the general rule is that the law of the central government shall prevail.
- The distribution of powers between the central and regional governments is to be interpreted and policed by a judicial authority. The judicial authority has the constitutional power to

¹⁰⁵ R Watts (2002) 8.

make binding decisions about the validity of legislation and government action, or where there is a conflict of the laws of the central and regional governments.¹⁰⁶

Similarly, Arendt Lijphart lists five principal attributes of federalism:

- A written constitution which specifies the division of power and guarantees to both the central and regional governments that their allotted powers cannot be taken away.
- A bicameral legislature in which one chamber represents the people at large and the other component units of the federation.
- Over-representation of the smaller component units in the federal chamber of the bicameral legislature.
- The right of the component units to be involved in the process of amending the federal constitution and to change their own constitutions unilaterally.
- A decentralised government in which the regional governments' share of power is relatively large compared to that of regional governments in unitary states.¹⁰⁷

The characteristics mentioned above are essential features of a federal system; hence, any country with these characteristics can rightly claim to be a federation. The next section discusses some of the features of a federal system in greater depth, while Chapter 7 discusses the institutional attributes listed above in specific reference to Somalia.

2.6.1 Supreme constitution is difficult to alter

The constitution¹⁰⁸ of a country is the fundamental law of the land; it sets the tone, the spirit and the framework from which all other laws and the form of government draw their legitimacy.

It guarantees the political and legal system and its cardinal features. It determines and regulates

¹⁰⁶ G Sawyer (1969) 1.

¹⁰⁷ Lijphart A, 'Non-majoritarian democracy: A comparison of federal and consociational themes' in D Elazar, *Exploring Federalism* (1991) 22–3.

¹⁰⁸ James Tully writes that the constitution is a written document that creates the foundation of government by an act of the sovereign will of the people. J Tully, *Strange multiplicity: constitutionalism in an age of diversity* (1995) 85. Charles Fombad refers to a constitution as a power map that derives its authority from the governed and regulates the allocation of powers, functions and duties among the various agencies and offices of government. It also defines their relationship with the governed. He asserts that the constitution forms the main source and basis of governmental rule-making and is designed primarily to check against arbitrary rule-making. See C Fombad, 'Strengthening constitutional order and upholding the rule of law in Central Africa: Reversing the descent towards symbolic constitutionalism' (2014) 14 *Africa Human Rights Law Journal*.

the powers of, and the relationship between, the executive, legislature and judiciary. Alan Tarr point out that a constitution embodies a society's fundamental choices about government.¹⁰⁹ The constitution therefore designates offices, specifies how these offices are to be filled, allocates powers and responsibilities between the various offices, indicating the aims for which political power is to be exercised and fundamental rights elaborated, both individual and group rights are protected against violation by government.¹¹⁰ Tarr noted that 'a constitution eloquently articulates a country's aspirations and becomes a source of pride and a symbol of national unity for its citizens.'¹¹¹

The use of a written constitution to define and maintain the federal balance in a federation has been identified by many key theorists. Dicey, for example, writes that a leading characteristic of federalism is the existence of a written constitution that is the supreme law of the territory, such that every executive, legislative or judicial power, whether it belongs to the nation or to the individual states, is subordinate to and controlled by the constitution.¹¹²

Cramp also observes this supremacy, noting that, for a federal system to work properly, it is necessary to have a written, supreme constitution that sets out the allocation of these powers, rendering any legislation or action outside the set powers constitutionally invalid.¹¹³ Where the government is decentralised, the constitution also regulates the relationship between the central government and the regions, and between governments at the regional and local levels.¹¹⁴ Watts points out that the basic design of all federations is to express what Daniel Elazar called 'self-rule plus shared rule' via the constitutional distribution of powers between those assigned to the federal

¹⁰⁹ Tarr, A, 'Introduction: Constitution origins, Structure and change in Federal Countries' in Kincaid, J & Tarr, A *Constitutional origins, Structure, and Change in Federal Countries* (2005) Monreal & Kingstone: McGill Univeristy Press 8-12

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² A V Dicey, *Introduction to the Study of the Law of the Constitution* 8th ed (1926) 140-2.

¹¹³ K Cramp, *State and federal constitutions of Australia* (1913) 116-7.

¹¹⁴ A constitution is federal if (1) two levels of government rule the same territory and people; (2) each level has at least one area of action in which it is autonomous; and (3) there is some guarantee (even if merely a statement in the constitution) of the autonomy of each government in its own sphere. W Riker (1964) 11.

government for a common purpose and those assigned to the constituent units for the purpose of local autonomy and the preservation of specific identities and interests.¹¹⁵

2.6.2 Distribution of power between the federal government and constituent units

The importance of the distribution of power between the federal government and the state governments is highlighted by Iff and Topperwien,¹¹⁶ who note that

[t]he distribution of power determines the decision-making space of the different tiers of government. ... [It] is at the core of the self-rule. ... The distribution of powers will determine in what fields the federal units have a genuine right to self-rule and can therefore define and implement their own policies.¹¹⁷

James Bryce notes that in a federal system, there is a ‘distribution of powers’ between a national government and its constituent units. These powers are categorised as executive, legislative and judiciary.¹¹⁸ Bryce further states that both layers of government operate separately but at the same time complement one another.¹¹⁹ He lists five classes of powers:

- powers vested in the federal government;
- powers vested in the state;
- powers exercisable by either the federal government or state;
- powers forbidden to the federal government; and
- powers forbidden to the state governments.¹²⁰

The powers exclusive to the federal government relate mainly to matters pertaining to the country as a whole. In most federations, these include national security, foreign affairs, immigration and border control, and citizenship. Matters pertaining to the state alone are ordinary powers of internal governance, such as water resources, the maintenance of law and order, and

¹¹⁵ R Watts (1996).

¹¹⁶ A Iff and N Topperwien, ‘In support of the federalism debate’ (2017) *Politorbis* No. 64. Federal Department of Foreign Affairs, Swiss Confederation, available at www.eda.admin.ch/dam/eda/mehrsprachig/documents/publications/Politorbis/Politorbis64_ef.pdf, accessed 15 February 2018.

¹¹⁷ *Ibid.*

¹¹⁸ J Bryce, ‘*The American Commonwealth*’ (1989) 303.

¹¹⁹ *Ibid.* 29.

¹²⁰ *Ibid.* 306.

education and health. Concurrent powers (powers exercisable by both layers of government) are provided for in some federations, such as South Africa, Nigeria and Germany. These powers can be exercised by both the federal and state governments, including certain legislative powers. The power to legislate in certain policy areas, is assigned to the federal level, while the administration (the power to implement and execute) of the federal legislation is constitutionally assigned to state governments.¹²¹

In principle, assigning powers exclusively to one level of government bolsters the autonomy of that level of government by giving it the right to define and implement its own policies in the specified areas of competence. It also provides clarity as to which level of government is accountable and responsible to their citizens for the said functions.¹²² On the other hand, where the component units of the government are more powerful than the federal government, they are likely to overshadow the federal government, to the extent that citizens develop little loyalty to the federal government. Ben Nwabueze argues that ‘if the regions are so powerful as almost to submerge the center or to cause the inhabitants to think of governments in terms largely or mainly of regional governments, then it will be hard for them to develop any loyalty to the nation, let alone one which will equal loyalty to the region’.¹²³ Elsewhere, Nwabueze rightly notes that federalism presupposes that the national and regional governments stand with each other in a relationship of meaningful independence, one that rests upon a balance of division of power and resources.¹²⁴ On her part, Bednar Jenna point out that the division of sovereign authority among levels of government, can be seen as a way of stabilising, or making credible, decentralised government structures’¹²⁵

¹²¹ R Watts, ‘*Comparing Federal Systems in 1990s*’ (1996).

¹²² Ibid.

¹²³ BO Nwabueze, ‘*How President Obasanjo subverted Nigeria’s Federal System*’ (2007) at 392.

¹²⁴ BO Nwabueze, ‘*Nigeria under the Presidential Constitution*’ (1983) at 182.

¹²⁵ Bednar, J ‘*The Robust federation: principle design*’ (2009) 242.

Federal theory specifies that a written federal constitution distributes power between the central and regional governments. In doing so, it will frequently list, and thereby limit, the powers allocated to the central government. Hence, in delineating these powers, the written constitution provides for a federal balance of power that must be maintained between the two levels of government. This balance of power has been identified by numerous theorists, such as Dicey, who notes that a key characteristic of federalism is the distribution of the different powers of government among bodies with limited and co-ordinate authority.¹²⁶ Dicey makes the following observation about the distribution of powers between the federal and state governments:

The distribution of powers is an essential feature of federalism. The object for which a federal state is formed involves a division of authority between the national government and the separate States. The powers given to the nation form in effect so many limitations upon the authority of the separate States, and as it is not intended that the central government should have the opportunity of encroaching upon the rights retained by the States, its sphere of action necessarily becomes the object of rigorous definition.¹²⁷

The requirement of a constitutional division of power between federal and state governments in a federal system goes hand in hand with a written constitution. Logic dictates that the constitution must be written, so as to ensure that this division of power is expressed in clear terms.¹²⁸ Furthermore, in order to make the division of power binding on both levels of government, the constitution must be above the governments. In other words, the federal constitution must be the supreme law of the land, such that any legislative, executive and judicial act by any organ of the federal and state governments is under an obligation to adhere to its provisions.¹²⁹

A key feature of a federal system of government is that governmental institutions and powers are set out in a written constitution which is difficult to alter and impossible for the federal

¹²⁶ Dicey (1926) 140.

¹²⁷ Ibid 147.

¹²⁸ V Dicey (1926).

¹²⁹ Ibid.

government to alter unilaterally. This written constitution, that is, should be rigid¹³⁰ in that it can be altered only by a supreme authority above and beyond the legislature,¹³¹ or in other words, by a body outside the constitution.¹³² Dicey notes that while a federal legislature cannot alter the constitution, the constitution can limit the powers of the federal legislature:

A federal constitution is capable of change, but for all that, a federal constitution is apt to be unchangeable. Every legislative assembly existing under a federal constitution is merely a subordinate law-making body, whose laws are of the nature of by-laws, valid while within the authority conferred upon it by the constitution, but invalid or unconstitutional if they go beyond the limits of such authority.¹³³

In summary, a written constitution, one in which the parameters of state and federal powers are rigidly set out and difficult to alter, helps to ensure that the balance of power between the two levels of government is maintained and, thereby, that the states are protected from any federal attempts to usurp their power or make them in any way subordinate. The division of power between two levels of government in a federal constitution requires a separate and independent body to exercise judicial powers in order to ensure that the power exercised by federal and state governments is within their competence.¹³⁴ Separation of the legislature, the executive body and the judiciary is essential in ensuring the division of power between the two levels of government and that the doctrine of constitutional supremacy is observed in a federation.¹³⁵ This calls for a supreme court of justice that has jurisdictions over federal and state governments.

¹³⁰ Ibid 142–3.

¹³¹ Ibid.

¹³² Ibid 145.

¹³³ Ibid 145–6.

¹³⁴ The doctrine of the separation of powers assumes that power corrupts and that the separation of powers is essential to liberty and democracy. Montesquieu held that ‘all would be in vain if the same person, or the same body of officials, be it the nobility or the people, were to exercise these three powers: that of making laws; that of executing public resolutions; and that of judging crimes and disputes of individuals’: J C Froneman, ‘The constitutional invasion of the common law. Can the judges be controlled?’ in G Carpenter (ed) *South Africa in Transition. Focus on the Bill of Rights* (1996) 8–9, 15.

¹³⁵ According to ‘Van der Vyver, the notion of the separation of powers as propounded by Montesquieu eventually developed into a norm comprising four basic precepts or principles: (1) The principle of *trias politica* that requires a formal distinction to be made between the legislative, executive and judicial components of state authority; (2) the principle of the separation of personnel serving in each of the three branches of state authority or under its guidance;

Osaghae writes that power-sharing between two levels of government can work only when power-holding and challenging elites respect pacts and agreements:

By far the greatest obstacles to the success of federal solutions in Africa are the underdevelopment of constitutionalism and the domination – or monopoly of power in some cases – by central-state elites. Federalism, as is well known, is a contractual system that can only thrive when constitutional rules, including most importantly the rights of constituent units, are observed – which is why, for instance, the federal principle forbids unilateral amendment of the constitution by the central government. Where, therefore, constitutional rules are breached or amended at will, as most central governments and powerful elites tend to do in Africa, or democracy is absent, federalism is threatened. Although this is truer of federal government, it is no less true of the species of federalism without the federal government. Structures of executive power-sharing, for instance, can only work when power-holding and challenging elites respect pacts and agreements.¹³⁶

2.6.3 Two layers of government: federal and state government

A federal system exists where there is a layer of state institutions between a state's centre and its localities, where this layer of institutions has its own leaders and elected bodies, and where those leaders and bodies share decision-making power with the centre.¹³⁷ Other definitions entail, furthermore, that, for a state to be federal, it needs to guarantee in its constitution that both levels of government have at least one area of action in which they have exclusive jurisdiction. Also, there is considerable agreement that a federal state needs to have a minimum level of democracy for the concept of sub-state autonomy to have meaning.¹³⁸

Federalism, then, is a constitutional means to prevent the centralisation of power. It combines self-rule by territorial sub-units with shared rule at the centre: sub-units govern

(3) The principle of the separation of functions between the three organs of state authority; and (4) the principle of checks and balances requiring that each organ be entrusted with special powers designed to serve as checks on the exercise of functions by the others in order to come to an equilibrium'. See J D van der Vyver, '*Political power constraints*' 419–420.

¹³⁶ E Osaghae (2004).

¹³⁷ N Bermeo (1999) 98; Elazar (1994) 192.

¹³⁸ *Ibid.*

themselves and share power in the central government. Federalism provides a constitutional framework that recognises two types of majority, namely national or federal, and regional or state. The distinctive aspect of a federation, according to Preston King, is ‘that its structure is grounded in the representation of regional governments within the national or central legislature on an entrenched basis’.¹³⁹ A federal democratic system recognises not only the will of the majority of the whole or national population but also the will of the majority of each region or member state in the federation. In a federation,

‘[t]he people’ are viewed as sovereign, but the expression of this sovereignty is tied to the existence and entrenchment of regional, territorial entities. In federations, ‘the people’ are taken as a single entity, in one sense, but as a plurality of entities in another. The people are represented as a whole (the nation) and as parts (the distinct regions comprising the nation). The people, then, are taken as both united and as diverse. This duality, for the life of the federation, is implicitly inexpugible.¹⁴⁰

The application of this principle typically involves the creation of bicameral chambers at the national or federal level. Each chamber or house of a bicameral legislature in a federal system represents one type of majority. Generally, the will of the people of the whole nation is manifested in the lower chamber, which is comprised of elected representatives of federal constituencies throughout the federation. In this chamber, the number of representatives of each state varies according to its population and the size of its territory. States thus have an unequal number of representatives in the lower chamber. The will of the majority at the member-state level, in the meanwhile, is manifest in the other house, which is generally referred to as the upper house or senate. This is the forum where the rights and interests of the regional governments are protected at the national level.

¹³⁹ P King, ‘Federation and representation’ in Michael Burgess and Alain-G. Gagnon (eds) *Comparative Federalism and Federation* (1993) 94.

¹⁴⁰ *Ibid.*

2.6.4 Sovereignty of the states

Since the federal and constituent units operate independently of one another, their powers are mostly exercised without reference to, or interference with, one another:

The authority of the national government over the citizens of every state is direct and immediate, not exerted through the state organisation, and not requiring the cooperation of the state government. For most purposes the national government ignores the states and treats the citizens of different states as being simply its own citizens, equally bound by its laws.¹⁴¹

As outlined above, federalism allocates powers between separate federal and state spheres of government. Crommelin notes that federalism requires two levels of government, each complete in itself, operating directly upon the people with limited powers, without the capacity alone to alter the allocation of powers.¹⁴² This distinct allocation of powers requires each level of government to operate autonomously, free from interference from the other. Hence, each level of government is intended to be sovereign in its own sphere. In regard to the sovereignty and importance of the states, Galligan remarks that

the essence of federalism is the division of political power and government institutions between two levels of government, both of which are sovereign in limited fields and neither of which is subject to the other in certain core areas.¹⁴³

In a similar vein, Elazar defines federalism as a comprehensive system of political relationships which has to do with the combination of self-rule and shared rule within a matrix of constitutionally dispersed powers,¹⁴⁴ in which power is non-centralised, with the power to govern

¹⁴¹ M Evans, quoting from J Bryce *'The American Commonwealth'* (1889). See M Evans 'Rethinking the federal balance: how federal theory supports states' rights' (2010) 1 *The Western Australian Jurist*.

¹⁴² M Crommelin, 'The federal model' in Gregory Craven (ed) *Australian Federation Towards the Second Century* (1992) 33, 36.

¹⁴³ B Galligan, 'Australian Federalism: Perceptions and Issues' in Brian Galligan (ed) (1989) *Australian Federalism* 2, 3.

¹⁴⁴ D Elazar, 'Viewing federalism as grand design' in D J Elazar (ed) *Federalism as Grand Design: Political Philosophers and the Federal Principle* (1987) 1.

diffused among many centres.¹⁴⁵ This sharing of power, according to Elazar, is premised upon mutual respect and understanding between the two levels:

The term ‘federal’ is derived from the Latin foedus, which, like the Hebrew term brit, means covenant. In essence, a federal arrangement is one of partnership, established and regulated by a covenant, whose internal relationships reflect the special kind of sharing that must prevail among the partners, based on a mutual recognition of the integrity of each partner and the attempt to foster a special unity among them.¹⁴⁶

Sharing power while maintaining sovereignty is central to federalism and federal principles concerned with the combination of self-rule and shared rule. Elazar observes:

In the broadest sense, federalism involves the linking of individuals, groups and polities in lasting but limited union in such a way as to provide for the energetic pursuit of common ends while maintaining the respective integrities of all parties ... As a political principle, federalism has to do with the constitutional diffusion of power so that the constituting elements in a federal arrangement share in the processes of common policy making and administration by right, while the activities of the common government are conducted in such a way as to maintain their respective integrities. Federal systems do this by constitutionally distributing power among general and constituent governing bodies in a manner designed to protect the existence and authority of all.¹⁴⁷

2.6.5 An independent judicial guardian of the constitution

In federal theory, an independent judicial body bears the responsibility for ensuring that the sovereignty of each level of government (that is, the federal balance) is maintained and not transgressed by either level of government. Hence, as noted by Dicey, a key characteristic of a federal system of government is the authority of the courts to act as interpreters of the constitution.¹⁴⁸ More specifically, federalism requires a judicial body to resolve disputes about the demarcation of powers. Consequently, this judicial body acts as a guardian of the constitution¹⁴⁹ in ensuring that the federal balance is not transgressed.

¹⁴⁵ D Elazar, ‘*Exploring Federalism*’ (1987) 34.

¹⁴⁶ Ibid 5.

¹⁴⁷ Ibid 5–6.

¹⁴⁸ A Dicey (1926) 140.

¹⁴⁹ Ibid 117–8.

John Stuart Mill commented on the role of the courts in maintaining this federal balance:

[In] the more perfect mode of federation, where every citizen of each particular state owes obedience to two governments, that of his own state and that of the federation, it is evidently necessary not only that the constitutional limits of the authority of each should be precisely and clearly defined, but that the power to decide between them in any case of dispute should not reside in any of the governments, or in any functionary subject to it, but in an umpire independent of both ...¹⁵⁰

According to Dicey, this federal supreme court must have the authority to interpret the constitution and to hand down independent judgments.¹⁵¹ He notes that an independent federal court would prevent bias in favour of either level of government. For example, the independence of the constitutional court would prevent state judges from interpreting the constitution with a view to preserving the rights of the states, and would also prevent the dependence of judges on the federal government for interpreting the constitution in favour of the federal government.¹⁵² This ‘guardianship’ role is therefore fundamentally important; as a result, if the high court were to adopt a centralist agenda contrary to the text, structure and provisions of the constitution (that is, if the high court failed to interpret federal powers with a view to maintaining the federal balance), the power and sovereignty of states would be compromised.

In the classic work, *The Federalist, No. 51*, James Madison outlines the care with which the judiciary’s independence from the appointing authority must be assured:

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on

¹⁵⁰ J S Mill, ‘Of federal representative governments’ in Dimitris Karmis and Wayne Norman (eds) *Theories of Federalism: A Reader* (2005) 165, 167. This umpire is a supreme court, empowered by the constitution to make final decisions about the powers of the state and federal governments, including disputes between them, or between these governments and citizens (168–9).

¹⁵¹ A Dicey (1926) 140, 155.

¹⁵² *Ibid* 155.

the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department must soon destroy all sense of dependence on the authority conferring them. It is equally evident that members of each department should be as little dependent as possible on those of the others for the emoluments annexed to their offices. Where the executive magistrate, or the judges, are not independent of the legislature in particular, their independence in every other would be merely nominal.¹⁵³

2.7 Various forms of federal systems

Federal systems have been classified in a variety of ways. For instance, Lijphart,¹⁵⁴ acting on the basis of earlier work by Tarleton,¹⁵⁵ classify federalism in one of the two ways. The first involves congruent and incongruent federalism. Congruent federalism¹⁵⁶ is that in which each of the constituent parts of a federal state resembles the whole. For example, in the United States, there are no states that are known as ethnic minority states, despite the fact that some states have higher percentages of ethnic minorities than others. Conversely, incongruent federalism is seen in countries, such as Canada or Belgium, where federations have one or more areas in which an ethnicity has its home region.¹⁵⁷

The second way to understand federalism is to distinguish between symmetric and asymmetric federalism. This involves the constitutional treatment of federal units. Under symmetric federalism, constituent parts are treated as equals. For example, in the United States, Florida is treated no differently than Minnesota under the Constitution. Under asymmetric federalism, constituencies are treated differently, such as in Russia, where ethnic republics each have their own elected presidents, while administrative regions, called *oblasts*, have appointed governors.¹⁵⁸

¹⁵³ J Madison, 'The Federalist, No. 51' (1788). The latter forms part of *The Federalist Papers*, a series of 85 articles and essays written by Alexander Hamilton, James Madison and John Jay in 1777–8.

¹⁵⁴ Lijphart, 'Patterns of Democracy' (1999).

¹⁵⁵ C Tarleton, 'Symmetry and asymmetry as elements of federalism' (1965) 27 *Journal of Politics* (1965) 861–874.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Elazar (1987).

The next section appraises symmetrical and asymmetrical federal models more closely.

2.7.1 Symmetrical federal model

Ideally, a symmetrical federal system is one composed of political units of equal territorial sizes and populations as well as similar economic features, climate conditions, cultural patterns, social groupings and political institutions. In this model, the symmetrical systems of each of the separate political units are in effect a reflection in miniature of salient features of the federal system as a whole.¹⁵⁹ Each of the states, due to this basic similarity, is concerned with the solution of the same sorts of problems and with the development of the same sorts of potential. There would be no significant difference from one state to another in terms of the major issues with which the political organisation of a state might be concerned, nor would there be significant difference in terms of the political machinery and resources with which the state approaches those major issues.

In this model, each state maintains essentially the same relationship with the central authority: the division of powers between central and state governments is nearly the same in every case. Representations in the central government would be equal for each component polity, and support of the activities of the central government would also be equally distributed. Likewise, no significant social, economic or political peculiarities exist, which would otherwise necessitate special forms of representation or protection.

2.7.2 Asymmetrical model

An asymmetrical federal system¹⁶⁰ is one in which there is differentiation in the degree of autonomy and power among the constituent units. Asymmetrical federalism is therefore composed

¹⁵⁹ Watts (1996).

¹⁶⁰ The issue of asymmetric federalism has attracted growing attention, as is evident in the burgeoning literature on it. See Y Ghai 'Constitutional asymmetries: Communal representation, federalism and cultural autonomy' in A Reynolds (ed.) *The Architecture of Democracy* (2001); R Watts, 'Asymmetrical decentralization: Functional or dysfunctional' (2004) *Indian Journal of Federalism* 1–42; H Hannum 'Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights' (1996); D Elazar, 'Exploring Federalism' (1987); R Lapidot, 'Autonomy: Flexible Solutions in Ethnic Conflicts' (1997).

of political units corresponding to differences of interest, character and make-up that exist within the society. The asymmetrical federal system is one in which, as Livingston says of federal systems in general, the diversity in the larger society finds political expression through local governments possessed of varying degrees of autonomy and power. Again, following Livingston, an asymmetrical federal government is one in which political institutions correspond to the real social 'federalism' under them.¹⁶¹

Ronald Watts, in a comparative perspective on asymmetry in federations, lists a number of distinctions that are applicable to it.¹⁶² The first is the distinction between the conditions that led to its formation – these conditions could be historic, economic, social, ethnic and cultural. His second distinction is between *de jure* and *de facto* asymmetry. The former refers to asymmetry enshrined in written constitution and legal processes such that the constituent parts are treated differently under the law. He defines *de facto* asymmetry as the actual practice or relationship arising from the impact of cultural, social and economic differences among the constituent units within the federation.¹⁶³

What is significant about asymmetric federalism is the stability, political cohesion and success that it brings to constituent units. According to Watts, countries that have succeeded as a result of adopting asymmetric federalism include Belgium, Germany and Spain. In most of these federations, asymmetric arrangements were developed to accommodate political diversity and facilitate political legitimacy and stability.¹⁶⁴ He notes, furthermore, that in Malaysia, the constitutional asymmetry applied to the two Borneo States, Sabah and Sarawak, with their distinct

¹⁶¹ Across the world, there are significant numbers of federal systems with asymmetrical constitutional and polity arrangements relating to the status and authority of the constituent units. These include Belgium (1993), Germany (1949), Malaysia (1963) and Spain (1978).

¹⁶² R Watts, 'A Comparative Perspective on Asymmetry in Federations' (2005) 1–2.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

populations, has been successful for more than four decades, particularly in reconciling the differences between them and the states.¹⁶⁵

Asymmetric federalism could be crucial in the Somali federal system, FGS, Somali societies and international partners, as indicated in the introduction of this chapter, are seeking ways and means of accommodating major differences between constituent units in the Somali federal system. One particular challenge is the accommodation of Somaliland and Puntland. Puntland has agreed to be part of the Somali federal system, whereas Somaliland is seeking secession. Even though its secession is not recognised, Somaliland has maintained peace and stability. The FGS opposes any formal dismantling of the Somali border, as this would violate its sovereignty, territorial integrity and political independence. In this instance, asymmetric federalism could be a means of containing violence between Somaliland and Somalia. Chapter 5 highlights the historical background of Somaliland and its relationship with Somalia, while Chapter 7 outlines asymmetric federalism as a potential solution to Somaliland's claims to self-determination.

2.8 Federalism and conflict management

The argument is often made that federalism is a means of bringing government closer to the people, leading to greater political participation at the local level and providing autonomy to the constituent units. As an important tool for collective representation, federalism is also believed to contribute to overall regime consolidation and to increase the quality of the democratic process by guaranteeing accountability, fostering civil competencies, enhancing social capital, and strengthening political parties and civil societies.¹⁶⁶ Lovise Aalen pointed out that

‘ although federalism in its initial form (the American and Swiss Models) was not designed to regulate conflicts based on ethnicity or other identity differences, it is today conceived

¹⁶⁵DJ Elazar, *Federalism and the way to peace* (1994).

¹⁶⁶ Rothschild (1966).

as one of the better device to mute conflicts among the groups and between central state and sub-national communities.¹⁶⁷

Accordingly, federalism is increasingly prescribed as a means of accommodating territorial divisions and managing ethnic conflict. That is, it is seen as a way to accommodate territorially based ethnic, cultural and linguistic differences in divided societies while maintaining territorial integrity. A significant defining feature of federalism, as already discussed, is that self-rule and shared rule are constitutionally enshrined.¹⁶⁸ Osaghae share noted that:-

‘The point made by several authors and supported by the experience of successful federal states is that on the balance federal solutions and arrangements have a fairly good record as a systems of political accommodation for the management of diversity and conflict, including problmes of minorities’¹⁶⁹

However, scholars are divided on the potential of federalism to prevent conflict. Scholars such as Michael Hetcher¹⁷⁰ and Nancy Bermeo¹⁷¹ have argued that federal structures, when compared with unitary patterns of governance, have a broad set of beneficial effects for reducing ethnic conflicts, accommodating minorities and holding nation-states together. By contrast, Eric Noerdlinger and Yash Ghai argue that federalism may indeed exacerbate conflict and as such fail to regulate it.¹⁷² Ghai further claims that only ‘true autonomy’ can prevent secession.¹⁷³ Yet again, Hechter¹⁷⁴ and Ghai¹⁷⁵ argue that federalism is an appropriate method to accommodate difference in multicultural states. On his part Horowitz classifies federalism as on the the structural techniques in conflict regulation, he noted that together with electoral reform, federalism is the device to change the institutional format in which conflicts occur, altering the structure of incentives for political actors without making any promises about ethnic outcomes.¹⁷⁶ Still others, such as Will

¹⁶⁷ Aalen, L ‘Ethnic federation and a dominat party state: the Ethiopina experience 1991-20000’ (2002) 2 *Development and Human Rights* 14.

¹⁶⁸ W Riker (1964).

¹⁶⁹ Osaghae, E’ Federalism and the management of diversity in Africa’ (2004) 1 & 2 *Identity, Cultural and Politics* 162-178.

¹⁷⁰ M Hechter, ‘*Containing Nationalism*’ (2001).

¹⁷¹ N Bermeo, ‘The import of institutions’ (2002) 13(2) *Journal of Democracy* 96–110.

¹⁷² A Noerdlinger, ‘*Conflict Regulation in Divided Societies*’ (1972).

¹⁷³ Ghai (2001) 23.

¹⁷⁴ Hecher (2000)

¹⁷⁵ Ghai (2000)

¹⁷⁶ Horowits, DL (1997) 121.

Kymlicka, contend that it ‘seems unlikely that federalism can provide an enduring solution to the challenge of ethno-cultural pluralism’.¹⁷⁷ Elsewhere, Horowitz asserts that federalism might encourage national minorities to seek secession.¹⁷⁸

The discussion above shows that the literature on federalism and ethnic conflict does not provide us with an unambiguous verdict on the benefits of federalism. Nonetheless, it has emerged as an important tool for conflict resolution and come to be seen as an instrument to accommodate the territorial integrity of existing states. Nancy Bermeo argues that federal institutions facilitate successful accommodation as opposed to exacerbating ethnic conflicts.¹⁷⁹ She contends that federalism has helped to keep states unified and democratic in the face of possible secession by territorial-based minorities. Based on her analysis of advanced democracies and less-developed countries,¹⁸⁰ she claims that ‘no violent separatist movement ever succeeded in a federal democracy’,¹⁸¹ she affirmed the unmitigated success of federalism as a method of ethnic-conflict resolution.

In the light of this, what tools could federalism ideally provide one with as aids in conflict management? The notions of shared rule and self-rule have been mentioned above. Francesco Palermo lists the following as useful tools for conflict resolution in federal system: distribution of powers, financial arrangements, inter-government relations and judicial adjudication.¹⁸² Palermo adds two further tools he believes are particularly applicable to ethnically diverse societies: cross-border cooperation, which assists groups divided by borders, and ‘forms of citizen participation in

¹⁷⁷ E Kymlicka, ‘Is federalism a viable alternative to secession?’ in P B Leehning (ed) *Theories of Secession* (1998) 111–150.

¹⁷⁸ D L Horowitz, *Ethnic Groups in Conflict* (1985).

¹⁷⁹ N Bermeo (2002) 96–110.

¹⁸⁰ *Ibid* 98.

¹⁸¹ *Ibid* 108.

¹⁸² F Palermo, ‘Federalism, constitutionalism and conflict management’ in H Buhler, S Luther and M Siegner (eds) *Federalism and Conflict Management* (2017) 11.

decision-making’, which ‘increase the feeling of inclusiveness, and allow decision-makers to take into due account minorities’ claims.’¹⁸³

Some of these tools have been discussed in the preceding sections that dealt with essential features of federalism. The following sections will appraise several of these tools.

2.8.1 The notions of shared rule and self-rule

Self-rule comes about through a formal allocation of legislative, executive and fiscal powers that enables each order of government to exercise autonomy in a range of policy areas. It relates to the degree of political self-government enjoyed by the constituent units within a multilevel state, and entails ‘a sharp focus upon autonomy, separateness, independence, rule-making and the capacity to govern a political community’.¹⁸⁴ Self-rule finds practical expression in the different territorial structures of a federation, for instance, in the configuration of a federation. Similarly, self-rule can also receive institutional expression through the division of powers between different levels of government. The other key aspects of self-rule are financial autonomy and the sharing of resources.

By contrast, shared rule concerns the participation of sub-state national or regional governments in decision-making processes at the centre or federal order of government.¹⁸⁵ It gives them the formal means and capacity to influence central or federal decision-making, especially in policy matters that directly or indirectly affect sub-state competencies. For Watts, shared rule represents a ‘collaborative partnership through common institutions’.¹⁸⁶ As already noted, these institutions may include a second chamber of the federal legislature, which provides mechanisms for the representation of collective territorial interests or forums for the conduct and coordination

¹⁸³ Ibid.

¹⁸⁴ Burgess (2012) 184.

¹⁸⁵ Wolff (2009) 6; Galligan (2008) 274; John McGarry and Brendan O’Leary ‘The political regulation of national and ethnic conflict’ (1994) *Parliamentary Affairs* 47 (1) 94–115; B Galligan ‘Comparative federalism’ in R A W Rhodes, Sarah A Binder and Bert A. Rockman (eds) *The Oxford Handbook of Political Institutions* (2008); S Wolff ‘Complex power-sharing and the centrality of territorial self-governance in contemporary conflict settlements’ (2009) *Ethno politics* 8 (1) 27–45.

¹⁸⁶ Watts (2013) 20.

of formal or informal intergovernmental relations. Shared rule also relates to institutional measures to protect territorial interests, including giving sub-state governments veto rights on certain issues deemed important to their status or autonomy.¹⁸⁷ Shared rule includes intergovernmental relations and resource distributive schemes.

The ability of federations to prevent and manage conflict is widely recognised. Although federations have no built-in guarantee of escaping internal conflict, they have been shown in many instances to be flexible and able to adjust in conflict-prone situations. The conflict-resolution attributes of federations have been summarised as follows:

Only a balance between self-rule and shared rule can give communities the opportunity to promote their cultures within their territories. Only on this basis is it possible to provide the necessary base for the balanced development of all communities, together with the majority of the citizens and the people. Such a result can be constitutionally achieved only through a federal design. ... Federalism offers a constitutional mechanism that not only tolerates but can also promote diversity. Not only does it limit state power, but it also enables diverse communities to participate in government.¹⁸⁸

When constitutions come under examination and their assignments of powers fall under scrutiny, the primary institutional questions are:

- Which powers remain at the central level?
- Which powers are reserved for the units?
- Which powers are shared between the entities?

All these questions revolve around how the central government, the sub-units, and, ultimately, citizens and groups, are represented in a federation. Therefore, one of the issues that must be considered is the number of entities that should be created to provide for the representation of group diversity. The exact number of federated entities can vary either as an administrative

¹⁸⁷ Ibid.

¹⁸⁸ T Fleiner, W Kälin and W Linder, 'Federalism, Decentralisation and Conflict Management in Multi-cultural Societies,' in R Blindenbacher and A Koller (eds.) *Federalism in a changing world: learning from each other* (2002) 206.

function or due to issues of representation. Saunders argues that federations can be either too small or too large, whereas the entities in a federation should ideally be comparable in size, wealth and representation.¹⁸⁹ Shared rule and self-rule in Somalia are discussed in Chapter 7.

2.8.2 Federalism and minority protection

Federalism is regarded as an institutional arrangement conducive to the protection of ethnic or other national minorities. Although it can provide rights to ethno-territorial groups, Kymlicka¹⁹⁰ points out that federalism is not inherently connected to the protection of cultural diversity. He notes many federal examples were instituted for reasons of administrative decentralisation rather than the protection of certain groups (Germany is a prime example). However, federalism is often adopted in order to provide rights and certain guarantees to local groups, be they racial, ethnic, tribal or religious in basis. What remains is the issue of how to protect both national majority or minority.

Minorities in federations want to be protected from the tyranny of the majority, while the majority wants likewise to be protected from the tyranny of the minority. Thus, the challenge of every federation is to find the appropriate balance that overcomes mistrust and enhances common trust. If the federation can generate comprehensive common values, the minorities will trust the majority and pay the price in the winner-takes-all democracy. If the federation has only limited legitimacy and the majority receives only limited trust from the minorities, it will have to accept (for the sake of the common interest of the federation) more power-sharing with the federal units. These dynamics could create tension between the effective participation of federal units against the winner-takes-all only majority democracy.

¹⁸⁹ C Saunders, 'Constitutional arrangements of federal systems' (1995) *Publius: The Journal of Federalism* 25 (Spring) 61–79.

¹⁹⁰ W Kymlicka, 'Emerging western models of multinational federalism: are they relevant for Africa?' in D Turton (ed) *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (2006).

Minorities in Somalia are marginalized, as is discussed in Chapter 3. However, much as Provisional Constitution which guarantees rights of every Somalis, minority rights have not sufficiently been protected by the successive Somali transitional and federal government. Chapters 7 and 8 detail how these rights are provided in the Somalia's current constitutional dispensation and continues failure of their implementation by successive Somali federal government.

2.8.3 Fiscal distribution

An important issue in federalism is resource-sharing between the centre and the constituent units. It is argued that federalism provides a resource-sharing mechanism which fosters equitable development by correcting economic inequalities through taxation and fiscal transfer methods.¹⁹¹ The federal constitution can specify what is to be taxed by the federal and regional governments, respectively. This gives regions the opportunity to support their budgets from their own internal revenues. Resources can also be transferred from the wealthiest regions to the poorest through fiscal transfer methods. This helps the state to maintain balanced development in all the regional states.¹⁹² It is therefore crucial that national governments fully define the institutional arrangements necessary to guarantee reliable fiscal decentralisation and effective systems of revenue-sharing between central and state governments.

Fiscal federalism is concerned with the division of public-sector functions and finance among different tiers of government.¹⁹³ Anwar Shah argues that provides safeguards against the threat of centralised exploitations as well as decentralised opportunistic behaviour while bringing decision makers closer to the people,¹⁹⁴ He further noted that ' the principle of fiscal federalism are concerned with the designs of fiscal constitutions- that is how taxing, spending, the regulatory

¹⁹¹ R Boadway, 'The imperative of fiscal sharing transfers' (2001) 53 (167) *International Social Science Journal* 103–110.

¹⁹² B Dahlby, 'Taxing choices: Issues in the assignment of taxes in federations' (2001) 53 (167) *International Social Science Journal* 93–101.

¹⁹³ Ozo-Eson, 'Fiscal federalism: theory, issues and perspectives' (2005) *Daily Independent Newspapers* Thursday 22 September.

¹⁹⁴ Shah, A 'Introduction: Principle of fiscal federalism' in Shah, A & Kincaid, J (eds). *The practice of fiscal federalism: comparative perspectives* (2017) Montreal & Kingstone: McGill-Queen's University Press. 3.

functions are allocated among governments and how intergovernmental transfers are structured'¹⁹⁵ to him these arrangements are of fundamental importance to the efficient and equitable provision of public services.¹⁹⁶

Economists emphasise the need to improve the performance of the public sector and the provision of its services by ensuring a proper alignment of responsibilities and fiscal instruments.¹⁹⁷ Perhaps the most important issue in fiscal federalism is the revenue-allocation formula for sharing national revenue among the tiers of government. Indeed, fiscal federalism consists in a framework assigning fiscal functions and instruments to the different levels of government.¹⁹⁸ Akpan sees fiscal federalism as a set of guiding principles and concepts that help in designing financial relations between the national and subnational levels of government. It is apparent that each unit of government within a federation exists not as an appendage of another government but as an autonomous entity capable of acting of its own accord free from directives from any other government.¹⁹⁹

2.8.4 Contextualising the challenges to and prospects for federalism in Africa

A number of African countries have adopted federal systems (Congo in 1960–1965, Uganda in 1961–1966, Cameroon in 1961–1972, and Kenya: 1963–1965).²⁰⁰ Ethiopia also experimented with federation in the case of Eritrea (1952–1962) in an attempt to prevent it from seceding; however, this federation was dissolved by Haile Selassie of Ethiopia. Similarly, Sudan tried a federal system twice. Among the 55 states in Africa, there are only three functioning federal systems: Nigeria, Ethiopia and Comoros. South-Sudan and Somalia are still at the early stages of

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid. 3

¹⁹⁸ G Mbanefo and F Egwakhide, 'International Labour Organisation (ILO) global employment trends (Geneva) revenue allocation in Nigeria: Derivation principle revisited' in K Amuwo et al. (eds) '*Federalism and Political Restructuring in Nigeria*' (2009).

¹⁹⁹ G Akpan, 'Fiscal potentials and dependence in Nigeria' in '*Fiscal federalism and Nigeria's Economic Development*' (2011) Selected papers presented at the 1999 Annual Conference, The Nigerian Economic Society.

²⁰⁰ Tepeciklogly, EE 'The Promise of Federalism in Africa' (2012) available at <https://ecpr.eu/Filestore/PaperProposal/13bc6471-c93b-4044-9fd7-16aba14131f6.pdf> accessed 4 August 2018.

developing federal systems. Other countries such as South Africa, Tanzania,²⁰¹ Ghana, Namibia and Kenya are not formally or fully federal but to varying degrees have adopted federal arrangements, principles and practices in their legal and political systems.

In Africa, federalism has failed to thrive and take root,²⁰² despite many African countries' adopting or proposing to adopt federalism at various points after independence. A number of African countries that adopted federalism have failed,²⁰³ while most never got off the ground.²⁰⁴ For instance, while Nigeria is regarded as a pioneer in African federalism and the use of power-sharing mechanisms, its experience with federalism has been praised and criticised in equal measure as a solution to ethnic conflict.²⁰⁵

These failures have been attributed to a variety of factors, including the absence of democracy and of elites committed to federalism; a lack of economic capacity to run a federal government; and under-development of constitutionalism and the rule of law.²⁰⁶ Ojo argues that the vulnerability of the federal principle in Africa suggests that it is wise to identify common conditions in the region that pose a threat to it. According to him, the most obvious of these are ethnic cleavages, economic under-development or dependence, and a weak sense of nationhood arising from a short period of independent statehood.²⁰⁷

²⁰¹ The United Republic of Tanzania, which was the result of the Union of Tanganyika and Zanzibar Act, signed in 1964, is the only type of federal system between two parties that survived till today; however, its federal status is accepted as a union rather than a federation, as its name implies.

²⁰² Burgess observed that 'federalism in Africa does not have a positive image. Its record of success is patchy while its failure seems manifest'. See Burgess (2013) 3.

²⁰³ Among the failed federations are the Mali Federation (1959–1960), the Central African Federation (1953–1964), consisting of what are today Zambia, Zimbabwe and Malawi; and the Senegambia Confederation (1981–1989), consisting of Gambia and Senegal. See Burgess (2012).

²⁰⁴ The federal proposals that never got off the ground include the federation of East Africa (Tanganyika, Zanzibar, Kenya and Uganda), and the Ghana-Guinea-Mali federation.

²⁰⁵ R Suberu (2009) 67–86.

²⁰⁶ Mkandawire reveals in his submission the failure of federalism in Africa. He argues that the African continent of more than a thousand ethnic groups was to adopt political postures and institutional arrangements that never took cognisance of such diversity but simply denied the existence of such diversity. See Mkandawire (1999) 35. See also See Noerdlinger (1972).

²⁰⁷ E O Ojo, 'Federalism and the search for national integration in Nigeria' (2009) 3(9) *African Journal of Political Science and International Relations* 387.

In a similar vein, Rothschild attributes the failure of federalism in Africa to lack of support for the principle of federalism by key leaders on the continent.²⁰⁸ Elsewhere, it has been argued, federalism fails to hold countries together because its citizens lack a sense of unity and commitment to decentralised governance.²⁰⁹ Olowu noted that many African leaders looked to the crude governance models of the early colonial period.²¹⁰

Additionally, Osaghae contends that federalism has not had dramatically positive effects in countries that tried it.²¹¹ He also attributes the failure of federalism in Africa to the absence of democracy and the prevalence of authoritarian regimes, absence of elites committed to federalism, under-development of constitutionalism and the rule of law, lack of economic capacity to run a federal government, and overarching concerns with national unity and the manipulation of state powers by elites.²¹²

Likewise, Franck's comparative study of the East African Federation (comprising Tanganyika, Zanzibar, Kenya and Uganda), the Central African Federation, the federation of the West Indies (comprising 10 islands), and the federation of Malaysia (comprising 13 constituents)²¹³ led him to conclude that the common factor in these failures could be found 'only in the absence of a sufficient political-ideological commitment to the primary concept or value of federation itself.'²¹⁴ He also noted that 'federation[s] will fail if they are justified to the participants only in terms of immediately realisable practical advantages'; indeed, the supposed short-term benefits the units and the federal leadership each anticipated in their turn were usually quite different, even at odds with each other, giving rise to destructive conflict.²¹⁵

²⁰⁸ D Rothschild, 'The limits of federalism: an examination of political institutional transfer in Africa' (1966) 4 (3) *Journal of Modern African Studies* 275–293.

²⁰⁹ Lijphart (1977); Duchacek (1987) (1988); Burgess (1993).

²¹⁰ Olowu, D 'Local Institutions and political structure: recent experience in Africa' (2003) 23 *Public Administration and Development* 41-53.

²¹¹ E Osaghae, 'Federalism and the management of diversity in Africa' (2004) 1 and 2 *Identity, Culture and Politics* 162–178.

²¹² *Ibid.*

²¹³ TM Franck, '*Why federations fail: an inquiry into the requisites for successful federalism*' (1968) at 174.

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

African leaders are divided between those that favour a unitary system of governance and those that argue for federalism. The proponents of a unitary power structure argue that it is the best model to ensure national cohesion and forge nation-states out of the divergent communities that make up the state. In the immediate post-colonial period, some African leaders held federalism in contempt as a system that would exacerbate tribalism and encourage secessionist tendencies.²¹⁶ They saw the federal arrangement as not only a divide-and-rule strategy²¹⁷ but a crisis escalator rather than crisis dampener.²¹⁸ Thus, it was not surprising that many of them opted for the unitary state or centralised administrative system as the one capable of fostering national unity and identity. In fact, some regarded decentralisation within a unitary state as an administrative and political risk. In such an environment, the establishment of unitary systems of government was considered an effective means to maintain national identities in plural societies, with various ethnic groups being expected to give up their identities for the sake of a national unity as the case of Kenya, where Majimbo system was dissolved.²¹⁹

However, unitary systems soon began to falter in bringing about the vaunted nation-state.²²⁰ If anything, the centralised state escalated rather than minimised ethnic problems, due to the appropriation of state resources by the central government. The centralisation of resources readily turns political contestation, such as via elections, into inter-ethnic confrontation and war, since any ethnic group or coalition of ethnic groups that controls the state controls power, security, wealth and quality of life. It is little wonder that many states in Africa soon became theatres of inter-ethnic war over which group controlled the state.

Numerous scholars have argued that federal or devolved forms of government offer several advantages for the African state and represent the system of government best suited to the political

²¹⁶ M Burgess, *Federalism in Africa: an essay on the impacts of cultural diversity, development and democracy* (2012).

²¹⁷ S A Dersso, 'Post-Colonial Nation-Building and Ethnic Diversity in Africa' (2008) 5–23.

²¹⁸ J I Elaigwu (1994).

²¹⁹ Linda, N 'A critical analysis of the concept Majimbo in Kenya's political circle' (2018) 3 *International Journal of Language and Linguistics* 131-143.

²²⁰ Kimenyi (2002) 10; D Rothschild (1966) 275–293.

reality of Africa in view of the need to constrain limitless political power, accommodate diversity, protect certain from oppression, and ensure development.²²¹ Thomas-Wooley and Keller examine the relevance of American federalism to Africa and conclude that the American experience, which is quite sensitive to minority rights, has much to offer African nations.²²²

As noted earlier, African leaders who were opposed to limitations on their power were mostly hostile to the federalism ideal, considering it an obstacle to national unity and stability. Apart from the antipathy of the ruling class, however, there are many other conditions contributing to the fragility of federalism in Africa – these relate to the nature of the political process, the nature of inter-territorial links, and the nature of interest group activities and aspirations. The merging of factors, such as the large size and competition between parties that are regionally-based, is also viewed as a factor obstructing the success of African federalism.²²³ As discussed in chapters 7 and 8 in Somalia political tension between federal government and federal member states is increasing impacting on the establishment of federal systems. Federal-regional tensions also highlighted the absence of appropriate constitutional mechanism that clearly delineate the respect roles of the federal government and federal member state.

Despite these negative views, federal solutions are still present in African political and academic discourse. With the new democratisation movements in Africa, there has been renewed hope for federalism to succeed in Africa. Fissah, quoting Barkan, states that ‘federalism is an idea that was universally rejected in the 1960s across Africa; federalism is now an idea whose time has come in several countries.’²²⁴ In Somalia federalism is intended to serve as institutional mechanism

²²¹ M Kimenyi, ‘Harmonising ethnic claims in Africa: A proposal for ethnic based federalism.’ (1998) 18 (1) *Cato Journal* 59–60.

²²² B Thomas-Woolley and E Keller, ‘Majority rule and minority rights: American federalism and the African experience’ (1994) 32 (3) *Journal of Modern African Studies* 411–427.

²²³ D Rothschild, ‘The limits of federalism: An examination of political institutional transfer in Africa’ (1966) 4 (3) *The Journal of Modern African Studies* 275–293.

²²⁴ Fissah, YT ‘Federalism, territorial autonomy and the management of ethnic diversity in Africa: reading the balance sheets’ (2012) *L’European en Formation* 265–285

for bringing about peace and conflict resolution, taking services closer to the people and protecting minorities and marginalised communities.

2.9 Concluding remarks

Federalism as a concept and federation as a structure of government rest on the division of sovereignty between at least two territorially defined levels of government (although there can be overlapping jurisdiction of sovereignty). The division of power between the constituent units does not preclude the interdependence of the two levels of government; it merely requires that, for some governmental functions, neither level is subordinate to the other. A constitutional delimitation of powers, bicameral legislature, independent elections for both levels of governments and a multiparty system are the institutional building blocks of federations. The division of sovereignty requires that federations have a written constitution and an independent supreme court to adjudicate disputes that arise between the two levels of government. Any country with these institutions can be referred to as a federation.

Essential institutional features of federal systems include supreme constitution, separation of powers, shared rule and self-rule enshrined in the constitution, and independent judiciary, to mention a few, were discussed in this chapter. The constitution and institutions, once created, channel and shape societies. A lack of understanding of the underlying philosophy of federal institutions may defeat the purpose of having federal institutions established through federal constitutions. As noted in this chapter and elaborated in chapter 7 and 8 political tensions between FG and FMSs is increasingly impacting the establishment of federal system. Chapters 6, 7 and 8 evaluate the Federal Constitution of Somalia in the light of the institutional characteristics discussed above.

CHAPTER 3: SOMALIA'S SOCIO-CULTURAL, HISTORICAL AND POLITICAL BACKGROUND

3.1 Introduction

The issues surrounding the introduction of federalism and design of state structuring in Somalia cannot be appreciated without understanding the country's political history, social structures and socio-economic challenges. As such, the aim of this chapter is three-fold. First, it presents an overview of the country's geographical location and examines how this has shaped social and economic patterns and the clan relationships. Secondly, the chapter outlines a century-old clan system and, in particular, its traditional self-governing components and examines their role in social cohesion, conflict management, governance and bringing peace in the absence of a central government. Finally, the chapter discusses Islam and Sharia law in relation to Somalia and maps the rise of political Islam.

3.2 Geographical location

Somalia,²²⁵ located geographically in the Horn of Africa, shares borders with Ethiopia in the west, Kenya in the south, and Djibouti in the north-west. The Indian Ocean lies to the east of the country and the Gulf of Aden closes in from the northeast.²²⁶ The country covers a total land area of 637,540 km² and a coastline of 3,333 km.²²⁷ It is a semi-desert region, with vegetation cover and water resources that dictate a pastoral nomadic existence for the majority of the population. In addition, the area between the Southern, the Shebelle and Juba rivers, and in the valleys of the northern escarpments comprise fertile lands, where higher rainfall and richer soils provide land suitable for

²²⁵ The term 'Somalia' has multiple meanings. Conventionally, it was used with reference to the former Italian colony, namely *Somalia Italian*, and, by 1950, it was used to refer to the region under international trusteeship. After independence and the unification of the former Italian colony and the British Somaliland Protectorate, the name 'Somalia' came to indicate either the southern region of the unified country, or more broadly, the Somali Republic. In this thesis, the term 'Somalia' refers to the former Italian colony, *Somalia Italian*, and to the region under trust administration. When referring to the Unified state, the thesis also uses the term 'Somali Republic' or, as enshrined in the Provisional Federal Constitution of Somalia, the 'Federal Republic of Somalia'. The name 'Somaliland' is used with reference to the former protectorate of British Somaliland and to the self-declared Republic of Somaliland.

²²⁶ For the boundaries of the Federal Republic of Somalia, see article 7(5) of the Federal Republic of Somalia's Provisional Constitution.

²²⁷ D H Nelson, 'Somalia: *A Country Study, Foreign Area Study*' (1982).

agriculture.²²⁸ Lewis notes that Somalis traditionally occupied a large expanse of territory in the Horn of Africa stretching from the Awash Valley, through the Ethiopian Ogaden, and into the north towards Kenya as far as the Tana River.²²⁹

Large numbers of Somali people still reside outside Somalia's borders in neighbouring countries such as Kenya, Ethiopia and Djibouti. This dispersal is attributable to the colonial powers that divided the area inhabited by people of Somali origin into five territories in 1884: Italian Somaliland, British Somaliland, Djibouti, the Ogaden region of Ethiopia, and the NFD of Kenya. (elaborated on in Chapter 4).

3.3 Social and culture structure

3.3.1 Social institutions and cultural norms

Somalia is regarded as one of the most homogenous societies in Africa. The sense of a common heritage is rooted in the widespread traditional belief that all Somalis descend from a common founding father, Hill, the father of brothers Sab and Samaale.²³⁰ Samaale's descendants comprise three clans: Hawiye, Darood and Dir.²³¹ The Sab clan is made up of the Digil and Mirifle. The majority of the Somali population constitutes these four clan families, but there are also minority clans with different ethnicities, including Reer Benaadir (people of *Xamar* or Mogadishu), Somali Bantu, Barawan, and the descendants of Arabs (Yemen, Oman), as well as Persians, Indians, Pakistanis and Portuguese.²³² The latter clans are scattered throughout the country. Other

²²⁸ Ibid.

²²⁹ I M Lewis, *Understanding Somalia and Somaliland, Culture, History and Society* (2008).

²³⁰ One of the most well-known scholars of Somalia is the anthropologist and historian Lewis. His work *Blood and Bone* is the definitive work on the clan and its importance in Somalia. Lewis's work ties the clan system to nationalism and shows its importance in the history of Somalia. (See the most comprehensive work on Somali clans, I M Lewis, *Blood and Bone: The Call of Kinship in Somali Society* (1964)).

²³¹ I M Lewis, *A Pastoral Democracy* (1961) 15–34. Lewis's books, *A Pastoral Democracy* and *The Modern History of Somaliland: From state to State* (1988), offer a valuable survey of Somali history until early 1980s. These works are highly important as they focus on the interplay between Somali culture and its social construction in the process of state-building and state dissolution.

²³² M Jama, 'Kinship and contract in Somali politics' (2007) 77 (2) *Journal of the International African Institute* 226–249.

minorities include the Tumaal, Midgaan and Yibir. These groups are well known for their artisanal abilities but are despised by the pastoralists.²³³

3.3.2 Territorial distribution of clans

The original territorial distribution of Somali clans was transformed in recent decades and is no longer as distinct as it was at the end of the nineteenth century. People have always moved within and outside the Horn of Africa,²³⁴ but over time, large-scale factors have altered the territorial distribution of clan families since independence. Such factors include internal migration in the Somali region due to the Somali-Ethiopian war of 1977–78, efforts to escape the repressive military regime of President Barre in the 1980s, the civil wars of the 1990s, the wave of migration after the fall of the military regime, and persistent droughts that make life difficult for pastoralists.²³⁵ These modern dynamics have disrupted the traditional way of life of Somali clans.

Historically, clans claimed specific territories, which refer back to the traditional rights of access and control.²³⁶ However, the major clans are found in all the Somali territories. Given that clans regularly traverse very large areas of land, it cannot be said that the clan is a clear-cut geographical unit.²³⁷ Somalia has not had a proper population census since 1975, while the data from 1985–86 census during the military regime was never publicly released. Nonetheless, it is claimed that some regions have particular majority clans – for instance, Dir is the majority clan in the north-west, while the following clans are the majority in the respective regions: Isaaq in the north-central; Darood in the north-east; Hawiye in the south-central; and Rahawain and Digil in the south.²³⁸

²³³ Ibid.

²³⁴ M H Brons, *Society, Security, Sovereignty and State: Somalia: From Statelessness to Statelessness* (2001) 101.

²³⁵ I M Lewis (2008) 5.

²³⁶ M H Brons (2001) 101.

²³⁷ Ibid.

²³⁸ Abbink, J *Dervishes, Moryaan and freedom fighters: cycles of rebellion and the fragmentation of Somali society 1900-2000* (2003).

The Darood and Hawiye are among the largest of all the Somali clans, with their members distributed over the entirety of the greater Somalia region. The Hawiye clan occupies the Hir-Shabelle, Galmudug, and Benaadir (or southern coastal and its hinterland), where Mogadishu, the capital city, is located. Beyond Mogadishu, Hawiye clans also stretch across the Shebelle River into the region occupied by the Digil and Rahawyen, where some have become farmers.²³⁹ The Sab, with their main sub-groups, Digil and Mirifle, mostly found in the broad area of central and southern Somalia down to the Juba River, have also moved across the latter and over the border into northern Kenya. The Darood are the dominant clan in Puntland, Jubaland and along the Kenyan border.²⁴⁰

Regardless of the territorial distribution of clans, patrilineal descent (*tol*) is the overarching means of tracing extended family lines through blood ties and kinship (kinship is discussed below).

3.3.3 Somali language and clan identities

Mukhtar argues that despite homogeneity, Somali people speak a number of languages and dialects.²⁴¹ *Maay* and *Maxaa-tiri* being those of majority.²⁴² Given the geographical size of Somalia, it is no surprise that the ‘standard Somali language’-*Maxaa-tiri* consists of two regional dialects: the north-central has the northern dialect (and is most closely associated with ‘standard Somali’); the coastal regions (including the national capital and largest city, Mogadishu) are home to the Benaadir dialect; and the southern region uses the Maay dialect. Notably, the Maay dialect is so distinctive that other Somali speakers have difficulty in understanding it, leading some

²³⁹ I M Lewis, ‘*Understanding Somalia and Somaliland*’ (2008) 5.

²⁴⁰ Laitin and Samatar (1987) 21.

²⁴¹ Other languages spoken in Somalia includes; - *Af-Dabarre*, *Af-Garre*, *Af-Jiiddu*, *Af-Mushunguli*, *Af-Tunni*, *AF Baraawe* (*Chimbalazi* or *Chimini*), *Kibajuni* and *Af Reewing* (or *Maay*). Mukhtar, MH (2010). See also Kusow, AM ‘The Genesis of the Somali Civil War: A New Perspectives’ (1994) 1 (1) *Northeast African Studies*.

²⁴² Mukhtar, MH ‘Language Marginalisation, Ethnic Nationalism and Cultural Crisis in Somalia’ In Hoehne, MV & Luling, V *Peace and Milk, Drought and War; Somali culture, society and politics* (2010) 281.

scholars to classify it as a unique language.²⁴³ The *Maay* dialect is spoken by Mirifle and Digil.²⁴⁴ In 1972 Latin-based *Maxaa-tiri* script was adopted and *Maxaa* became the only official national language of the country. The formalisation of the Somali orthography was a significant achievement of Barre's military regime. Establishing a common language and alphabet was also part of the government's effort to diminish clan differences and promote a common, pan-national Somali culture and identity. However, recognition of *Maxaa-tiri* as a national languages alienated speakers of other Somali languages in particularly *Maay* speakers as Muktaar put it, 'speakers of *maay* language were enraged.'²⁴⁵ Even so, The Provisional Federal Constitution of Somalia, 2010 recognises both *Maay* and *Maxaa-tiri* as official languages.²⁴⁶

3.3.4 Somali lineage system and political constituents

The key to understanding the political constitution of the Somali people lies in the unique *tol iyo Xeer* (kinship and social contract).²⁴⁷ Jama Mohamed defines these two aspects of the Somali clan system as follows: 'The kinship system is based on blood relation, but the ties that bind blood relatives are grounded on social contract, which is a public system of rules publicly negotiated.'²⁴⁸ Kinship is derived from membership of a particular Somali clan. It is founded upon a segmentary lineage system that allows Somalis to trace their descent to common ancestors.²⁴⁹ It is traced through males to a common male ancestor from whom they take their clan name. The young people are taught to memorise the entire genealogy of their descendants. Descent units are united by a bond of corporate commitments, the major one of these being that loyalties are to be offered, first and foremost, to one's group unit.

²⁴³ Mukhtar argues that the af-Maay seems to differ from the standard Somali as Portuguese does from Spanish. For comprehensive analysis of the distinct languages spoken in Somalia see Mukhtar, MH (2010).

²⁴⁴ The Somalia Provisional Federal Constitution, 2012, recognises both of these dialects (*Maay* and *maxaa-tiri*). See article 5.

²⁴⁵ Muktar MH (2010) 281.

²⁴⁶ Article 5, The Federal Republic of Somalia, Provisional Constitution 2010.

²⁴⁷ M Lewis, A Mayall, '*A Study of Decentralized Political Structure for Somalia: A Menu of Options*' (1995).

²⁴⁸ M Jama (2007) 226.

²⁴⁹ I M Lewis, '*Pastoral Democracy: A Study of Pastoralism and Politics among the Northern Somali of the Horn of Africa*' (1961).

The lineage system can be differentiated into categories of clan families,²⁵⁰ clans,²⁵¹ sub-clans, primary lineage and the *diya*-paying groups.²⁵² According to this classificatory schema, the clan family stands in the upper limit of clanship.²⁵³ Therefore, clan families such as Darood, Hawiya, Dir are the upper limits of clanship, while the *diya*-paying groups, which Somalis call *jilib*, extend from five to seven ancestors and belong to the lower limits of the system.²⁵⁴

The clan family is further classified into constituent clans. Each Somali clan family branches into several sub-clans, depending on size. The clan frequently acts as a corporate political unit and represents the interior boundaries within a clan family; it is the mechanism through which Furthermore, Somalis can distinguish one another under their clan family umbrella.²⁵⁵ An additional web of relationship is created or strengthened by intermarriage, or *Xadid*.²⁵⁶

In regard to political affiliation, the *diya*-paying group is, according to Jama Mohamed, the most important corporate political group, one consisting of people who share the most important responsibilities, such as the payment of blood money,²⁵⁷ common defence, and mutual assistance Lewis notes: ‘Since politics are in principle a function of genealogical proximity, genealogical distance – the number of ancestors counted apart; as Somalis say defines the political relations of

²⁵⁰ The clan family is generally the upper level of clanship. The genealogical length of a clan family is not fixed and can count up to 20 generations to a common ancestor. See Lewis (1961).

²⁵¹ A clan can act as a corporate political unit and tends to have some territorial exclusiveness, following its regular seasonal movements for pastures and semi-permanent settlement. The most distinctive group within the clan is the primary lineage, defined as the lineage to which a person describes himself as a member (most often between six and 10 generations). Lewis (1961) 5.

²⁵² *Diya/Mag*-paying groups are the most important level of social organisation for each individual. It is a small corporate group of a few lineages who trace their descent to a common ancestor, in some cases from four to eight generations. They are sufficiently large in number (from a few hundred to a few thousand men) to be able to pay the *Mag* (according to Sharia, 100 camels for homicide) if need be. Hence, all men are defined by their belonging to a *mag*-paying group, and their social and political relations are defined by contracts called *Xeer* – the Somali customary law – that are entered into within and between *mag*-paying groups (see Lewis (1961) 11).

²⁵³ Lewis (1961) 11.

²⁵⁴ Ibid; Jama (2007).

²⁵⁵ Ibid.

²⁵⁶ Samatar, A I (1994)

²⁵⁷ Blood money is money paid by *diya*-paying groups. *Diya*-paying groups are kin members who jointly pay and receive compensation for murder and other personal injuries or wrongdoing. If any of the members commits a crime, all members of his *diya*-paying group are involved in compensation of payments; similarly, if a member suffers some wrongdoing, they all engage in getting compensation and sharing it (M Lewis (1961).

one man or group with another.²⁵⁸ As such, descent from the Hawiya clan family, for example, provides the basis on which the Hawiya bargain their political affairs with the other clan families. When there is enmity between these clan families, members of one clan family have a strong commonality of purpose against those of another.²⁵⁹ Thus, the supremacy accorded to clan interests can compel Somalis to take whatever action is deemed in the interests of their clan family, even if such action is detrimental to the others.

This rigid loyalty to their clan families shapes the relationships between Somali individuals and tethers their identity solely to their particular clan family.²⁶⁰ Members of a clan show pride in their membership of it and cherish their genealogy. However, Mansur argues that blood relationships are not the crucial element in determining clan kinship; he contends that, since ancient times, clan families have been formed by the fusion of different clans and people, including non-Somalis.²⁶¹ Similarly, Elmi argues that ‘while clan identity is based in the idea of common ancestral kinship, there are numerous cases where perceived kinship is not based on blood and is fictive rather than genetic.’²⁶²

Customary law, also referred to as social contract (*Xeer*), is the second fundamental principle of Somali politics. Historically, regular feuds and disputes were commonly sparked by conflict over resources such as water, grazing locations and camel.²⁶³ To regulate the conflicts in the absence of western style courts, the *xeer* system, the traditional approach to solving conflicts was established to mediate between belligerent parties and restore peace. *Xeer* as will be discussed later continued to offer valuable lessons and practises that are relevant in the contemporary situation.

²⁵⁸ M Lewis (1961) 162.

²⁵⁹ Ibid.

²⁶⁰ OAMansur (1995).

²⁶¹ OA Mansur, ‘The nature of the Somali clan system’ in Ali Jimale Ahmed (ed) *The Invention of Somalia* (1995).

²⁶² Elmi, Afayare (2010)30.

²⁶³ Elmi & Barise (2006) 33.

Another important aspect of Somali tradition is Islam. Through Al-Quran, Al-Hadith, and Al-Sunnah, Islam infused new values into Somali cosmology.²⁶⁴ It has played an important role in Somali society: Sharia emphasises equality, justice and *amana* (delivery of what one is entrusted with to its rightful owner). It emphasises too that all men are equal, and provides a readily accepted model of governance in Somali society for dispute- and conflict-resolution.²⁶⁵ It serves as a basis for trust and affords a unifying identity that transcends the divisiveness of the clan in Somali society.

Therefore, as Samatar rightly notes that ‘any evaluation of a Somali tradition needs to consider the full constitution of communal relations, namely, the complex of *Xeer*, Islam, blood-ties.’ and *xadiid*²⁶⁶

3.3.5 Clan relationships

The clan system in Somalia as described above is based on a genealogical ancestry, *tol*, *Xeer*, *xadiid* and Islam. Although clans resemble tribes, they are distinguishable in Somalia in that all Somalis share a common ancestor, Hill, the father of the brothers Sab and Samaale. Clan families are scattered across the Horn of Africa, from Somalia to Djibouti, Ethiopia, Kenya and beyond.

Pre-colonial Somali society was stateless in character, lacking any institutional hierarchy. According to Samatar, pre-colonial Somalia could be considered

an equalitarian and relatively democratic society in the sense that in the absence of institutionalised state structures and spread of livestock production as the primary economic enterprise, no household or lineage group could muster enough resources (materials or organisational) to dominate and exploit others.²⁶⁷

²⁶⁴ Abdullahi, A ‘Revisiting Somali historiography: critique and idea of comprehensive perspective’ (2018) 5(1 and 2) *Bildan: Journal of Somali studies* 31–59.

²⁶⁵ Ibid.

²⁶⁶ Samatar, I A ‘Destruction of state and society: beyond the tribal convention’ (1992) 30(4) *The Journal of Modern African Studies* 625–941.

²⁶⁷ Samatar, A I (1992) 625–641.

Xeer defines the overall framework within which issues and problems are managed in Somalia.²⁶⁸ Although it was weakened by colonial forces and the military regime, it remains respected in Somali society and its practices have continued to the present day, where it provides the basis for conflict settlement, protection and mutual support.

Divisions on the basis of clanship lead to cleavages and deep-seated resentment among clans, according to Lewis,²⁶⁹ but clans are also a cohesive force, providing a sense of identity, physical security and social insurance. Throughout the history of Somalis, even during civil wars, there have been cross-clan cooperation and alliances, even attempts to lay down arms. Such attempts often appealed to a common Somali heritage and to Islam.²⁷⁰ Social connections based on neighbourhood, region, 'Somali-ness' and Islam play a vital role as a counterbalancing identity.²⁷¹

In recent years, clan institutions have changed significantly due to many years of conflict and the erosion of cultural values.²⁷² Samatar argues that clanship and the tenets that regulate it have changed in that clans have abandoned the *Xeer*.²⁷³ Elsewhere, he points out that 'the causes of Somalia's calamity lie in state leaders' failure to nurture shared cultural and social commonalities, and sectarian entrepreneurs' instrumentalist accentuation of social differences.'²⁷⁴ He adds that 'the innocuous differences has become lethal weapon in the hands of sectarians.'²⁷⁵ Samatar also points to shifts in livelihood due to urbanisation after independence. Political and environmental shocks such as migration have led to the politicisation of clan elders' authority, which has weakened traditional norms by inducing corruption, fragmentation and loss of

²⁶⁸ Gundel, J (2006).

²⁶⁹ Lewis (1998a)..

²⁷⁰ See Lewis (1998a)

²⁷¹ Kapteinjns (2004).

²⁷² Samatar, AI 'Social transformation and Islamic reinterpretation in Northern Somalia: The women's Mosque in Gabiley' (2000) 3 (1) *The Arab World Geographer* 22-39. See also Samatar, AI, 'The Somalia catastrophe: explanation and implications (2000) *Ethnicity and kills?* Springer 37-67.

²⁷³ Samatar AI (2000).

²⁷⁴ Samatar AI 'Somali reconstruction and local initiative: Amoud University' (2001) 29 (4) *World View* 641-656

²⁷⁵ Ibid.

legitimacy. These shocks have also impacted on the ability of locality to serve as the glue for clan members' collective defense, protection and welfare.²⁷⁶

Gaas shares similar views, saying that '[the] clan is no longer a source of robust collective action in the defense, protection, security and welfare of its members.'²⁷⁷ Even so, he adds that the clan system has not disappeared entirely; rather, it has been deformed.²⁷⁸ He further observed that traditional institutions such as xeer and sharia continued to fill the governance vacuum left by the collapse of the Somali states.²⁷⁹ Gaas contends that in recent years clanship has provided a strong basis for cross-clan solidarity and collective social humanitarian and philanthropic actions, as is evident in the diaspora's response to famine and floods in Somalia and its involvement in building schools, hospitals and universities.²⁸⁰

3.3.6 Minority communities

Minority clans in Somalia include the following: Bantu/Jareer (which include the Gosha, Makane, Shiidle, Reer Shabelle and Mushuguli), Rerhamar, Bajuni, Bravenese, Eeye, Jaaji/Reer Maanyo, Barawani, Galgala, Tumaal, Yibir/Yibro, and Midgan/Gaboye (which include the Madhiban, Muuse Dhariyo, Howleh and Hawaatar).²⁸¹ Their past and present numbers are hard to determine as mentioned there was no national population census that was conducted to ascertain their number but in the 1960s they were thought to be under 15,000 in greater Somalia and dispersed among the general population. Larger clans, such as the Midgans, developed neo-lineage organisations.²⁸² Since independence in 1960, the status of minority clans have not improved, only a few notable individuals attached to major pastoralist clans have become prominent politicians on the national

²⁷⁶ Samtar AI (2000).

²⁷⁷ Gaas, MH 'Primordialist vs Instrumentalist in Somali Society: is an alternative perspective needed? (2018) *Journal of Contemporary African Studies*.

²⁷⁸ Gaas, MH 'Primordialist vs Instrumentalist in Somali Society: is an alternative perspective needed? (2018) *Journal of Contemporary African Studies*.

²⁷⁹ Ibid, see also Menkhaus and Predergast (1995); Raeymakers, Menkhaus, and Vlassenroot (2008).

²⁸⁰ Menkhaus and Predergast (1995)

²⁸¹ Helander, B 'Vulnerable minorities in Somalia and Somaliland' (1995) *Indigenous Affairs* 21-23. Besteman, C 'Unraveling Somalia, Race, Violence and the Legacy of Slavery' (1999).

²⁸² DB Putman and MC Noor, 'The Somalis: their history and culture' (1993).

stage or famous singers or poets, an earlier route to fame and fortune.²⁸³ General Mohamed Siad Barre's senior vice-president and minister of defence, General Mohamed Ali Samatar, was a high-profile Tumul.²⁸⁴

These minorities lead sedentary lives along the Juba and Shebelle river valleys of southern Somalia. Most of the Bantu residents of the Shebelle River valley are indigenous to Somalia. On the other hand, the Bantu sub-group living in the Juba River valley is made up largely of the descendants of slaves from Tanzania and Malawi.²⁸⁵ Various hybrid Somali-style groups have developed in the inter-riverine area and along the Shebelle and Juba river basins. Some are bilingual, speaking both southern Somali (*Af-Maymay*) and Swahili.²⁸⁶ Due to their lack of political and military power, minorities have been and continue to be economically exploited as well as politically and culturally subjugated with impunity by dominant clan militias and religious extremist groups, in the course of which their human and civil rights are violated.²⁸⁷

Most of the minority groups, largely dependent on farming for their livelihood and without armed militias to defend them, were greatly affected during and after civil war in Somalia, and many sought asylum overseas. Indeed, several large groups of minorities eventually found refuge in the United States, where they were welcomed as victims of racist oppression.²⁸⁸ The dominant clans have conspired with one another to create and maintain a social, civil and economic system in which they are at the top of society and minority groups at the bottom. Owing to unwritten norms in terms of which national wealth and opportunities are allocated to dominant clans,

²⁸³ V Luling, *The Social Structure of Southern Somali Tribes* (unpublished doctoral dissertation, University of London, 1971).

²⁸⁴ Ibid.

²⁸⁵ M A Eno, 'Identity crisis and ethnic marginalization in Somalia: The case of the Bantu Jarer community' (2009) 1 *The Academic Journal of St Clements University*.

²⁸⁶ Lewis (2008) 6.

²⁸⁷ Hill, M (2010).

²⁸⁸ L V Cassanelli, *Victims and Vulnerable Groups in Southern Somalia* (1995); Dan van Lehman, 'Resettling Somali Bantus may present special challenges.' (2001) 9 (10) *African Refugee Network* 6.

minorities have been systematically discriminated against in the areas of higher education, government posts and political representation.²⁸⁹

In traditional Somali society (and in many parts of Somalia today), there was no impartial justice system, and individuals depended upon their clan militias to provide redress for wrongs against them. Majority clan members possessed militias, while minority clans, whose members have historically practised unarmed and therefore disadvantageous trades (such as shoemaking and building), did not. The minority-rights advocate Martin Hill has argued that in a culture where might makes right, living unarmed has had a profound impact on minorities.²⁹⁰ A historical lack of clan militia has effectively excluded minorities from access to the justice system – a reality encapsulated in the expression *looma-ooyeyaasha*, meaning ‘no-one will avenge your death,’²⁹¹ which implies that they could not expect redress if their rights are violated. Minorities are also not adequately represented in political participation and left out in employment, while inter-marriage with someone from a majority clan is seldom practised: just recently, a man was killed for playing a role in arranged marriages between couples from minority and majority clans.²⁹²

3.4 Socio-economic activities

3.4.1 The pastoral nomadic communities

The majority of Somalis traditionally follow a pastoral nomadic culture, herding camels (the traditional prestige wealth), sheep and goats and, in favourable regions, cattle. According to Lewis, between 60 to 70 per cent of the population is nomadic or has nomadic affiliations, even though many people today live in urban centres.²⁹³ The pastoral groups include the Dir, Darod and

²⁸⁹ M A Eno (2009).

²⁹⁰ Hill, M, ‘No redress: Somalia’s forgotten minorities’ (2010), available at <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-912-Click-here-to-download-full-report.pdf>, accessed on 3 August 18.

²⁹¹ Lewis (2008) 7.

²⁹² Hassan, J ‘Somalis hope to end inter-clan marriage discrimination after violent disputes’ (2018) available at www.sbs.com.au/yourlanguage/somali/en/article/2018/10/22/somalis-hope-end-inter-clan-marriage-discrimination-after-violent-dispute. Accessed 1 December 18.

²⁹³ Lewis (2008) 7;

Hawiye.²⁹⁴ Although cattle-, goat- and sheep-rearing play a considerable part in the economy, camels are the true heroes of Somali material life. They are the mainstay of pastoralism, the ‘mother of man,’ in the words of Sayyid Mohammed Abdille. The aridity of land in Somalia creates favourable conditions for people to move with their herds in search of pasture.²⁹⁵

Somalia is the only sub-Saharan African state in which an estimated two-thirds of the population earn their livelihood from animal husbandry and related enterprises. The pastoral way of life and outlook have a pervasive influence in national life, impinging on plans for economic development as well as on almost every social interaction.²⁹⁶ One of the largest income-generating activities is livestock export, which, before 1991, accounted for about 80 per cent of the country’s income.²⁹⁷ The majority of Somali pastoralists are engaged in livestock production. Consequently, they maintain large stocks of animals that need grazing land to survive, a fact that in turn leads to disputes about grazing land. Loss of income from the pastoral economy also leads them to explore other opportunities, which results in competition over alternative livelihood sources. Unfortunately, agriculture has also been hit by droughts, increasing unemployment and misery in the rural areas. Rural-urban migration has accelerated, but there are limited opportunities in the urban areas, resulting in widespread poverty.

3.4.2 Agricultural community

Although Somalis are regarded primarily as nomadic, agriculture is an important part of the economy. The distinction between nomads and farmers corresponds with the most marked internal cultural divisions in the country. The inter-riverine area between the Juba and the Shabelle has been called Somalia’s bread basket. Its agricultural capacity constitutes a desirable resource.

²⁹⁴ Lewis (2008) 4.

²⁹⁵ Ibid.

²⁹⁶ Laitin and Samatar (1987) 22.

²⁹⁷ D Peter, ‘*Somalia: Economy without State*’ (2003).

Farming communities in this area form two confederations of clans, known respectively as Digil and Rahawyen, or collectively as Digil-Mirifle.²⁹⁸

By the same token, traditionally Somalia's coastal communities have focused on fishing and farming, while intermingling only sporadically with nomadic clans, for example, during times of drought or famine. Nomadic clans tend to employ the term 'fish-eater' in the pejorative sense: they only consume fish when meat from pastoralism or vegetation from small-scale cultivation is not available during times of environmental crisis and food scarcity.²⁹⁹ Hence, some intermittent contact between nomadic clans and coastal communities has been witnessed in the past.

3.4.3 The business community and growth of private sector

The Somali economy is, as a result of many years of war, largely under-developed and lacking in diversification. It is reliant mostly on remittances sent by Somalis in the diaspora and on funds from international donor agencies.³⁰⁰ In addition, the federal government has not been able to collect enough tax revenue to be able to rebuild the country.³⁰¹ Remittances from the diaspora and investments by businessmen (some of whom are former warlords) have led to a flourishing of economic activities, particularly an explosion of the telecommunications sector. Given that the country's devastated physical infrastructure will take a long time to rebuild, private Somali companies have leap-frogged landline telecommunications by investing directly in mobile technology. As a result, Somalia has inexpensive, high-quality mobile phone services, supposedly

²⁹⁸ Lewis (2008) 4.

²⁹⁹ Ibid.

³⁰⁰ Remittances account for more than \$1.6 billion, with ODA \$1.3 billion for 2015 in a GDP of just \$6 billion. Federal World Bank Group, 'Aid flows in Somalia: Analysis of aid flow data', WB (February 2016): 8, available at <http://new-deal.so/wp-content/uploads/2016/07/AidFlows-in-Somalia-FINAL-WebVersion.pdf>, accessed on 1 July 2017.

³⁰¹ As of June, tax revenues for 2016 were \$45,544,843, falling significantly short of the original forecast of \$107,771,120. Federal Government of Somalia, 'Summary of Government Revenue and Expenditure as of June, 2016', available at <http://mof.gov.so/wpcontent/uploads/2016/07/FiscalSummaryReport-June-2016.pdf>, accessed on 4 Dec. 2016.

the cheapest in Africa,³⁰² and there has been a boom in private-sector activity in the past few years.³⁰³

Somali entrepreneurs also produce light goods such as pasta, soap, electricity and bottled water to meet local demand.³⁰⁴ Menkaus Kenneth observes that

[i]n south-central Somalia, for example, despite the instability, investments in the airline industry, light industries, telecommunications and education are steadily rising. These business ventures are likely to contribute to peace as they will create employment in conflict-stricken areas, reduce incentives for conflict, and encourage cross-clan collaboration. The urban areas like Hargeisa, Bosasso, Galkayo and Mogadishu, to mention a few, are witnessing a resurgence in real estate development, construction and small manufacturing companies, which are funded mainly by the diaspora and remittances.³⁰⁵

The injection of diaspora funds has had a trickle-down effect, with an expansion of large private-sector activities such as telecommunications, airlines, money transfer companies and small-scale initiatives.³⁰⁶ These activities are leading to the de-escalation of violent conflict because successful businesses necessitate partnerships across clans and geographic boundaries. As these cross-clan business partnerships multiply, the incentives for cooperation and peaceful relations across clans are likely to increase correspondingly.³⁰⁷

Somalia's long coastline provides traders and regional administrators with good sources of income. Ports such as Bosasso (Puntland) and Berbera (Somaliland) are vital to Somali economic growth, as goods from Somalia and neighbouring countries (Ethiopia) are transported via these ports. Ports generate huge revenues from levying duties, but poor facilities at Bosasso and high taxes at Berbera (particularly compared with Bosasso) may cripple trade potential. Struggles to control the seaports of Mogadishu El-maan and Kismayo, as well as the revenue-generating

³⁰² P D Little, *'Somalia: Economy without State'* (2003).

³⁰³ For an interesting discussion on the role of the private sector in Somalia, see Roland Marchal, August 2000.

³⁰⁴ K Menkhaus (2003) b.

³⁰⁵ Ibid. at 1-50.

³⁰⁶ See Report of the Panel of Experts on Somalia pursuant to U.N. Security Council Resolution No. 1425 (2002).

³⁰⁷ D Little (2003).

resources transiting through them, have led to recurring conflict between warlords (in the guise of businessmen or with the support of business groups) since 1995.³⁰⁸

3.4.4 Natural and productive resources

The main natural resources in Somalia are cash crops, charcoal, marine resources and potential oil and mineral reserves. Clans often clash in their attempts to control natural resources out of need for power or economic survival or gain, or a combination of these motives.³⁰⁹ In the relatively resource-rich south and central regions, as well as in the resource-scarce regions of Somaliland and Puntland, serious and recurring clashes occur between pastoral, semi-pastoral and agricultural clan groups in battles for access to and control of land for crop cultivation, animal grazing and use of water points. Seaports and airports are also sources of revenues for federal member state governments.

Socio-economic activities and resources for federal member states are discussed in Chapter 7.

3.5 Somali traditional leadership and governance systems

In the course of its history, Somalia developed a highly functional traditional governance structure (TGS).³¹⁰ This is culturally based, adaptable and democratic. It handles inter-community relations, conflicts and resource-sharing, and provides for the rule of law through traditional institutions and norms. The traditional institutions and norms consist of customary law (norms) (*Xeer*), elders,³¹¹

³⁰⁸ C Webersik, 'Mogadishu: an economy without a state' (2006) 27 (8) *Third World Quarterly* 1463-80.

³⁰⁹ C Webersik and C Alec, 'Commerce in the chaos: Bananas, charcoal, fisheries, and conflict in Somalia' in H Young L Goldman (eds) *Livelihoods, Natural Resources and Post-Conflict Peacebuilding* (2015).

³¹⁰ Traditional governance structures existed in Somalia since pre-colonial times, as well as at the time of the first government and during the military regime. See Lewis, *A Pastoral Democracy* (1967) 140.

³¹¹ Clan elders are prominent adult males representing the lineage groups involved in talks. They include notable religious leaders. As skilful negotiators, they are essential in the crafting of accords and resolving conflicts and disputes between clans.

shiir (elders' assembly)³¹² and *diya*-paying groups.³¹³ *Xeer* can be translated roughly as the customary law that exists between Somali clans.³¹⁴ It is an oral (unwritten) agreement that evolved within and between Somali clan communities over generations but has no formal institutional structure. Implementation of *Xeer* is overseen by traditional elders. These TGSs have played a big role in facilitating co-existence between clans, managing conflict and regulating a wide variety of affairs from constitutional crises in regional political administration and the enforcement of business contracts, to the settlement of marital disputes and finalising divorces.³¹⁵ TGSs are particularly important in rural areas, where there are few modern political institutions. However, even in urban areas with local administrations, *Xeer* is usually the first recourse in dispute management, settlement and reconciliation. *Xeer*, clan elders, *shiir* (clan assemblies) and *diya*-paying groups collectively form Somalia's traditional conflict management practices and social institutions.³¹⁶

Two events in history had a major effect on Somalia's TGS: the arrival of Islam and of the colonial powers, both of which influenced its evolution. The advent of Islam led to the removal of

³¹² *Shiir*, the traditional clan assembly, usually meets under big trees. It engages in consultative processes that make traditional Somali peace-making relatively democratic and open. The assembly can either call adult male members of a lineage at any level of segmentation to discuss or rectify a position, or it can call a meeting between elders of two or more lineages. *Shiir* entail lengthy processes in which all present have the right to express their views. It is an open and democratic space, situated in the midst of the community, and open for all to observe. The assembly results in an accord with a high level of legitimacy and binding power (Lewis, '*A Pastoral Democracy*' (1967) 140).

³¹³ *Diya* members engage in negotiations to settle wrong-doing or conflict arising out of revenge. As discussed, *diya*-paying groups are the most stable units in the lineage segment, consisting of close kinsmen who together pay and receive blood compensation in cases involving injuries or killing. They represent the strongest corporate unit within the society's political organisation, with members sharing the same civil and moral responsibilities. In fact, the clan systems lack a concept of individual culpability, as it would be highly unlikely that a single person, household or a small group could raise and pay a hundred camels should a murder be committed by one of its members (Lewis, '*A Pastoral Democrac'y*' (1967) 140).

³¹⁴ *Xeer* is not a written legal code, but rather a tradition that has been passed down orally from one generation to the next. The sources of *Xeer* date back centuries and are generally considered to be the agreements reached by elders of various clans who lived and migrated adjacent to one another. The role of the clan elders in *Xeer* cannot be overstated, as they are simultaneously considered its 'legislators, executors and the judges'. See Puntland Development Research Center (PDRC), *Somali Customary Law and Traditional Economy: Cross sectional, pastoral, Frankincense, and Marine Norms* (2003) Gerome 19–20.

³¹⁵ I M Lewis (1961) 162.

³¹⁶ For a detailed analysis, see *International Committee of the Red Cross, 'Spared from the Spear: Traditional Somali Behaviour in Warfare', Nairobi: ICRC Somalia Delegation, February 1997.*

most of the norms in the TGS that were incompatible with Sharia law.³¹⁷ Somali customary law bowed to the dictates of Sharia law, and where the norms of the customary law did not comply, Sharia law overruled them; therefore, the Somali TGS was subordinated to the Sharia code. The merger of traditional customary laws and Sharia law remains the driving force of the TGS, even though the latter is originally indigenous in nature. Although *Xeer* was weakened by colonial forces and the military regime, it continues to be respected in Somali society today, providing the basis for conflict settlement, protection and collective solidarity.

When the military regime seized power in 1969, it suspended the Constitution of 1961, assigning all legislative, executive and judicial powers to the Supreme Revolutionary Council (SRC).³¹⁸ In 1973, it introduced a unified civil code in which provisions pertaining to inheritance, personal contracts and water grazing rights sharply curtailed both the Sharia and *Xeer*. In particular, the new civil code altered the customary system of *diya* payment as compensation for death or injury, one in which responsibility was collectively borne by the clan.³¹⁹ Consequently, under the military regime, any homicide was made punishable by death and compensation payable only to close relatives.³²⁰ Furthermore, Law No. 67 (1 November 1970) abolished 'tribalism' and key elements of *Xeer*, including tribal land, water and grazing rights, as well as collective responsibility and *diya* payment (e.g. blood money compensation).³²¹ In this way, the military regime diluted the practices and impact of customary law.

The collapse of the Somali state revitalised the role of the TGS in urban areas, and the application of *Xeer* became prevalent throughout the country. In the countryside, it was life as usual: since the collapsed state had had no impact on people there, the TGSs continued to govern them.³²² The TGS owe its existence and survival to the positive social capital (trust, accountability

³¹⁷ A Elmi, '*Understanding the Somalia Conflagration: Identity, Political Islam and Peacebuilding*' (2010).

³¹⁸ See Chapter 4 for a detailed discussion on the military rule.

³¹⁹ See the discussion of *diya* payments above.

³²⁰ A Lewis, '*A Pastoral Democracy*' (1964).

³²¹ Military government - Law No. 67 (1 November 1970).

³²² Ibid.

and honesty) of the Somali society towards the Somali customary law (*Xeer*). Trust in the TGS is attributable to the following: first, the mechanisms embedded in the TGS and *Xeer* are indigenous, so every Somali can claim ownership of them.³²³ Secondly, factors contributing to the success of the TGS include the failure of both the colonial and post-independent governments to reach the majority of Somalis, whose lives have never been sedentary. Thirdly, in the absence of state-centred governance in Somalia, the Sharia framework has served as a governance model, a regulatory framework, and a basis for trust and collective action.³²⁴

3.6 Conflict management norms and Somali customary law

The TGS plays a significant role in the maintenance of peace and management of conflicts, from small disputes, such as ones concerning water resources or family matters, and cases of homicide to political conflicts. This section briefly discusses customary and Sharia law in the TGS.

3.6.1 Somali customary law (*Xeer*)

Parallel and complementary to the clan system, the *Xeer* represents customary law. It combines Somali pastoral elements with precepts from Islamic jurisprudence in establishing individuals' reciprocal rights and obligations vis-à-vis natural resources and social relationships. It offers the interpretative machinery both for the internal governance of a community and for its relations with other communities. Most widely, it is a set of rules and procedures that form the backbone of the social, political and civil functioning of Somali society.³²⁵ *Xeer* is dynamic and flexibly applied in accordance to changing needs and circumstances and in relation to various considerably different lineage groups.³²⁶ More generally, *Xeer* also provides basic prescriptions for behaviour that apply to all Somalis (*Xeer dhagan*). These include the collective payment of blood compensation (*diya*) for certain crimes such as murder, assault, theft and rape, the promotion of inter-clan harmony

³²³ Lewis, 'A Pastoral Democracy' (1964) 36–39.

³²⁴ Gaas, MH 'Primordialist vs. Instrumentalist in Somali Society: Is an Alternative Perspective Needed?' (2018) *Journal of Contemporary African Studies*.

³²⁵ K Menkhaus, 'Somalia: The political order of a stateless society' (1998) 619 *Current History* 220-224.

³²⁶ Lewis and Mayall (1995).

through the protection of certain social groups (including women, children, the elderly and guests) and, the payment of dowry obligations.³²⁷

The ability to enter into binding agreements such as *Xeer* is based largely on the agnatic connections – kinship and the *Xeer* – that constitute the driving force of the Somali political system. The, *Xeer* however, is less constraining than kinship, which Somalis cannot refute. The *Xeer* contracts are open to being abrogated, modified or rescinded. *Xeer* agreements relate principally to ‘collective defences and security, and to political cohesion in general’. In this regard, the *Xeer* denotes ‘a body of explicitly formulated obligations, rights and duties’.³²⁸

Compensation for physical injuries and homicide is based on the Sharia, assessed by sheikhs and according to standard Shafi’ite authorities.³²⁹ The *Xeer* allocates specific compensation for victims of murder at varying rates. In principle, all Somalis accept that another man’s life is worth 100 camels. Given that the availability of 100 camels is disproportionate among the Somali clans, there is no objection to the substitution of money.³³⁰ The *diya* (blood compensation) among pastoral groups is generally expensive, seeing as the intent is to deter crime. The *Xeer* dictates that the blood compensation for a murder is 100 camels, to be paid to the family of the victim. That is, however, not the case among agriculturist groups because the mode of production is different (as discussed previously, the source of livelihood is agricultural products) and the potential for feuds is lower than elsewhere. The stipulated amount for blood compensation is not always collected because of the disparity in wealth and ownership.³³¹

3.6.2 Sharia law as practised in Somalia

Although Islamic law has existed in Somalia in one form or another for hundreds of years, it has usually been incorporated as an element within the traditional *Xeer* system. Islamic law was

³²⁷ J Gundel and A Dharbaxo (2006) 1–85.

³²⁸ S Touval (1961); Lewis (1992).

³²⁹ Ibid.

³³⁰ Ibid.

³³¹ I M Lewis , ‘*Blood and Bone: The Call of Kinship in Somali Society*’ (1994).

applied as a system separate from but complementary to modern judicial institutions during both the colonial and independence eras.³³² Sharia law was a traditional feature of Somali society throughout the colonial era, as well as during the post-independence era until the collapse of the Barre government. In the transitional period and subsequent era of federal government, Sharia was officially incorporated into the Somali state. In principle, and according to the Somali Constitution, Sharia has supposedly been the basis for all national legislation, a factor which has provided symbolic religious legitimacy to the government. However, in practice, Sharia has always been relegated within the formal justice system to the level of courts of first instance and applied only in common civil cases, including family matters, marriage and divorce, and inheritance.³³³

Since the mid-1990s, independent Sharia courts emerged in parts of Somalia, mostly so in urban areas. Often administered on a clan-by-clan basis, these courts manage militia forces capable of establishing basic law and order in their immediate area of operation and enforcing court decisions. While Sharia courts are an indigenous response to persistent insecurity to which neither factions nor traditional *Xeer* can respond effectively, there are concerns about their affiliation with fundamentalist elements. In the absence of a government, varying combinations of Somali militia-faction leaders, businessmen, clan elders and community leaders have worked with religious leaders from within their sub-clans to establish these courts in attempts to improve local security. Somalia's new Sharia courts play three roles: first, they organise a militia to apprehend criminals; secondly, they make legal decisions in both civil and criminal cases; and thirdly, they are responsible for the incarceration of convicted prisoners.³³⁴

3.7 The role of traditional institutions in conflict management

Somali society has strong traditions of mediation, reconciliation and consensus-building. In recent years, a number of disputes – ranging from constitutional crises to federal member state political

³³² M Mukhtar, 'Islam in Somali history: Fact and fiction' in Ali Jimale Ahmed (ed) *The Invention of Somalia* (1995) 2.

³³³ Ibid.

³³⁴ Ibid.

administrations, enforcement of contracts, and settlement of marital disputes and divorce – have been addressed within these traditions. The next section will briefly appraise the role of the TGS in conflict management in Somalia.

3.7.1 The role of traditional institutions in state-building

As Gundel states,

[T]he traditional leaders in Somalia are not only the prime force for stability and continuity in terms of regulating access to pastures, water and conflict resolution between clans but also, especially in Somaliland and Puntland, have been instrumental in establishing relatively stable structures of governance, jurisprudence and security.³³⁵

In this regard, Somaliland and Puntland have developed a traditional grassroots peace-building process based on trust and confidence among communities, one which provides indigenous peace and governance from the bottom-up and which has made Somaliland and Puntland unique in the Horn of Africa (elaborated on in Chapters 6). The TGS has played vital roles in the formation of all the established FMSs in Somalia (see Chapter 7).

Experimentation with the TGS during state-formation in Puntland and Somaliland has been hugely successful. The two regions succeeded in creating institutions led by a council of elders that ‘have both mandates for and experience in conflict resolution and continuing responsibilities in establishing peace’. In Somaliland, the council of elders succeeded not only in creating a constitution but in appointing the government.³³⁶ Somaliland was able to resolve its internal conflicts because it resorted to the entirely indigenous method of inviting the parties to a conflict to meetings at which they are pressurised into reaching consensus.³³⁷ The approach to conflict resolution was thus based on tried and trusted local methods designed to defuse disputes between neighbouring communities. Somaliland and Puntland are evidence of the effectiveness of the

³³⁵ Renders, M ‘Consider *Somaliland: State-building with traditional leaders and institutions*’ (2012).

³³⁶ Ibid.

³³⁷ Ibid.

traditional structures that were revived after the state collapsed in 1990. Clan elders continue to play a large role in maintaining law and order, drawing upon customary and Sharia laws and sometimes acting in cooperation with religious leaders³³⁸ who are advised by the traditional leaders.

The role of elders is not confined to the ‘traditional’ sphere: in both Puntland and Somaliland, traditional elders are often engaged by modern government institutions to advise and give guidance to them.³³⁹ Moreover, in Somaliland their role as guardians of peace and security has been institutionalised in the Upper House of Elders, also called the House of *Guurti*. *Guurti* members cooperate with the local clan elders in containing, settling, preventing and resolving inter-group conflicts.³⁴⁰

In these regions, government law enforcement institutions quite often have resorted to indigenous mechanisms to tackle intractable security issues. In Puntland, for example, many traditional and religious leaders are engaged in persuading young sea pirates to cease their criminal activities, and have so far made steady progress in their endeavour, as many youngsters have abandoned piracy and taken up economic activities such as fishing and running small businesses so as to make a decent living for themselves.³⁴¹

3.7.2 Conflict management and dispute resolution

Traditional Somali conflict resolution mechanisms are embedded in the clan structure. Historically, conflict occurred mainly between clans, between *diya*-paying groups, or between one or two clans and sub-clans. Pastoral-area conflict between pastoral clans mostly arises in regard to control of grazing territories, access to water resources (particularly deep wells), and criminal

³³⁸ L M Makhubela, ‘*Conflict Resolution in Somalia: Learning from Failed Mediation Processes*’ (2010).

³³⁹ *Ibid.*

³⁴⁰ T Haggmann, ‘Bringing the sultan back’ in Elders as Peacemakers in Ethiopia’s Somali Region’ in L Buur, and HM Kyed, ‘*State recognition and the democratisation of Sub-Saharan Africa: a new dawn for traditional authorities?*’ (2007) Basingstoke: Palgrave Macmillan.

³⁴¹ C L Besteman and L V Cassanelli, ‘*The Struggle for Land in Southern Somalia: the War behind the War*’ (2000).

activities such as livestock theft. In the south (the country's agricultural area), conflicts arise over land tenure, infringement of grazing reserves, destruction of parts of the harvest, and forcible occupation of farmlands. In recent years, political conflicts have been interwoven with clan conflicts over resources, as a result of which they are often fuelled by historically transmitted mistrust, suspicion or stories of betrayal.³⁴²

In order to solve these disputes, both *Xeer* and Sharia law are employed by the clan elders, who have dealt with legal issues relating to competition over resources (either water or pastureland), family affairs, criminal offences and compensation (*diya*) payments. The difference between Sharia and customary law lies in the fact that, in the former, the perpetrator is held personally responsible, whereas, in the latter, there is a collective lineage responsibility for the committed crime. The notion of collective responsibility often leads to acts of revenge that are directed against a clan as a whole. This is a major element in the dynamics of violence that unfold in crisis situations.

In the pre-colonial period, most legal matters in nomadic areas were determined by elders, known as *Wadaado*, or by sheikhs. In agricultural villages and coastal towns, there were permanent traditional local courts controlled by *Kadis*.³⁴³ Among pastoral people, outbreaks of violence were related to the clan; thus, conflict resolution and subsequent compensation were the responsibility of the clan and not the individual. As such, violence between various segments, within or between clans, not only served to protect but also had a power-regulation function.³⁴⁴ In pastoral society, it was mainly the warriors (*waranleh*) who became involved in violent conflicts. They were responsible for the control and defence of the territory and resources. The elders of the clan or village, the clerics (*wadadoo/ sheikhs*)³⁴⁵ had the responsibility of mediating peace.

³⁴² Laitin and Samatar (1987) 30.

³⁴³ M Brons, '*Society, Security, Sovereignty and State: Somalia: From Statelessness to Statelessness*' (2001).

³⁴⁴ Ibid.

³⁴⁵ Religious leaders.

Both *Xeer* and Sharia law regulate the behaviour of a man not only towards his fellow kinsmen but towards members of other clans.³⁴⁶ For example, a *diya*-paying group bound by *Xeer* is collectively responsible for a member's actions that go against the prescriptions set forth in the contract. For instance, when a man commits a homicide, the guilt does not remain with him solely as an individual but is attributed to all the murderer's kin, who become guilty in the eyes of the aggrieved party by reason of their blood connection with the perpetrator. Members of the aggrieved group then seek revenge not just on the perpetrator but any member of his lineage they chance upon. The system's lack of individual culpability is a unique characteristic of Somali society.³⁴⁷

The compensation for physical injuries and homicides is based on the Sharia and determined by sheikhs and *Kadis* according to standard shafite authorities. The Sharia's tariffs are applied generally, with local variations and the specific compensation rates embodied in the *Xeer* treaties of the various groups.³⁴⁸ Currently, the general rate in northern Somaliland is 100 camels for the homicide of a man and 50 camels for a woman.³⁴⁹ The blood-money payment rests on the understanding that the clan compensates for a homicide committed by one of its members. The notion of collective responsibility often leads to acts of revenge directed against a clan as a whole – a major factor in the dynamics of the violence that unfolds in crisis situations.³⁵⁰

3.7.3 Women's role in conflict management in Somalia

Traditional Somali leadership processes are an exclusively male domain. Women do not participate in the *shiir*, are not numbered among the titled elders, and are not counted among 'kinsmen' in the traditional enumeration of clan membership (*qoora tiris*).³⁵¹ This condition seems

³⁴⁶ Samatar (1991) 10.

³⁴⁷ Ibid.

³⁴⁸ The majority of *Xeer* agreements refer to collective defence and security and to political cohesion in general. The most important delicts are those of homicide (*dil*), wounding (*qoon*) and insult (*dalliil*). *Xeer* also regulates various forms of interaction, including the regulation of access to water sources and grazing land, due to the fundamental importance of these common-pool resources to the lives of nomadic pastoralists, especially during the dry seasons (ibid).

³⁴⁹ Lewis (1961) 162.

³⁵⁰ Brons (2001) 120.

³⁵¹ Biixi (2001). See also Andrzejewski and Lewis (1964) 24

to be due more to the patriarchal nature of traditional Somali society than to Islamic teachings or religious prohibitions.³⁵² Apparently women do not formally feature within the decision-making system, though their absence from formal political institutions is partly balanced by their considerable informal influence in their communities and households, where they perform a number of critical activities (elaborated on below).³⁵³

Building relationships and establishing alliances with other groups is strategic among Somali, as this extends the outreach of one group, enhancing its capacities to access resources and exchanges, thus broadening its livelihood resource base. Marriage plays a role of primary importance with this respect. Establishing blood ties enables forging an alliance that might facilitate inter-group bindings, thus facilitating their interactions.³⁵⁴

Within the clan framework a woman represents the natural interface between two groups, as she originates from a group and gets attached to another one through marriage. Her father and brothers belong to one group, while her husband and sons belong to another one. Women so become a significant bearer of social capital in that they represent both communities in the rights and duties of reciprocal sharing.³⁵⁵ The Somali woman enjoys, therefore, enjoy a double status, one defined by her agnatic or blood ties (*dhalasho*) and the other resulting from marital relationships, thus pertaining to her juridical rights (*dha'hdin*). As a result, her identity becomes ambiguous, as she is responsible for the reproduction of the primary unit of a lineage without being part of it.³⁵⁶

Somali women are often the first to take the risks necessary to promote dialogue across divided communities by instigating moves towards reconciliation. This is reflected in contributions they made to peace-building throughout the long years of civil war. Women's 'ambiguous kinship

³⁵² Kapteijns (1995)

³⁵³ See Horowitz and Jokwar (1992) for a detailed assessment of women's decision-making in the pastoral context.

³⁵⁴ Hassan and Bowen (2007). See Dini (2010) 120.

³⁵⁵ Kapteijns (1992).

³⁵⁶ Kapteijns (1992) UNIFEM (1998).

ties' and their 'double clan connections' are critical assets in peace-building processes.³⁵⁷ Their status grants them free movement and makes them ideal messengers in volatile situations; their affiliation to different groups provides them with the links and the concern to engage in conflict resolution and reconciliation.³⁵⁸ For instance, in the Sheekh peace conference, held to restore peace in Somaliland between two main warring sub-clans, the Issa Muse and the Habar Yunis, each of the clans agreed to exchange 50 women with the each other, with these women becoming wives and thus representing the clan of origin.³⁵⁹ Consequently, peace prevailed between the two rival sub-clans.

Similarly, in the Galkacyo peace accord of 1993, women played a critical role in ending conflict between neighbouring clans in the Galgadud and Mudug regions (now the Galmud state of Somalia). They rallied between the warring clans and their militias to petition them to lay down their arms and come to a peace agreement, utilising networks with other female peace activists to extend their influence to a larger number of neighbouring clans. The accord was later signed by Abdullahi Yusuf and Mohamed Farah, thus ending a large-scale conflict.³⁶⁰

In 1996, Puntland women held a large peace rally in the region, calling for continued dialogue and an end to fighting between clans.³⁶¹ Again, women utilised various tools, including poetry, to convey grievances and rally for peace. Likewise, the Isimada Peace Conference of 2001 saw women engaged in grassroots mobilisation to end fighting between clan militias³⁶².

During the recent conflict, their role as an inter-group bridging agency has made dialogue possible between warring factions. In Mogadishu, for example, committees of women are leading NGOs and other groups promoting reconciliation, and have organised committees to improve

³⁵⁷ Warsame (1996).

³⁵⁸ Asha Hagi Elmi et al. (2000); PDRRC (2003).

³⁵⁹ Farah and Lewis (1993).

³⁶⁰ FJ Mohamed, 'Somali Women's Role in Building Peace and Security' (speech before the ARRIA Formula Meeting on Women, Peace and Security, October 23, 2000), www.womenscommission.org/take_action/arrria/eq_now.html.

³⁶¹ UNIFEM, Women, War and Peace Project, War, Peace and Security: Somalia, December 7, 2003, www.peacewomen.org/WPS/Somalia.html.

³⁶² Ibid.

health and education across conflict borders.³⁶³ More generally and due in part to their non-combatant role, women are critical in rebuilding the Somali social fabric, establishing neighbourhood relationships and forming associations and organisations based on joint interests and reciprocal support, which are vital for local livelihoods.³⁶⁴ In other words, Somali men and women played and continue to play diverse and complementary roles, with women forging inter-group, horizontal and bridging links, whereas men engage in kin or clan intra-group dynamics that are vertical and binding.

While mediation and negotiation are men's tasks, women are involved in important 'behind-the-scenes' activities, facilitating the bringing-together of warring clans for peace talks.³⁶⁵ For instance, in the Arta peace conference (elaborated on in Chapter 4), the clans were divided into four and tasked to rally behind this power-sharing formula. The question was asked: Which clan was going to accommodate women? When none stood up for women, the women spoke up and said they needed their own clan, 'the fifth clan'. The president of Djibouti acknowledged the presence of the 'fifth clan' and gave it a quota. Asha, the women leader, sat at the table as a representative of women, the fifth clan.³⁶⁶ Consequently, women were given the opportunity to contribute to Somalia's early state-making processes. However, as elaborated in chapters 5, 7 and 8 attempts to incorporate and secure a space for women in governments and general Somali politics have been painstakingly slow.

3.8 Other factors contributing to conflict management

3.8.1 Decentralised, traditional social structure

Somalia's social structure is highly decentralised and may even be described as un-centralised. The traditional social structure, unlike the European notion of a state, does not have

³⁶³ WSP (2001).

³⁶⁴ J, Gardner and J, El Bushra (eds), *Somalia: The Untold Story. The War through the Eyes of Somali Women* (2004) London: Pluto Press and Catholic Institute for International Relations.

³⁶⁵ Warsame (1996) 51.

³⁶⁶ Amina Haji Elmi, Director, Save Somali Women and Children (SSWC)

any permanent bodies or permanent leaders. It is a tribal democracy where elders gather on an ad hoc basis and make consensual decisions.³⁶⁷ The decision-making process is democratic but not electoral, as (male) elders represent related families or alliances of families or clans. The alliances among these lineage groups, clans or sub-clans are dynamic and dependent on shifting interests and allegiances. Representation is therefore based on kinship and family-loyalty relations.³⁶⁸ Issues are discussed in an institutionalised *shiir*, which Lewis defines as ‘the fundamental of government’.³⁶⁹ The *shiir* has no formal constitution (except where membership of lineages is concerned) or regular place or time of meeting, and there are no official positions on it.³⁷⁰ Although the clan leaders preside over the assembly of elders (*shiir*), they have little executive powers and do not make decisions without consultation.³⁷¹ After lengthy discussion and analysis of the matter concerned, a decision in the *shiir* is made by reaching consensus. This is what Lewis refers to as pastoral democracy, a democracy in which everybody has the right to participate. All adult males are elders, and they are empowered by contractual treaty to direct the policies of the lineage.³⁷² In summary, the political structure is akin to a loose or decentralised federation.

3.8.2 Consensus-based democratic decision-making

Decision-making among Somalis is a highly participatory process that relies on the selection of representative elders and consensus-based agreements. Decisions are taken by councils (*shiir*) consisting of the selected participants, and consensus must be reached on the final decision. The criteria for participation are that a person has to be an adult male. Women and non-free men (meaning those not belonging to major clans) are thus excluded from formal political decision-making. It is during these consultations that the *Xeer* is interpreted and applied on a case-by-case

³⁶⁷ I M Lewis and J A Mayall, ‘A Study of Decentralized Political Structure for Somalia: A Menu of options’ (1995).

³⁶⁸ Gundel and Ahmed (2006).

³⁶⁹ Lewis and Mayall (1995).

³⁷⁰ Ibid.

³⁷¹ I M Lewis, ‘A Pastoral Democracy’ (1961) 36–9.

³⁷² Ibid.

basis. No decision is taken if consensus among participants is not reached. This applies to disputes both within and between groups.

When it comes to a conflict between two groups, the *Xeer* provides the council with the principles and instruments for reaching ‘a gentlemen’s agreement’ in the course of meetings attended by representatives of both sides. Clan representatives attending the councils are selected on a case-by-case basis according to their competence in the disputed matter. Through analysis of the problem and making reference to previous cases, *shiir* participants must reach consensus on the resolution. Once agreed, this resolution (*gar*) becomes formalised in what is termed *guddoon*, which becomes the law that regulates that dispute. *Shiir* within the same group can also be set up to govern internal matters, such as the management of water-points or alliances and agreements with other groups.³⁷³

The *diya*-payment group has political and juridical powers by virtue of the existence and application of internal sanctions within the group, with these sanctions being based on the decision and advice of the ruling elders.

Parties’ willingness to respect the decision and to find a solution is nevertheless paramount, as no authority is embedded in the power to enforce decisions.³⁷⁴ Councils of elders are meetings where collective decisions are made, but these councils lack the power to enforce the decisions. Group consistency and related fighting strength within the lineage system might play an important role in obedience to decisions taken by a *shiir*. Leadership is hence an essential element of the system: leaders are people who oversee and negotiate, and they should be capable of forging consensus in their constituencies. Local leaders also represent the internal authority and have to ensure that *Xeer* arrangements are duly considered and implemented. In this framework,

³⁷³ I Lewis, ‘*A Pastoral Democracy*’ (1961).

³⁷⁴ *Ibid.*

subsidiarity is important, with higher-level authorities intervening where lower levels are unable to address the subject in contention.³⁷⁵

3.9 Limitations of the TGS in Somalia

A lack of impartial enforcement mechanisms may present problems when a militarily strong clan openly refuses to comply with a judgment that favours a militarily weak clan. As a result, Somali minority groups – particularly those of Bantu and Arabic origin – are severely discriminated against in *Xeer* decision-making.³⁷⁶ However, in cases involving clans of relatively equal standing, a number of factors work to ensure that the decisions of the *Xeer* are respected. These include ‘avoiding a future cycle of revenge; community or clan pressure; respect for the jury members; and the relative strengths of the opposing parties’; the ‘awareness that similar previous cases have been solved by the same ruling’; and the threat of additional individual and collective punishments that the *Xeer* may apply to persons who ignore rulings.³⁷⁷

The *Xeer* has not developed with the same pace as Somali society has changed. It is particularly weak in urban contexts, where the new social mix of clans and sub-clans generates problems should it happen that no bilateral contract in the *Xeer* exists between the opposing groups. In addition, while the incidence of criminal acts increased dramatically during the civil war, it is that case that elders who used to make decisions based on detailed knowledge of local events now no longer know many of the individuals who sit before them or what deeds they have committed in their lives in the city.

Clans institutions have been penetrated by the patronage of warlords and big businessmen, thus harming their integrity and effectiveness, as noted by Samatar and Lenorad clan authority has been eroded by their being coopted into partisan political combat.³⁷⁸ They further noted that

³⁷⁵ Ibid.

³⁷⁶ C Besteman, ‘*Unravelling Somalia: Race, Violence, and the Legacy of Slavery*’ (1999).

³⁷⁷ Dan van Lehman, ‘Resettling Somali Bantus may present special challenges’ (2001) 9 (10) *African Refugee Network* 6.

³⁷⁸ Samatar and Leonard (2011) 570.

clans were manipulated and bought in the creation of the Transitional Federal Government, compromising its legitimacy.³⁷⁹ Many of the respondent interview shared similar views that clan elders are manipulated and compromised by politicians.³⁸⁰

Other shortcomings of the traditional clan system are painfully visible in Somalia's modern conflict. For one, it lacks a concept of individual responsibility. The responsibility for redressing criminal acts and punishing wrongdoers is instead borne collectively by the clan. Reparation for murders requires blood payments, or *diya*, which in turn require the murderer's lineage to pay a certain number of head of cattle or camel in compensation, or even take responsibility for executing the criminal.³⁸¹

Traditional Somali leadership processes are an exclusively male domain. Women do not participate in the *shiir* and do not count among titled elders and 'kinsmen' in the enumeration of clan membership (*qoora tiris*). This condition reflects the patriarchal nature of traditional Somali society.³⁸² Women do not exist formally in the decision-making system, albeit that – as also previously discussed – their absence from customary political institutions is partly balanced by their informal influence in communities and households.³⁸³

3.10 Islamic religion in Somalia

Somalia is one of the few countries in Africa where the population is virtually entirely Muslim. Islam is fundamental to the Somali people's identity, a distinguishing element in the definition of the Somali nation, and a factor promoting unity and solidarity – it has been one of the country's ideological backbones in overcoming clan divisions,³⁸⁴ given that 99.9 per cent of the population

³⁷⁹ Ibid.

³⁸⁰ Interview 1 and 2.

³⁸¹ Lewis and Mayall (1995) 2.

³⁸² L Kapteijns, 'Discourse on moral womanhood in Somali popular songs, 1960–1990' (2009) 50 (1) *The Journal of African History* 111.

³⁸³ For a detailed account of women's role in decision-making in pastoral contexts, see M Horowitz and F Jowkar, '*Pastoral women and change in Africa, the Middle East, and Central Asia*' (1992) Binghamton, NY: USA.

³⁸⁴ Muktar (1995) 11.

practice moderate Sufism of the Shafie order.³⁸⁵ The Shafie order is a version of Sunni, one of the two schools of Islam (the other being Shi'a). Sunni plays a significant role in the lives of Somali people. According to various scholars, the Sharia laws in Somalia originated from four Sufi orders: the Qadiriya, Ahmadiyah, Salihiya and Rifaiyah. Islam gained traction in Somalia in the tenth century through increased contact with Muslim merchants and traders, a development that also served to incorporate Somalia economically and culturally into the wider region.³⁸⁶

In the 1960s, other religious schools emerged and took root in Somalia: the Hambali School, brought from Saudi Arabia by the Salfiya movement, and the Hanafi School, imported from India and Pakistan by the Tablig movement.³⁸⁷ The influence of these schools at the political level began to be felt as early as the 1970s, when many Somalis who had been job-hunting in Arab countries returned with ideologies that reflected the interests of those countries rather than the interests of their own localities. For example, the first returning wave of young men politically linked to religious movements in Arab countries (such as the Muslim Brotherhood in Egypt and the Wahhabism order of Saudi Arabia) quickly established schools and began teaching groups of youths around the country. The aggressive reinforcement of Wahhabism, a strict interpretation of the Holy Qur'an, came into force in the 1990s. This was the start of a bleak era for Somalia's political and social affairs. The politicisation of religion as a means to obtain power changed the country's political landscape and held implications for peace-building and state-building efforts. What arose was an often violent competition for political power between representatives of these schools and the secular politicians in the post-collapse period of the Somali state.

Islamic identity and clan identity are both pillars of Somali society. This duality is fluidly overlapping, as is evident in the fact that Islamic customs and laws are embedded in the everyday life of Somali clans. In the post-Barre era, however, Islamic identity exhibited greater rigidity in

³⁸⁵ A Abdullahi, 'Political Islam in Somalia.' (1993) 1 (3) *Middle Eastern Affairs Journal* 44-55.

³⁸⁶ Ibid.

³⁸⁷ A Abdullahi (1993).

some quarters, leading to a degree of divergence from clan identity. For some Islamic movements in Somalia, politics and policies should be devoid of reference to clan identity.³⁸⁸ In a similar vein, one must be careful not to oversimplify or misrepresent the role of Islamic identity in Somalia.³⁸⁹ Samatar notes that the arrival of Islam had several benefits, ranging from deepened spirituality and the formation of pan-Islamic linkages with other cultures to the emergence of a more transparent form of governance of community affairs.³⁹⁰ Religion interacts with clan structures, nationalism and wider Islamic unity to define the possibilities and limitations of fundamentalism in Somalia.

Religion is regularly presented as a feature of a united Somali culture, one shared by almost everyone in the country.³⁹¹ A common religious faith unites the Somali population across clan and other lines. The anarchy, plunder and violence that followed the collapse of the state in 1991 were viewed by most Somalis as contrary to traditional Islamic values. Many people worry that those values have been eroded and see the revival of the traditional ethical and value system embedded in Islam as essential for the peace process. Furthermore, Sharia courts contribute to maintaining justice and stability, and local Islamic organisations play an important role in providing critical humanitarian and social services. Religious groups often transcend clan and regional lines, and are thus helpful in strengthening cross-cutting social capital.³⁹²

In assessing the prospects for identity reconstruction as a long-term strategy for ending Somalia's simmering civil war, Elmi concludes that a Somali nationalist identity that transcends clan and Islamic identities has much potential in this regard. That said, Elmi is careful to point out that, at present, 'Islamic identity has the better chance ... of functioning as an inclusive identity in

³⁸⁸ A Elmi (2010) 4.

³⁸⁹ Samatar (2000) 50.

³⁹⁰ Elmi (2014) 51.

³⁹¹ Article 2(1) stipulates that Islam is the religion of the state. Article 3(1) of the founding principle states that the Constitution of the Federal Republic of Somalia is based on the foundation of the Holy Qur'an and Sunnah of the Prophet (PBUH) and protects the higher objectives of the Sharia and social justices. Article 4(1) claims that the Constitution of the Republic is supreme but subordinate to Sharia law. Article 2(3) provides that no law can be enacted which is not compliant with the principles and objectives of Sharia.

³⁹² N Colletta and M Cullen, *'Violent Conflict and Transformation of Social Capital'* (2000).

identity reconstruction'.³⁹³ This is based on the belief held by some Islamists that a broader Somali identity is already so infused with Islamic tenets that it is interchangeable with an Islamic identity. After the collapse of the Somali state, religious groups often attempted to influence social forces to formalise political organisations based on Islamic Sharia. Even though the Islamic movement was present in Somalia as early as the 1970s, post-independence Somali governments maintained control over it, mainly so through coercion and imprisonment. This forms the background to the inclusion of Sharia law in the Provisional Federal Constitution of Somalia.³⁹⁴

The role of Islam in bringing stability and peace became particularly evident at the peak of the Union of Islamic Courts/Islamic Courts Union's (UIC/ICU) control of Mogadishu and environs, a period in mid-to-late 2006 during which it brought a brief, six-month interval of stability to much of the southern part of the country.³⁹⁵ This is not to say that some of the country's Islamists would prefer to see Somalia become a Sharia-based Islamic state – an outcome that neighbouring Kenya and Ethiopia, as well as the United States, would be loath to permit. It is also doubtful that Islamic militias, such as the Al-Shabaab militants, would be interested in a more inclusive identity that allows a degree of reconciliation of not only a wider Somali identity but clan identity with their brand of Islamic identity.

3.11 The rise of political Islam in Somalia

In the mid-twentieth century, new Islamic reform movements emerged throughout the Muslim world, including Somalia, advocating for strict adherence to the written sources of Islam – the Qur'an, Hadith, Ijam and other authoritative sources.³⁹⁶ An important motive of these movements was to correct what they saw as the aberrations of politicians influenced by Eastern, Western or

³⁹³A Elmi (2010).

³⁹⁴ Article 2(1) states that Islam is the religion of the state; Article 4(1) provides that Sharia is the supreme law of Somalia, similarly, Article 2(3) expressly indicates that no law can be enacted that is not compliant with the general principles and objectives of Sharia.

³⁹⁵ O Mwangi, 'The union of Islamic courts and security governance in Somalia' (2010) 19 (1) *African Security Review* 89.

³⁹⁶ Ibid.

non-aligned positions during late colonial rule and the Cold War.³⁹⁷ It is in this context that the term ‘political Islam’ gained currency and relevance. The term refers to actors involved in religious reform in the way just mentioned. Political Islam covers social reform movements, as well as militant or so-called *jihadi* groups. The boundaries between these various, often ideologically heterogeneous, strands of political Islam are blurred and not clear-cut: dichotomies such as moderate versus extremist, Sufi versus Salafi, and nationalist versus globalist are misleading. From an analytical perspective, one may argue that the only common goal among political Islamists is to establish Islamic states, and, in the long run, a new Caliphate, in which the divine law (Sharia) rules; nevertheless, strategies on how to achieve these aims differ tremendously.³⁹⁸

Until the mid-twentieth century, the Sufi tradition in Somalia went unchallenged. An obvious religious and political transformation of Islam in Somalia began in the 1950s and 1960s. Egypt and Sudan increased their influence on the Somali territories (partly instigated by the British colonisers) in the form of scholarships for Somali students and the establishment of schools in colonial Somalia.³⁹⁹ A ‘modern’, religious elite came into existence in late colonial and early post-colonial Somalia, one influenced by the ideas of the Muslim Brotherhood (founded in Egypt in the 1920s). Simultaneously, Wahhabi Islam, propagated by the Saudi Arabian rulers, gained ground in the Islamic world. It was transmitted to Somalia through oil workers, students and other migrants to the Gulf States. In the 1970s, these new and previously Sufi-oriented forms of Islam fed into the emerging opposition against the military regime under General Mohamed Siad Barre (1969–1991).⁴⁰⁰ The conflict reached its first climax when the regime reacted harshly to clerics who criticised the new family law, 10 of whom were executed in 1975.

³⁹⁷ Ibid.

³⁹⁸ A Abdullahi, ‘The Islamic Movement in Somalia: A Historical Evaluation with a Case Study of the Islamic Movement’ (1950–2000) (unpublished PhD thesis, McGill University, 2011).

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

Abdulrahman Abdullahi argues that Islamism and political Islam in Somalia, while sharing similarities with other movements in the Muslim world, have their roots in Somali history and the particular local context of Somalia and its people.⁴⁰¹ Growing numbers of scholars see it as inevitable that an Islamist movement will rule in Somalia.⁴⁰²

3.11.1 Al-Ittihad Al-Islamiyya (AIAI)

The first effective political Islamist movement was Al-Ittihad Al-Islamiyya (AIAI). Founded in 1984, it engaged in the civil war⁴⁰³ and envisaged an alternative political order with a caliphate in Luuq in south-western Somalia (the Gedo region). In 1991, Barre's government finally collapsed, with armed factions struggling among themselves to gain control of key government institutions and resources. AIAI made several attempts to gain territory.⁴⁰⁴ In some cases it was unsuccessful, losing the port town of Bosasso to the Somalia Salvation Democratic Front (SSDF). In others, however, it was victorious, notably in the southern town of Luuq, where it managed to rule for five years.⁴⁰⁵

Menkhaus's findings suggest that the AIAI case is prescient, with many of the noted forms of control used in Luuq to be seen in the rise of the Islamic courts which would later come to prominence.⁴⁰⁶ The control of Luuq witnessed the banning of *qaat* (*khat*, *mirra*) and tobacco, while women were forced to wear veils.⁴⁰⁷ Generally, security improved dramatically in Luuq, and NGOs were happy to work there as conditions were safer. AIAI also tried to take control of Mogadishu, bringing a degree of order to the chaos there, but despite considerable support for the measures it sought to impose, AIAI ultimately failed in this effort. It was chased to the south where

⁴⁰¹ Ibid.

⁴⁰² A Elmi, 'Understanding the Somalia Conflagration: Identity, Political Islam and Peace Building' (2010).

⁴⁰³ M Taddesse, 'Al-Ittihad, Political Islam and Black Economy in Somalia' (2002).

⁴⁰⁴ A Le Sage, 'Somalia and War on Terrorism: Political Islamic Movements and US Counter Terrorism Efforts' (2004) PhD thesis, The Jesus College, Cambridge University.

⁴⁰⁵ M Taddesse (2002).

⁴⁰⁶ K Menkhaus, 'Somalia: State Collapse and the Threat of Terrorism' (2004).

⁴⁰⁷ R Marchal, 'Islamic political dynamics in the Somali civil war' in A Dewall (ed) 'Islamism and Its Enemies in the Horn of Africa' (2004).

at Kismayo it lost a key battle to General Mahammad Farah Aydiid's forces. For Roland Marchal, this failure was entirely due to the movement's disregard for clans and its unwillingness to compromise with the politics of clan interests in Mogadishu and southern Somalia. Here again, as in Luuq, Islamist goals were undermined by local clan politics.⁴⁰⁸

Besides AIAI, a number of reformist, but not necessarily militant, Islamist movements were active, engaging mainly in humanitarian work and education. Groups close to the Muslim Brotherhood, such as Al-Islah, took the lead in this regard. But Wahhabi-oriented groups, such as Al-Intisam, also appeared to seek social and political transformation in Somalia without resorting to violence. Sufi groups such as Ahlu Sunna Wal Jama'a kept a more 'traditionalist' profile.⁴⁰⁹ The latter's political career began in about 1991 as a partner formation to the warlord Mohamed Farah Aideed, who presented himself as a 'traditionalist'. The full militarisation of the Sufis occurred when they were threatened by Al-Shabab and the tombs of venerated sheikhs were attacked. Ahlu Sunna Wal Jama'a began to fight back, assisted by Ethiopians, from 2009 onwards.⁴¹⁰

After the fall of the military regime, the imposition of Sharia law and administration of Islamic courts featured prominently in Somalia, but it is in Mogadishu that the most intense struggles about religious and clan politics were seen. Since the 1990s, a succession of attempts have been made to establish Islamic courts in Mogadishu – often supported by business groups for whom stability and order were advantageous – but ultimately these attempts were undermined by clan politics and failures to incorporate all the key militias. Marchal notes these tensions, as well as growing willingness by advocates of Sharia law to accommodate clan interests.⁴¹¹ According to Marchal, for example, al-Barakat owner Ali Jima'ale provided funding for the courts' initiative in

⁴⁰⁸ R Marchal and M Zakariya, 'Ahlu Sunna wa l-Jama'a in Somalia' in Patrick Desplat and Terje Østebø (eds) *Muslim Ethiopia: The Christian Legacy, Identity Politics and Islamic Reformism* (2013) 215–239.

⁴⁰⁹ ICG, 'Somalia's Islamists' Report, No. 100 (12 December 2005).

⁴¹⁰ Ibid.

⁴¹¹ A Le Sage, 'Prospects for Al Itihad and Islamist radicalism in Somalia' (2001) 27 *Review of African Political Economy* 89.

the late 1990s and was backed by many other businessmen.⁴¹² Far from being exclusionary, the Islamic Courts Union (ICU) in Mogadishu has sought since then to build support among the different Muslim groups, including the Islamists of al-Itihaad and other Salafis, along with a number of smaller Sufi groups.⁴¹³ With the financial support of businesses and the backing of a variety of religious groups, the Islamic Courts Movement was able to bring vastly improved security, thus gaining what some called ‘performance legitimacy’.⁴¹⁴ (The role of the ICU will be discussed in the next chapter.)

3.11.2 The rise of Al-Shabaab

Somalia became a theatre in the ‘war on terror’ after the 9/11 attacks in the USA. New and more radical groups arose, further diversifying the Islamist scene. Harakat Shabaab Al Mujahidin (Al-Shabaab) emerged in about 2003 as a small cell in the south, but was also supported by activists from the north (where it carried out its first attacks).⁴¹⁵ In 2006, it joined the Islamic courts. It was still a rather small nucleus of hard-core Islamists. The invasion of Ethiopia fuelled local resentment against ‘Ethiopian invaders’ and bolstered the Al-Shabaab support base. Between December 2006 and January 2009, Al-Shabaab became the most powerful and – in the eyes of many Somalis, most legitimate – military and political actor in the country.⁴¹⁶ It became the de facto government between 2009 and 2011 of most regions in southern Somalia.

Apart from Al-Shabaab, other strands of Islam continued to exist. Al-Islah mainly kept its distance from militant extremism, while Ahlu Sunna became an active military adversary of Al-Shabaab. Al-Intisam also maintained a low profile.⁴¹⁷ Al-Shabaab eventually secured Baidoa, Mogadishu and Kismayo, and worked to establish sophisticated funding and recruitment networks.

⁴¹² R Marchal (2013) 296.

⁴¹³ ICG ‘Somalia’s Islamists’ No. 100 (12 December 2005).

⁴¹⁴ Menkhaus (2009d).

⁴¹⁵ J Hansen, ‘*Al Shabaab in Somalia: The History and Ideology of a Militant Islamist Group*’ 2005–2012 (2013) 23.

⁴¹⁶ R Marchal, ‘A tentative assessment of the Somali Harakat Al-Shabaab’ (2009) 3 (3) *Journal of Eastern African Studies*.

⁴¹⁷ R Marchal (2009).

Not only was Al-Shabaab able to pay recruits – often per attack due to revenue generated through illegal taxation networks and the illicit trade of charcoal from the port of Kismayo – but it was also able to capitalise on rising Islamic solidarity to garner support from the Somali diaspora. The group also established an intricate intelligence unit, the Aminyat, which gathered intelligence to use in planning further sophisticated attacks.

Many in Al-Shabaab's leadership had fought in Afghanistan in the 1990s as well as during the fall of Barre's government. The group is believed to have been affiliated with Al-Qaeda since its inception.⁴¹⁸ This means that the localised leadership ultimately pledges allegiance to Al-Qaeda, although there are also recent accounts of it pledging allegiance to ISIS.⁴¹⁹ This vacillation highlights many of Al-Shabaab's internal problems, like the splitting of the goals of the group, its leaders and its members. These divergences can be seen in its desire, on the one hand, to address local or tribal issues and, on the other, to create an Islamist-controlled Somalia under Islamic law.⁴²⁰

In response to the rise of Al-Shabaab in the country, as well as the continued insecurity in Somalia, the African Union (AU) deployed a counter-insurgency operation, AMISOM, aimed at eradicating the group. Troops from Burundi, Djibouti, Kenya and Uganda were deployed to Somalia in March 2007. The AMISOM operation was bolstered by the launch in October 2011 of the independently mandated Operation Linda Nchi led by the Kenya Defence Forces. These engagements had significant successes against Al-Shabaab, recapturing Mogadishu in 2011, Kismayo in 2012, and Barawa in 2014, and thereby forcing the group further south. Al-Shabaab moved to consolidate its presence in the Lower Shabelle, Bakool and Hiraaan regions⁴²¹; however,

⁴¹⁸ M Abdisaib, 'The Al-Shabaab Al-Mujahidin – A Profile of the First Somali Terrorist Organisation'.

⁴¹⁹ A I G Sjah, 'Tracing Al Shabaab's decision to cooperate with Al Qaeda in Somalia' (2008) 5 (1) *Journal of Terrorism Research* 1–11.

⁴²⁰ David M Anderson and Jacob McKnight, 'Understanding Al Shabaab: clan, Islam and insurgency in Kenya' (2015) 9 *Journal of Eastern African Studies* 537.

⁴²¹ Al-shabab still maintain administrative control of most of the Juba valley including the major urban centres of Bu'ale, Sakow and Jilib. Qunyo Barrow, in Lower Juba is the headquarters of Al-shabab's finance department.

despite having lost them, Al-Shabaab has maintained a network of operatives in both Mogadishu and Kismayo.

Following sustained efforts by AMISOM and Operation Linda Nchi, Al-Shabaab largely withdrew from conventional warfare, regrouping in the south of Somalia. In an insurgent campaign comprising hit-and-run attacks, improvised explosive devices (IEDs), bombings and assassinations in the south, Al-Shabaab increased the frequency of its attacks significantly and was thought to be responsible for up to 60 per cent of all attacks in Mogadishu. In November 2015, the group was responsible for 55 per cent of all attacks against FGS interests. In 2018, several Al-Shabaab attacks were reported. In April 2018, two car-bomb attacks killed at least 38 people in Mogadishu;⁴²² similarly, heavily-armed Al-Shabaab fighters attacked the AMISOM base in the southwest of Mogadishu, killing more than 50 soldiers.⁴²³ In June 2018, a car bomb at a military base in Somalia injured seven Somali soldiers and one American.⁴²⁴ In November 2018, Al-Shabaab detonated three vehicle-borne improvised explosive devices outside the Sahafi Hotel in Mogadishu, 50 people were killed and 100 injured in the attack. On 24th July 2019, a female Al-Shabaab suicide bomber detonated herself at the Benadir Regional Administration headquarters in Mogadishu. The attack killed more than 10 people, including the Mayor of Mogadishu, Engineer Abdirahman Omar Osman 'Yarisow' and three District Commissioners.⁴²⁵

Al-Shabaab orchestrated its first transnational terrorist attack outside of Somalia on 11 July 2010, when 76 people were killed in multiple suicide bombings in Kampala, the capital of Uganda. The group claimed the attacks were in retaliation for the deployment of Ugandan peacekeeping

⁴²² BBC News 'Somalia al-shabaab: Deadly double car bombing near presidential palace' available at www.bbc.com/news/world-africa-43177348, accessed on 5 June 2018.

⁴²³ Al-Jazeera News, 'Somalia Al-shabaab attacks African Union Base in Somalia' available at www.aljazeera.com/news/2018/04/somalia-al-shabab-attacks-african-union-base-180401151818560.html, accessed on 9 July 2018.

⁴²⁴ Africa News, 'Al-shabaab strikes again following Friday attack that killed US Commando' available at www.africanews.com/2018/06/10/al-shabaab-strikes-again-following-friday-attack-that-killed-us-commando/, accessed on 9 July 2018.

⁴²⁵ The Guardian, 'Mayor of Mogadishu dies as a result of Al-Shabab attack' available at www.theguardian.com/world/2019/aug/01/mayor-of-mogadishu-dies-as-result-of-al-shabaab-attack-somalia> accessed on 20th June 2020.

troops in Somalia as part of AMISOM.⁴²⁶ Similarly, according to the Global Terrorism database, in the course of Operation Linda Nchi (that is, between October 2011 and 31 December 2014), more than 200 Al-Shabaab incidents were reported in Kenya.⁴²⁷ The first attack was at the Westgate Shopping Mall in Nairobi's affluent Westland suburb in September 2013, where many innocent people were killed. In a high-profile attack on 21 April 2015, Al-Shabaab militants lay siege to Garissa University College in Kenya: 147 students were killed and 79 injured during the assault. The siege ended after the deployment of the Kenya Special Forces, and four of the perpetrators were killed in the ensuing security operation. On 15th January 2019, Al-Shabaab assault on the DusitD2 Hotel complex, killed 21 people.⁴²⁸ In view of all these incidents of terrorism, Al-Shabaab continues to pose the greatest threat to stability in Somalia and neighboring countries.

As the group ceded control of most of Somalia's urban centres, its tactics shifted to asymmetrical warfare, exhibiting greater reliance on suicide bombings, IEDs, hit-and-run attacks, political threats and assassinations, and grenade attacks. This allowed it to fight AMISOM and its Somali enemies on its own terms and put fewer of its fighters at risk.⁴²⁹ To execute these tactics, the group relied increasingly on its Amniyat network.⁴³⁰ This shift in tactics hinted at a change in Al-Shabaab's wider strategy: it now focused on the role of a spoiler – blocking any progress by the federal government, preventing normalisation of life in the capital, and harassing AMISOM with the aim of driving it out of the country.⁴³¹ Throughout its insurgency in Somalia, Al-Shabaab has maintained both a nationalist and Islamic ideology in its efforts to overthrow the FGS.

⁴²⁶ K Emmanuel, 'Comparing Somalia's Al-Shabaab and Uganda's Lord Resistance Party: A Toxic Mix of Religion, Politics, and Violence', Pretoria: Institute for Security Studies, 2011.

⁴²⁷ A Burns, 'Feeling the pinch: Kenya, Al-Shabaab, and East Africa's refugee crisis refuge' (2010) 27 *Canada's Journal on Refugees* 5–14.

⁴²⁸ CBS News, 'Extremist launch deadly attack on luxury hotels in Kenya's Capital Nairobi' available at <https://www.cbsnews.com/news/kenya-terror-attack-nairobi-dusit-hotel-al-shabab-claim-live-updates-2019-01-15/> accessed on 4th January 2020.

⁴²⁹ UN Monitoring Group on Somalia and Eritrea, 2012 www.marsecreview.com/wp-content/uploads/2012/09/UN_REPORT_2012.pdf. Accessed 5 December 2018.

⁴³⁰ Ibid 5.

⁴³¹ M Andrew, 'Are corruption and tribalism dooming Somalia's war on al-Shabaab,' *Terrorism (2017) Monitor*.

3.12 Concluding remarks

This chapter examined the social, political and economic characteristics of Somali society. It showed that the clan system in Somalia is founded on genealogical ancestry based on blood or clientele relations. Although clanship resembles the commonly known tribal systems found in other societies, Somalis believe they share common founding father. Clan families are very large and can range in number to several million people scattered across the Horn of Africa. Each clan family is divided into a series of clans and sub-clans, lineages and sub-lineages that extend down to households.

Clans have never been the sole cause of conflict in Somalia; rather, conflicts involving clans have always followed certain patterns of being caused by disputes over water, grassing lands or other resources, and, latterly, manipulation by elites⁴³². As such, the so-called ancient hatred between ethnic groups cannot be seen as the cause and driver of conflict in the Somali case. Conflicts that arise between clans are brief, have few casualties, and are resolved by elders by way of their *xeer*. In recent years, the conflict in Somalia has stemmed from the manipulation of clan differences. As noted by Besterman, elites manipulate clans by convincing members that their suffering and disadvantaged positions are the result of their clanship and, consequently, inducing them to fight with each other.⁴³³ As such, conflicts do not arise from clan differences but the manipulation of clans by elites.

The traditional governance systems consisting of *xeer*, *sharia*, and *shiir* provided frameworks of governance. Although weakened by successive colonial forces, state, military government and non-state actors, traditional governance remains respected in Somali society and continues to be practised to the present day, where it provides the basis for conflict settlement, protection and collective solidarity. In the aftermath of state collapse, Somali society fell back onto

⁴³² The conflict has been explained as stemming from the problem of governance and bad leadership (Samatar 1993; Samatar 1994), from the problem of resources (Kusow 1994; Mukhtar & Kusow 1993; Besterman 1999; Casanelli and Besterman 1996) or from bad economic policy and lack of sustainable development (Osman 2007; Mubarak 1996).

⁴³³ Besterman (1999).

the authority of clan elders, *xeer* and *sharia*. Traditional institutions offset the regulatory, trust-related and logistical challenges brought about by the absence of the state and become the de facto basis for governance, including collective action in the country.

While the clan system remains important in Somali society, there is no doubt that it has changed and continues to change. The diminishing locality of clan, the vigour of *xeer* and the authority of *shiir* (elders), combined with the dispersal and the globalisation of Somalis, have all undermined the collective role of the clan. The latter is no longer a source of robust collective action in the defence, protection, security and welfare of its members. However, while it has withered, it has not disappeared.

The chapter also revealed the role of Somali women in peace-building and last of the chapter appraised the rise of political Islam and Al-Shabab in Somalia.

CHAPTER 4: SOMALIA'S GOVERNANCE CONTEXT FROM THE COLONIAL PERIOD TO THE ADAPTION OF THE FEDERAL SYSTEM

4.1 Introduction

The appropriateness of Somalia's federal system for conflict resolution and establishing peace cannot be fully evaluated without considering the country's political, social and legal history. The historical discussion is especially important because the new federal government was introduced based on an explicit or implicit supposition that the previous centralised system of governance either caused or exacerbated the prevalence of conflict. It is also felt based on an allegation that the former system caused or resulted in the political, economic and cultural marginalisation of scores of minority populations and women in Somalia.

This chapter appraises several attempts at state-formation that took place in Somalia. It is divided into three parts. The first part provides a characterisation of the nature of the colonial state in Somalia, highlighting the debate on the colonial state's administration of power and political events during colonisation, with the emphasis on territorial issues and the impact of colonialism in Somalia. The second part presents an account of Somalia's previous post-independent governments, while the third part reviews the transitional period up to the final adaptation of federal constitutions, focusing on the formation of federalism.

4.2 Colonial rule

Unlike most African countries, where colonial powers created artificial states consisting of various ethnic groups, pre-colonial Somalia did not have one centralised state system and did not form a single political unit.⁴³⁴ This situation changed in the sixteenth century when Europeans started exploring the East African coast. British, Portuguese, French and Dutch merchants occasionally

⁴³⁴ For a detailed analysis of the colonial period in Somalia, see Abdisalam M Issa-Salwe's *The Collapse of the Somali State: The Impact of the Colonial Legacy* (1994). After a brief introduction on pre-colonial Somali society, the author, in 148 pages, surveys Somali history from the era of colonial occupation through to the nationalist struggle for independence, the rise of civilian and military governments, the Somali-Ethiopian war, the emergence of armed opposition movements, and state collapse. (A Issa-Salwe, *The Collapse of the Somali State: The impact of Colonial Legacy* (1994)).

visited the region en route to India. No significant occupation took place in Somalia until the 1830s.⁴³⁵ With the occupation of Aden by the British in 1839 and some shipwrecks along the Somali coast, there was a growing interest in exploration of the area.

British interest in the Somalian coast was motivated primarily by concerns about the security of trade and communication with India. Prompted by the looting of wrecked ships, Britain entered into treaties with Somali groups to protect crews and cargo.⁴³⁶ The first of these was concluded in 1827 between Captain Bremer of H.M.S Tamar and the sheikhs of the Habar Awal. With the establishment of the British Protectorate over Aden, diplomatic activity in the area increased, leading to treaties with the Sultan of Tajur and the Governor of Zeila.⁴³⁷ However, the opening of the Suez Canal in 1869 led to a dramatic change in the geopolitical evaluation of the region, given that the Red Sea became a major avenue of trade with India and the Far East and its shores acquired considerable strategic importance.⁴³⁸

The British sought to consolidate their position in the region, preparing an occupation of the Somali coast, which was officially notified in the General Act of the Berlin conference, 1884–85. However, in December 1884, the French took possession of Tajura, and Italy extended its hold on the Assab near the lower end of the Red Sea. In a climate of acute Anglo-French rivalry, France needed a base and a coaling station along the route to Madagascar and India, and was also interested in developing trade. In this regard, France's interests differed from those of Britain, whose policy was guided by the strategic necessity of securing imperial communication and who was, in commercial terms, concerned only about supplies to Aden.⁴³⁹ In 1885, the French colony and protectorate were formally established along the boundaries of today's Djibouti.

⁴³⁵ Ibid.

⁴³⁶ Ibid.

⁴³⁷ Also known as Zaila or Zeyla, a port city in the north-western Awdal region of Somalia.

⁴³⁸ A Issa-Salwa (1994).

⁴³⁹ Ibid.

Touvel describes Italy's colonialism as 'motivated by aspirations for imperial grandeur' and 'a by-product of the rise of Italian nationalism'.⁴⁴⁰ Yet despite their earlier activities in Eritrea and on the Red Sea coast, the Italians grew interested in the Somali coast only in the 1880s. By 1899, Italy, competing with the Germans in East Africa, had established its influence over the Somali coast from Bender Ziadeh on the Gulf of Aden in the north, to Kismayu on the Indian Ocean in the south.⁴⁴¹ By 1884, the British had carved out a portion of northern Somalia known as British Somaliland, and by 1886, the French had taken present-day Djibouti. This left most of Somalia uncontested and therefore vulnerable to the Italian takeover.⁴⁴²

By 1897 the partition of Somalia was virtually complete, and although subsequent adjustments were made, the frontiers of the new Somali territories had been defined, at least theoretically. The Somali territories were divided into five sections by the colonial powers.⁴⁴³ The area surrounding Djibouti was controlled by the French; the British controlled the section currently known as Somaliland (with Hargeisa as capital); while the Italians occupied the east and the east-western part (with Mogadishu as its capital). The other two sections, located in what today are the north-eastern parts of Kenya and the eastern parts of Ethiopia, were included in the East Africa British colony and Ethiopia, respectively.⁴⁴⁴ All the colonial rulers attempted to create a bordered, centralised state within their respective territories. However, each had its own style of rule and own administrative, security and financial systems, all of which left marked differences between the territories after independence.⁴⁴⁵

Southern Somalia experienced the changing hands of colonialism from the Italian Fascist rule (1923-1941) remembered for its harsh policies, to British Military Administration (BMA)

⁴⁴⁰ S Touval (1963) 40.

⁴⁴¹ Ibid.

⁴⁴² A I Samatar, *The State and Rural Transformation of Northern Somalia, 1884–1886* (1989) 31.

⁴⁴³ Ibid.

⁴⁴⁴ P Tripodi, *The Colonial Legacy in Somalia: Rome and Mogadishu: From Colonial Administration to Operation Restore Hope* (1999).

⁴⁴⁵ Ibid.

(1941–1950), and Italian Administration (*Amministrazione Feduciaria Italiana* ‘AVIS’) under United Nations (UN) trusteeship (1950–1960).⁴⁴⁶

The next section will appraise British and Italian colonies in Somalia.

4.2.1 British Somaliland

For most of the colonial period, Somalia was two separate entities: the British Somaliland Protectorate in the north and Italian Somaliland in the south.⁴⁴⁷ In July 1887, the Protectorate of British Somaliland was officially established.⁴⁴⁸ The British succeeded in formalising their influence on the northern Somali coast by declaring the area a British Protectorate; they also added the southern Jubaland Province and the northern Frontier District (NFD) of Kenya.

Britain had no formulated plan for its Somalian territory, which was treated as a dispensable asset that could be traded for higher imperial stakes in Ethiopia.⁴⁴⁹ British rule can therefore be characterised as indirect, allowing the traditional tribal authorities to govern through its leaders. Although the British were permitted to associate with the Somalis in the form of cultural societies or political parties, there was social segregation and Africans were denied direct participation in the government.

The stability of *diya*-paying groups was weakened by the appointment of chiefs (*Akils*) for each clan by the British colonial authorities in an effort to ease the running of their administrations.⁴⁵⁰ This practice, known as the *Akils* system, vested in a single person the powers of assisting the administration in maintaining law and order within the clan, enforcing government orders and regulations, and bringing persons guilty of crimes within the clan to justice, which

⁴⁴⁶ Nicole, D ‘*The Italian Invasion of Abyssinia 1935-1936*’ (1997)

⁴⁴⁷ The British Somaliland Protectorate was controlled briefly by the Italians during World War II and the ‘possession’ of Italian Somalia briefly handed over to the British after the war. See Lewis, ‘*Understanding Somalia and Somaliland*’ (1993) 29).

⁴⁴⁸ Lewis (1955) 46.

⁴⁴⁹ Ibid.

⁴⁵⁰ A Issa-Salwa, ‘*The Collapse of the Somali State: The Impact of the Colonial Legacy*’ (1994) 5.

diminished the bonds of contractual solidarity within the *diya*-paying groups.⁴⁵¹ The *Akils* were divided in loyalty to the clans, on the one hand, and the colonial state, on the other. The system was the first step towards divide-and-rule, which has continued to affect Somalis into the present day. Furthermore, because those appointed as chiefs were provided with a government stipend, clan elders competed to be appointed to this position.⁴⁵² As a consequence, the traditional authorities suffered from a loss of power and, in many cases, legitimacy.⁴⁵³

The British, however, did not develop a colonial administration. British Somaliland had no colonial population or valuable resources to protect. British Somaliland's strategic importance vis-à-vis trading routes through Aden and later the Suez Canal only marginally increased their willingness to govern. Instead, as mentioned, a system of indirect rule was applied in which British officials signed treaties with the various clans in the area.⁴⁵⁴

4.2.2 Italian Somalia

Italy, a latecomer to the colonialism game, was far behind major colonial powers like Britain, France, Portugal and the Netherlands. Those countries had colonial assets in other parts of the world, whereas Italy had to place the bulk of its efforts in Africa.⁴⁵⁵ The Italian colonial experience was somewhat different from that of the major European powers. First, Italy was not a unified country until 1861. This meant that its territorial expansion began only much later than that of Britain or France. Secondly, Italy's colonial history spanned both liberal and fascist rule (Mussolini's National Fascist Party did not come into power until 1922). For an imperial power, Italy was relatively poor. One rationale for Italian colonialism was that it was a means of dealing with the poverty problem. Under liberal and fascist governments alike, colonialism was seen as a

⁴⁵¹ Lewis (1961) 201.

⁴⁵² A Issa-Salwa (1994).

⁴⁵³ S Samatar and D Laitin, '*Somalia: Nation in Search of a State*' (1987) 129.

⁴⁵⁴ Ibid.

⁴⁵⁵ C Giampaolo, 'National Identities as a by-product of Italian colonialism: A comparison of Eritrea and Somalia', in AL Jacqueline and D Derek (eds) '*Italian Colonialism: Legacy and Memory*' (2005).

way to create employment opportunities – those unemployed in Italy could get work in the Italian colonies of Somalia, Libya and Eritrea.⁴⁵⁶

Italy took possession of the Eritrean coast from Assab to Massawa and the Benaadir coast along the Indian Ocean. In 1889, it and Ethiopia signed the Treaty of Wuchale which formally recognised Italy's protectorate over Eritrea. However, Emperor Menelik denounced the treaty, and Ethiopia defeated Italy at the famous battle of Adwa in 1896. Following Italy's defeat, the French and British recognised their boundaries and placed Ogaden (Ethiopian region 5) under Ethiopian authority.⁴⁵⁷

An Italian merchant based in Zanzibar named Vincenzo Filonardi was chosen to lead Italy's efforts in Somalia. As the head of the Italian consulate in Zanzibar, Filonardi had frequent contact with the Sultan.⁴⁵⁸ While locked out of the northern coast of Somalia by the British and French, the Italians still believed the long east coast of the country could be valuable for its port potential. Apart from servicing ships headed in or out of the Red Sea, these ports could be used as access points for supplies and equipment headed further inland into Africa. The Juba River, which stretches from the Indian Ocean near Kismayo in Somalia all the way to the Ethiopian border before splitting into three rivers that run deep into Ethiopia, was central to the Italians' efforts. Travel along the Juba would be the most obvious and effective means of getting goods in and out of the region.⁴⁵⁹

The Italians were more active in Italian Somalia than other European countries; for example, they had Italian expatriates in Mogadishu governing the country and actively promoting joint agricultural ventures between the locals and expatriates.⁴⁶⁰ They developed banana plantations and promoted the settlement of thousands of Italians in the colony. They established

⁴⁵⁶ Ibid.

⁴⁵⁷ Samatar, AI (1989) 167–70.

⁴⁵⁸ L Robert, *Italian Colonialism in Somalia* (1966).

⁴⁵⁹ Ibid 15.

⁴⁶⁰ Ibid.

centralised administrations, as a result of which the Italians were far more involved in building bureaucratic capacity to foster Somali elites than the British.

Colonial ambition in East Africa flared up again in the 1930s when fascist Italy conquered Ethiopia in 1935 and British Somaliland in 1940. Shortly before World War II, Italy invaded and annexed Ethiopia, as well as the Somali region of Ogaden which was under Ethiopian control. However, after the Allied victory over the Italians, Haile Selassie was reinstated as the ruler of Ethiopia and also rewarded with the Italian colony of Eritrea.⁴⁶¹ After the Italians were defeated in World War II, they lost their colonies and Italian Somalia was placed under British administration. Later, however, Italy regained control of its former colony, but Italian Somalia was to be administered by the Italians under UN Trusteeship.⁴⁶² British Somaliland gained independence from the crown in June 1960; Italian Somalia's independence followed shortly thereafter in July 1960. On 1 July 1960, the former territories of British Somaliland and Italian Somalia were united to form the Somali Republic.⁴⁶³ The duality of their colonial legacies would prove to be a complication in the new Republic.

4.2.3 The impact of colonialism on Somalia

Colonialists in Somalia, as in many African countries, had little more than a commitment to colonial business and a desire to bend the colonised to their will. Each colonial administration imposed its own models of subservience and methods of coercion according to the peculiarities of its imperial centre and the latter's political history and values, strategic agenda and economic needs. Both the British and Italians, for instance, stipulated that the Somalis were to be governed by customary law, but each favoured distinct versions of Somali customs. Both managed to set up a rudimentary apparatus of native authorities.⁴⁶⁴ on the other hand, Islam and sharia rule has been

⁴⁶¹ I M Lewis (2008) 33.

⁴⁶² Ibid 32.

⁴⁶³ Ibid 33.

⁴⁶⁴ R L Hess, *Italian Colonialism in Somalia* (1966).

the ideological backbone of the Somali society, Islam has been presented as a future of united Somali culture shared by almost everyone. Colonial and special European role did not penetrate the Somali community as much as sharia did.

Whatever their differences in how they exercised power, though, both of the colonial systems were disruptive to indigenous society and served, overall, to reinforce or create divisions between clans.⁴⁶⁵ In particular, traditional forms of Somali governance were destroyed as a result of arbitrarily imposed boundaries that were drawn up to suit the economic interests of the colonial powers and in total disregard for traditional clan ties. Moreover, Sultans in the south and *Akils* in the north were the link between the people and the colonial state, but the appointment of *Akils* and Sultans had adverse implications for the power balance, since (as already noted) they were divided in terms of loyalty to clans versus loyalty to the colonial state.⁴⁶⁶ As a result, traditional political systems were severely affected by these impositions. In terms of an idea of the state, the colonial heritage established a pattern of rising Somali political nationalism. This, however, did not reduce social fragmentation within Somali society. Instead, new versions of it emerged.

Following the partitioning of the continent, the imposition of the Westphalian state system laid the foundation for conflict. The colonial occupation and its division of territory made the country more prone to violence than before.⁴⁶⁷ Promises by the British and Italians to provide security were not fulfilled. Clans under their protection faced numerous Ethiopian attacks, both before and after boundaries were agreed on.⁴⁶⁸ Another aspect of social fragmentation that was aggravated by colonial policies was the rift between the nomadic and sedentary population. Colonial policies in the south sanctioned discrimination against minorities, particularly the Bantu communities. Subsequently, the colonial powers-imposed boundaries cutting across various clan

⁴⁶⁵ I M Lewis (1980) 77–80.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ R L Hess, '*Italian Colonialism in Somalia*' (1966).

⁴⁶⁸ *Ibid.*

territories, pastoral grazing lands and trading zones.⁴⁶⁹ The splitting of clan territory entailed a division of grazing lands for Somali pastoralists and increased insecurity in the region. These, then, were the most profound of the changes that accompanied the transformation of Somali society from a stateless society to a recognised state. As in Africa at large, the structural grid of the Westphalian state system and its arbitrarily imposed boundaries is one of the most enduring and developmentally obstructive of Somalia's colonial legacies.⁴⁷⁰

During the period of colonial rule, the significance of Somali descent groups increased considerably with the strengthening of clan lines, sharpening of clan rivalries and emergence of clan-based forms of political 'ethnicity'. Clannism evolved as the Somali version of the generic problem of ethnicity or tribalism.⁴⁷¹ Arguably, colonial policies of divide-and-rule led to the growth of resistance movements and hence the rise of Somali nationalism. In 1959, Somali delegates from different political groups and parties in both the British Protectorate and Italian Trusteeship territory launched a National Pan-Somali movement. This new organisation embraced in its charter the dual aims of campaigning by peaceful means for the independence and unification of all the Somali territories and creating firm ties with other African and Asian states.⁴⁷²

4.3 Pan-Somali nationalism and liberationism

Somali nationalism arose in the context of smaller and larger events such as the Jihad of the Darwish Movement (1900–1920),⁴⁷³ World War 1 (1914–1918),⁴⁷⁴ the Italo–Ethiopian War (1934–1935) and the World War II (1939–1945),⁴⁷⁵ all of which spurred political awareness. The root of Somali nationalism can be traced to the 1890s.⁴⁷⁶ This was the period during which Sayyid

⁴⁶⁹ Ibid.

⁴⁷⁰ A Issa-Salwa (1994).

⁴⁷¹ A Hussein, 'Somalia: A terrible beauty being born?' in I W Zartman (ed) *Collapsed State. The Disintegration and Restoration of Legitimate Authority* (1995) 69–89.

⁴⁷² Ibid.

⁴⁷³ See Samatar, S 'Oral Poetry and Somali Nationalism: The Case of Sayid Mahamed Abdille Hasan' (1982);

⁴⁷⁴ Beebor, A 'The Second World War' (2014).

⁴⁷⁵ Ibid.

⁴⁷⁶ S Touval, 'Somali nationalism, International Politics and the Drive for Unity in the Horn of Africa' (1963). Touval's books are a significant resource on the origins and course of Somali nationalist tendencies and political struggles.

Mohammed Abdullah Hassan (the Mad Mullah) first waged an anti-colonial struggle against the colonial powers; however, the anti-colonial struggle was not yet united under the banner of Pan-Somalian nationalism, due to clan divisions.⁴⁷⁷ Sayyid Mohammed injected political nationalism into the existing cultural nationalism.⁴⁷⁸ This was a direct result of the invasion. Liberating the country from foreign rule and unifying Somali territories were his main objectives, as was clearly expressed in his poetry. In the north, the British were consolidating their power, opening churches along the coastal towns; in the south, the Italians were aggressively expanding their rule. The French, too, had already carved out a part of Somalia, Djibouti, for themselves. The Mad Mullah led an uprising against the British Protectorate, one that would last for 20 years, in an attempt to reverse Western disruption of the Somali way of life.⁴⁷⁹

Sheikh Sayyid believed that the British and Ethiopian colonisers were destroying the faith of the Muslim people and formally declared a holy war. His movement originates in Sayyid's grievances both against the British and against Ethiopian encroachment on Somali pastoral territory, but it was the ensuing 20-year war against colonial British forces that is most remembered in history.⁴⁸⁰ Initially, Sayyid maintained a good relationship with the British administration due to the fact that his preaching was conducted primarily further inland from the major coastal cities and had not, up to that point, become an issue. In fact, his authority was welcomed by the British and fell in line with their strategy of indirect rule and empowering local clan leadership.⁴⁸¹ The ability of Sayyid to penetrate the local clans in a manner that ran counter to the meagre British Somali agenda was not initially considered a problem. The relationship soon soured when Sayyid became enraged that the British authority had refused to expel a Catholic mission in Berbera for homeless children.⁴⁸²

⁴⁷⁷ S A Abdi, *'Divine Madness: Mohammed Abdulle Hassan' 1856–1920* (1992).

⁴⁷⁸ RL Hess, 'The 'Mad Mullah' and southern Northern Somalia' (1964) 5(3) *Journal of African History* 451-433.

⁴⁷⁹ Ibid.

⁴⁸⁰ Ibid.

⁴⁸¹ I M Lewis, *'A Modern History of Somalia: Nation and State in the Horn of Africa'* (1980) 68.

⁴⁸² S A Abdi (1992).

Scholars are divided on whether Sayyid's followers, known as Dervishes, can be described as religious or nationalistic, or both. According to Sayid Samatar, the Dervish seems to be more of a poetic and literary dimension, and less of a nationalistic and the anti-colonial character of the movement.⁴⁸³ Samatar, on the other hand, argues that the Dervish movement placed much greater emphasis on anti-colonial nationalism than on Islam.⁴⁸⁴ Jama Omar is of the opinion that the movement was both poetic and philosophical.⁴⁸⁵ Nonetheless, the story of the Mad Mullah is significant because, while he failed to actualise his vision of a strong Islamic theocratic state, his legacy as a heroic Somali who was able to transcend clan divisions is embedded in the minds of the Somali people and he is viewed as a forerunner of Somali nationalism.⁴⁸⁶ Therefore, the Dervish movement could be described as the foundation of political nationalism in Somalia.⁴⁸⁷

In 1920, the national struggle came to an end as a result of military opposition by the British.⁴⁸⁸ Nevertheless, a sense of nationalism was shaped by the increasing opposition to the colonial powers. In addition, the negative treatment of the Somalis by colonial officials increased the national consciousness of the Somalis.⁴⁸⁹ During and after World War II, all Somali-inhabited areas, including those in Ethiopia and Kenya, came under the British military administration (with the exception of French-ruled Djibouti). This created favourable conditions for the development of Somali nationalism, especially among the urban population. This culminated in the first modern Somali political movement, the Somali Youth Club, in 1945.⁴⁹⁰ It was later renamed as the Somali Youth League (SYL), which had the aim of leading the national struggle to independence.⁴⁹¹ The

⁴⁸³ S Samatar, 'Oral Poetry and Somalia nationalism' in S Samatar, *'Oral poetry and Somali nationalism: the case of Sayyid Mohammed Abdulle Hassan'* (1982).

⁴⁸⁴ Ahmed Samatar says that the poems give more emphasis to the movement's anti-colonial and nationalist aspects. See AI Samatar, *'Socialist Somalia: Rhetoric and reality'* (1988).

⁴⁸⁵ A Issa-Salwe (1990).

⁴⁸⁶ S Touval *Somali nationalism* (1963) 5.

⁴⁸⁷ Ibid.

⁴⁸⁸ A Sheikh-Abdi, 'Somali Nationalism: its origins and Future' (1977) 15 (4) *The Journal of Modern African Studies* 657-665.

⁴⁸⁹ Ibid.

⁴⁹⁰ The objectives of the SYC were to unite all Somalis by eradicating harmful social prejudices and clannism, educating the youth in modern ideas, and promoting education. See Shikh-Abdi, A (1977).

⁴⁹¹ Ibid.

formation of the SYL and its spread throughout Somali territories (British Somaliland, NFD, Djibouti and Western Somaliland-Ogaden) during the 1940s and 50s heightened nationalist, pan-Somali feelings.⁴⁹² On the growth of Somali Nationalism, Laitin and Samatar wrote:

[A] complex number of factors helped to foster this new attitude: the memory of Darwish nationalists resistance; recent unification of the county and spectre of another dismemberment, the public humiliation of the colonial masters (first the British, then the Italians) hitherto presumed invincible; the progress in education and in economic complexity; the growth of articulate elite; and the lifting of the ban of an open political debate by the new administration.⁴⁹³

Similar views are expressed by Touval, who notes that a major factor in Somali nationalism was the resentment against colonial governments that had ruled but never subjugated Somalis.⁴⁹⁴ The latter had never been subject to institutionalised government but had to bear the burden of heavy taxation, forced labour, and racial policies imposed by Italian colonialists, particularly during the period of Fascist rule.⁴⁹⁵

In 1946, the British foreign minister, Earnet Bevin, proposed the reunification of all of Somaliland under the British.⁴⁹⁶ The proposal was rejected by the other members of the four-power commission, which included France, the US and the Soviet Union.⁴⁹⁷ The rejection was partially based on their suspicion that Britain's agenda was to create a new colony under the guise of Somali unity; however, it was largely due to Ethiopia's effective diplomatic campaign for the return of the Ogaden to Ethiopia.⁴⁹⁸ As a result, Ogaden returned to Ethiopia, North Somaliland to Britain, the NFD to British-held Kenya, and Southern Somaliland to Italy as a trusteeship in 1950.⁴⁹⁹

⁴⁹² Ibid.

⁴⁹³ Laitin and Samatar (1987) 63.

⁴⁹⁴ S Touval *Somali nationalism* (1963) 61.

⁴⁹⁵ Ibid.

⁴⁹⁶ Earnet Bevin, Britain's Foreign Secretary, delivered a speech in the House of Commons in June 1946 in which he proposed the unification of Somalis under the British Administration. See S Touval *Somalia nationalism* (1963) 79.

⁴⁹⁷ Ibid.

⁴⁹⁸ Laitin and Samatar (1987).

⁴⁹⁹ Ibid.

Although a united Somali state encompassing all Somali-inhabited territories failed to materialise, the idea of a 'greater Somalia' as proposed by Bevin continued to influence successive Somali governments.⁵⁰⁰ In the 1950s, the SYL and other nationalist groups in southern and northern Somalia waged a national struggle for the independence of Somalia.⁵⁰¹ At the same time, the Italian UN trusteeship authority and the political colonial authority were preparing their respective territories for self-government. The authorities introduced new governmental structures and bureaucracies as institutions of a future independent state.⁵⁰² In addition, they continued their efforts to produce modern Somali political elites and an educated urban class for key leadership positions in the state.⁵⁰³ As Somalia moved towards independence, most political parties were unanimous about the fundamental national goal of establishing a pan-Somali state.

On 26 June 1960, the British Somaliland Protectorate achieved full independence, and five days later, when the Italian Trusteeship Territory in turn became independent, merged with it to form a unitary republic. On the eve of independence, the colonial police and military units of both territories were declared the national army of the future Somali state.⁵⁰⁴ The cultural unity of the new country – united by a common ancestor, language, religion and pan-Somali ideal – was regarded as crucial in the construction of a nation-state. By pan-Somali standards, however, the birth of Somalia established a state which was inherently incomplete. Somalia nationalists considered the unification of the two parts of Somalia as but a stepping-stone to the unification of all five of the Somali territories represented in the five-pointed white star emblazoned on Somalia's national flag.⁵⁰⁵

⁵⁰⁰ S Touval (1963).

⁵⁰¹ Ibid.

⁵⁰² Ibid.

⁵⁰³ Ibid.

⁵⁰⁴ Ibid.

⁵⁰⁵ Regions that remain under neighbouring rule are French Somaliland (Djibouti), the Ogaden of Ethiopia, and the NFD of Kenya.

The Act of the Union between former British Somaliland and Italian Somaliland was passed by the parliament and was later intergrated into the draft national consitution, which the nation vetted via the referendum. In 1961, a referendum was held in order to approve the provisional constitution of the new republic. The voter turnout in former British Somaliland was low and divided, and almost half of the voters rejected the union.⁵⁰⁶ The north-west region (Hergesa) of former British Somaliland voted against the constitution by 54.63 per cent, while its eastern region (Buraø) voted in favour of it by 51.19 per cent.⁵⁰⁷ In the former Italian Somaliland Hiran had the highest negative vote against the constitution.⁵⁰⁸ Samatar and Samatar note that

the new parliament vetted the draft constitution, which triggered pubic debate, particularly after the document was read, article-by-article, over the two national broadcasting stations Radio Hargeisa and Mogadishu. Then came the constitutional plebiscite in 1961. Nearly three-fourths of the Republic's voting population endorsed the constitution, with opposition limited to areas of the northern region centred on the Hergisa, Buraon, and Berbera triangle.⁵⁰⁹

Samatar and Samatar write that 'the plebiscite marked the state's commitment to democratic rule, as it did not attempt to gerrymander the northern vote in order to manufacture artificial support for the charter in the North.'⁵¹⁰

4.4 Independence government (1960–1969)

On 1 July 1960, the sovereign Republic of Somalia was formed as a merger of the British Protectorate of Somaliland and the Italian-governed Trust Territory of Somalia.⁵¹¹ Aden Abdullah Osman Dar, president of the Legislative Assembly, was elected provisional president.⁵¹² President Aden appointed Abdi Rashid Ali Sharmake as Prime Minister on 12 July 1960. A new constitution

⁵⁰⁶ Lewis (2008) 35.

⁵⁰⁷ Samatar, AI (2016).

⁵⁰⁸ Ibid.

⁵⁰⁹ Samatar, AI and Samatar AI (2005).

⁵¹⁰ Ibid. 112.

⁵¹¹ M Brons, '*Society, security, Sovereignty and the State in Somalia: From statelessness to statelessness*' (2001). Brons's work is a significant analysis of Somalia's disintegration and its implications for state-building.

⁵¹² Aden Abdullah Osman joined the Italian administration in 1929 and served until 1941. In 1944 he joined the SYL, serving as its president in 1954-56 and 1958-60. He was also president of the legislative assembly (constituent assembly) of the Italian-administered UN trust territory of Somalia (1958-1960). See Samatar, AI (2016).

was approved in a referendum of 20 June 1961. In the country's first election, held in 1961, Aden Abdullah was elected as President.

During his term in the office from 1961–1967, President Abdullah was described as a dedicated and selfless leader. Samatar and Samatar observe that

President Aden had cultivated a reputation for unwavering abidance by the word and spirit of the Constitution. He became a national symbol and as such stayed out of party politics. Unlike many of his African peers, he tried not to intrude into the prerogatives of the executive PM. Often, he received a lot of complaints from the public. If he thought these accusations had merit, he would call the minister concerned or the PM. If an issue was of particular salience, he would write to the PM and counsel him to give it due attention.⁵¹³

The Somali Republic was seen as a particularly promising case of state-making in sub-Saharan Africa,⁵¹⁴ largely because it was apparently free of the multifaceted societal fragmentation that other newly independent African countries faced. However, from the onset, the new country faced a number of challenges, including a large uneducated populace, a politicised clan system, poor economic performance, hostile neighbours (notably Ethiopia), and weak institutions.⁵¹⁵ Other challenges were the dual colonial legacy: southern Somalia and northern Somaliland, which were integral parts of the newly independent state, had inherited very different governmental, legal, judicial, military, financial, civil service and educational systems.⁵¹⁶

Initially, citizens of both former colonies were optimistic about the unification. The excitement faded when the authorities experienced problems with the amalgamation of the two territories and their institutions. The distance between the capital of former British Somaliland, Hargeisa, and the new capital of Mogadishu increased this strain,⁵¹⁷ and less than a year after the unification, friction between citizens of the two former colonies became evident.

⁵¹³ Samatar AI and Samatar AI 'Somalis as Africa's First Democrats: Premier Abdirazak H Hussein and President Aden A Osman,' (2008) 2 (4) *Bildhaan: An International Journal of Somali Studies*.

⁵¹⁴ Ibid 205.

⁵¹⁵ M Bradbury (2008) 33.

⁵¹⁶ Laitin and Samatar (1987).

⁵¹⁷ Bradbury (2008) 33.

One of the northern clans which had had considerable influence under British rule, the Isaaq, had only minor influence in the new government, which affected relations in the new Somali republic.⁵¹⁸ Notwithstanding that the uneven distribution of political posts was justified – southern politicians generally had a more sophisticated understanding of government, having experienced a measure of autonomy under the Italian Trusteeship since 1956 – this caused discord in the north. Dissatisfaction in the north was intensified by economic decline: standardising tariffs meant increasing commodity prices, as tax rates of the north had to rise in line with those of the south, while the mass exodus of British expatriates withdrew investment from the region.⁵¹⁹

The new Somali government faced daunting challenges, which included legal, political and economic issues. There were almost irreconcilable differences between the northern and southern parts of the country, particularly regarding under-development and socio-economic stratification in the north. The two regions also had almost no economic relations. The long experience of partition had left them with separate infrastructures and institutions, and their merger caused considerable difficulties. Britain and Italy had set up different education, health and fiscal systems that were retained for a while, as well as different currencies and police and administrative frameworks. Public affairs as a whole were conducted according to different procedures in different languages.⁵²⁰

Northerners were not the only ones disillusioned with the way of the union. The Digil and Mirifle clans, who speak different dialects of the Somali language (as discussed previously, their Somali dialects are different from that of the pastoralists), faced systemic discrimination in both the educational and governmental sectors. They opposed the mainstream vision of a centralist republic, and their party, the Hub al-Dastuur Mustagil al-Somali (HDMS), advocated that ‘the only

⁵¹⁸ Regional institutional differences were aggravated by the political division of power within the new republic. Under British colonial rule, the Isaaq clan held the majority of the administrative posts in Somaliland, but it became the minority in government upon unification (Bradbury (2008) 33).

⁵¹⁹ Mansur, AO ‘Contrary to a Nation: The Cancer of Somali State’ in Jimale A (ed) *The Invention of Somalia* (1995) 114.

⁵²⁰ Brons (2001) 162

method of unifying the Somalis ... is through a federal constitution which accords them full regional autonomy'.⁵²¹ The desirable form of government is a federal system, but HDMS was only a minority party in southern Somalia and even more in the re-united republic.⁵²²

Some scholars, such as Brons, are of the view that the creation of the Somali Republic in 1960 was flawed, given that two distinct systems of government (British and Italian) were imposed on a new country with no history of democratic rule.⁵²³ Brons also notes that the Italian constitutional model was taken over virtually unchanged and thus without adaptation to the characteristics of Somalia.⁵²⁴ The Italian model was predicated on a centralised system of governances, whereas the British model was based on a form of devolution of power to regions.

The parliamentary election of 30 March 1964, a victory for the SYL,⁵²⁵ was a watershed in the politics of Somalia. President Aden appointed Abdirizaq H. Hussein as Prime Minister, who undertook reforms that included restructuring and professionalising public services, combating corruption and expanding the reach of public services.⁵²⁶ In this period, cabinet ministers were appointed on merit, and significant civil service reforms were also adopted.⁵²⁷ The golden period lasted only three and a half years.⁵²⁸

In the 1967 presidential election, Aden Abdulahi was defeated by Abdirashid Ali Sharmake, his former prime minister. President Aden accepted the loss graciously, making history as the first head of state in Africa to hand over power peacefully to a democratically elected successor.⁵²⁹ Peaceful handover was hailed by the West as an example of a successful African democracy.⁵³⁰ President Abdirashid appointed Muhammed Haji Ibrahim Egal as Prime Minister.

⁵²¹ S Touval (1963) 96–7.

⁵²² The HDMS's desire for a federal system is discussed in more depth under a section on federalism in Somalia.

⁵²³ Brons (2001) 162.

⁵²⁴ Brons (2001) 165.

⁵²⁵ In the election, 24 political parties fielded 793 candidates for 123 parliamentary seats.

⁵²⁶ For comprehensive detail, see Samatar AI 'Africa's First Democrats: Premier Abdirazak H Hussein and President Aden A Osman' (2016).

⁵²⁷ Ibid. (2016) 367.

⁵²⁸ Ibid.

⁵²⁹ Samatar, AI (2016).

⁵³⁰ Ibid. see also Bradbury (2008) 34.

However, in the period between 1967–1969, corruption and nepotism increased and, as noted by Samatar, sectarian and tribalist factions of the elites gained the upper hand.⁵³¹ These problems led to many shifts in alliances and a proliferation of political parties, to such an extent that Somalia had more parties per capita than any other country in Africa.⁵³²

In the parliamentary election held on 26 March 1969, the result again was victory for the SYL, which won 73 of the 123 seats in parliament. The election, however, was rigged and marred by corruption. Afterwards, all the elected members of opposition parties crossed over to the ruling party, in effect turning the republic into a one-party state.⁵³³ Only former Prime Minister Hussein and his party retained the status of opposition. During the elections, parties had multiplied as organisations and clans splintered,⁵³⁴ and after the elections, the rush to join the ruling party to obtain ministerial positions and other official perquisites meant that the parliamentary structure was bound to collapse.⁵³⁵

The country's last multiparty elections were held in March 1969. Although more than 60 parties contested them, very little civil governance or service delivery existed. Adding to the unfulfilled aspirations of pan-Somalism was the growing suspicion that electoral politics had become the biggest challenge for the Somali government.⁵³⁶

4.4.1 Pan-Somali nationalism and its ambitions

Despite Somalia's problems of national integration, the unification of all areas populated by Somalis into one country – a greater Somalia – remained a central issue in post-independence politics. A pan-Somali symbol, the five-pointed star on the national flag, represented the five

⁵³¹ Samatar (2016) 367.

⁵³² Laitin and Samatar (1987) 69.

⁵³³ Ibid.

⁵³⁴ The number of political parties increased from 24 in 1964 to 62 in 1969; the number of parliamentary candidates increased from 793 in 1964 to 1,002 competing for 123 parliamentary seats.

⁵³⁵ I M Lewis, 'Nationalism and particularism in Somalia' in P H Gulliver (ed) *Tradition and Transition in East Africa: Studies of the Tribal Element in the Modern Era* (1969) 339–362.

⁵³⁶ Samatar (1994) 15.

colonial territories that the new republic strove to bring together: the ex-British and ex-Italian Somaliland (now northern and southern Somalia); the Ogaden; the NFD in Kenya; and Djibouti. Pan-Somali activists, both in Somalia and abroad, stuck to a conception of self-determination that was increasingly pursued as decolonisation progressed. The constitution adopted in 1961 stated in its preamble that ‘the Somali Republic promotes by legal and peaceful means the union of all Somali territories.’⁵³⁷ As a result, Somalia did not directly claim sovereignty over adjacent Somali territories. Rather, it consistently demanded that alienated Somali communities living in neighbouring countries be granted the right to decide by themselves what their status would be.

After independence, Somalia pursued unification in two phases. The first was an aggressive adoption of pan-Somali projects involving support for local insurgencies in ‘occupied territories’ and strong advocacy for Somali self-determination in those regions.⁵³⁸ This phase continued under the premierships of Sharmarke (1960–64) and Abdirizak (1964–67). However, Primer Mohamed Egal (1967–69) introduced a major policy shift, namely a new policy of mitigating conflicts and improving relations with Somalia’s neighbours, as part of which he met leaders from Kenya, Ethiopia and Djibouti.

In Kenya, a referendum was held in the NFD in 1962 to determine if the NFD should be transferred to Somalia. An overwhelming majority of the region’s population voted to join the Somali Republic; however, the British and Kenyan governments ignored the outcome. The rejection of the results prompted the dissatisfied Northern Province Progressive People’s Party (NPPPP) to launch a guerrilla war under the umbrella of the Northern Frontier District Liberation Movement (NFDLM).⁵³⁹ The conflict, commonly known as the Shifta War, did not restore the NFD to Somalia.

⁵³⁷ The Constitution of Somali Republic, 1960 – Preamble.

⁵³⁸ An example is the Western Liberation Front (WSLF). Formed in Ethiopia in 1963, the WSLF demanded self-determination and after this was refused, embarked on guerrilla operations. The Somali government was supportive of the insurgency, and in January 1964 border skirmishes broke out between the two countries. Similarly, Somalia supported the armed insurgency of the Northern Frontier District Liberation Movement (NFDLM) in its fight for unification with Somalia.

⁵³⁹ Ghai, YP (2015).

In Djibouti (formerly French Somaliland), a referendum was held in 1958 to decide whether to join the soon-to-be independent Somali Republic by 1960 or remain with France. The outcome was in favour of continued association with France. However, there were allegations of widespread vote-rigging and, prior to the referendum, the expulsion from Djibouti of thousands of Somalis supportive of union.⁵⁴⁰ A second referendum was held on March 1967 and, again, the results were in favour of remaining with France.⁵⁴¹ Again, too, vote-rigging was reported, as was the expulsion of Somalis under the pretext their not having identity cards. The declaration of the referendum result ignited civil unrest.

4.4.2 Rule of law and democracy

The independent Somali state was a democratic state: a unitary republic with a representative democratic form of government. The legislature was unicameral and composed of elected members. The country was divided into eight administrative regions and 47 districts, each headed by a regional governor or district commissioner appointed by the minister of the interior.⁵⁴² The legal system combined Sharia and customary law with modern state law. The majority of people remained detached from the modern state framework.⁵⁴³ State political institutions did not penetrate society. Instead, non-state political structures (i.e. the TGS) penetrated the modern state. The reasons for this were threefold:

- the northern urban population's geographical distance from the capital;
- a marginalised status within the Somali clan system causing concern for the inter-riverine population; and
- the isolation from a modern way of life of the pastoral nomads of the north.⁵⁴⁴

⁵⁴⁰ Mesfin, B 'Situation report' Institute for security Studies (2011).

⁵⁴¹ Ibid.

⁵⁴² A Le Sage, '*Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives*' (2005).

⁵⁴³ Ibid.

⁵⁴⁴ M Brons (2001) 165.

The state also failed to offer a public social security system as an alternative to a sub-state mechanism rooted in clan networks. The state was perceived as simply having a complementary role to traditional security arrangements.⁵⁴⁵

De facto sovereignty thus remained divided, while de jure sovereignty was ascribed to the government of the internationally recognised Somali state. Centralised political power inherited from the colonial period increased as the northern former capital became marginalised, with all politics revolving around the national capital, Mogadishu. One of the weaknesses of the 1960–1969 state was that its Italian-style constitution and structure of government did not adequately incorporate traditional democratic governance by clan leaders.⁵⁴⁶ Thus, during the civilian regime, the southern urban elite – whose commitment to the *Xeer* had diminished due to its abandonment of clan ties – dominated the central government and became a predatory ‘state class’ using its governmental positions for personal gain and to the detriment of the Somali people.

4.4.3 The fall of the government

By 1969, Somalia had its third election within the first decade of democracy and was hailed by the West as an example of a successful African democracy.⁵⁴⁷ The 1969 election, however, was rigged and marred by corruption. After the election, all the elected members of opposition parties crossed over to the ruling party, effectively turning the republic into a one-party state.⁵⁴⁸ Shortly after the election, the newly elected president, Abdi Rashid Ali Sharmarke, was assassinated by one of his bodyguards.⁵⁴⁹ Before the parliament could elect a new leader, the military became

⁵⁴⁵ Ibid.

⁵⁴⁶ Ibid.

⁵⁴⁷ Bradbury (2008) 34.

⁵⁴⁸ Ibid.

⁵⁴⁹ For a detailed account of the circumstances of the assassination, see Ingris, M ‘who assassinated the Somali President in October 1969? The cold war, the clan connection, or the coup de’etat’ (2017) 10 (2) *Journal of African Security* 131-154

involved and took control of the government in what has been described as a ‘bloodless revolution.’⁵⁵⁰

4.5 Military rule (1969–1990)

On 21 October 1969, five days after the assassination of President Sharmarke, the military, led by Major-General Mohamed Siad Barre, the Commander of the Somali National Army, staged a coup in which it took over the power of government, arrested top officials of the civilian administration, suspended the constitution and, by decree, abolished the national assembly and all other constitutionally established bodies.⁵⁵¹ In their place, Barre announced the formation of a 25-member Supreme Revolutionary Council (SRC), made up entirely of army and police officers, which assumed power with Barre as President. The army, assisted by the police, ruled the country; military officers served as regional governors and district commissioners. Initially, Barre’s government enjoyed widespread support from Somalis due to improved economic performance, the provision of more social services, and a reduction in nepotism and corruption.⁵⁵²

Having seized power, Barre dissolved the civilian government and promised both to restore order and to eradicate the inefficiency and corruption that had become endemic under the first government.⁵⁵³ As the majority of the population had been dissatisfied with the increasingly clannist and nepotistic politics of the 1960s, Barre’s coup and the military clamp-down enjoyed immediate popular support.⁵⁵⁴ International observers argued that the military takeover had been inevitable⁵⁵⁵ and that ‘[t]he military intervened in 1969 only after the civilian institutions collapsed under the weight of their own talk’.⁵⁵⁶ Hence, the military actors were perceived as heroes who

⁵⁵⁰ Bradbury (2008) 35.

⁵⁵¹ Lewis (1994) 150.

⁵⁵² Ibid.

⁵⁵³ For a comprehensive review of the events that led to the military takeover, the subsequent reign of terror by Barre, his fall from power, and the dissolution of the Somali state into separate regions ruled by clan-based political groups, see Laitin and Samatar, *Nation in Search for State* (1987).

⁵⁵⁴ IM Lewis, ‘The politics of the 1969 Somalia Coup’ (1972) 10 (3) *Journal of Modern African Studies* 383-408.

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid.

rescued the Somali nation from imminent collapse,⁵⁵⁷ led it back onto the road of state-making, improved the country's economic performance, expanded social services, and created a better culture of governance.⁵⁵⁸

Moreover, citizens approved of the military government's anti-imperialist, pro-Islamic and Marxist-Leninist rhetoric.⁵⁵⁹ The military's hold on state affairs increased when the SRC was disbanded and a socialist vanguard organ, the Somalia Revolutionary Socialist Party, established in 1976. In 1980, the SRC was reconstituted as an element of the ruling power structure, and military officers were appointed to administer most of Somalia's districts and regions. President Barre preferred subordinates who would take orders rather than convey popular wishes.⁵⁶⁰ Thus, military officers were easier to manage than civilian officials.

On the first anniversary of the coup (21 October 1970), Barre declared socialism the ideology of the military regime and initiated major reforms. Scientific socialism (*Hantiwa daagga Cilmiga-ku-dhisan*) was to be the ideology of the regime and the basis of its social, economic and political programme.⁵⁶¹ Lewis notes that efforts to correct the errors of the past and place the country on a firm footing assumed a specific ideological orientation on this first anniversary.⁵⁶²

4.5.1 Socio-economic development

The first seven years of Barre's rule were relatively peaceful (his regime concentrated mostly on local development and consolidation of its authority). Accordingly, the military regime was initially welcomed by Somali society after having won public confidence due to its success in nation-building activities.⁵⁶³ In the early years of his rule, Barre seemed committed to the principle of advancement. He introduced an official orthography for the Somali language, launched a

⁵⁵⁷ Ibid.

⁵⁵⁸ Ibid.

⁵⁵⁹ Bradbury (2008) 36.

⁵⁶⁰ A Issa-Salwe (1994) 57.

⁵⁶¹ Ibid.

⁵⁶² M I Lewis (1969).

⁵⁶³ Brons (2001).

successful literacy campaign and initiated infrastructural and economic development programmes.⁵⁶⁴ The military regime also generated employment opportunities, introduced a better culture of governance, and established schools throughout the country, as well as the Somali National University.

One of Barre's main goals was to reduce the gaps between the haves and have-nots created by the previous democratic regimes. Thus, the new regime focused on eliminating divisions in Somali society: the cleavages between clans and lineages, sedentary and nomadic populations, pastoral lineages competing for grazing and water, patrons and clients in the cultivating regions, and urban and rural populations. Under the military regime, clan and lineage affiliations were irrelevant to social relations, and the use of pejorative labels to describe groups thought inferior to Somalis was forbidden.⁵⁶⁵ As a result of this achievements, as noted by Samatar, Barre received public approval.⁵⁶⁶ Appreciation for the military was also enhanced by the effective way in which it dealt with the devastating drought of 1975.⁵⁶⁷

According to Lewis, the Somali people's acceptance of the military was influenced by the latter's advocacy of rooting out corruption and restoring Somali virtues through a concentrated onslaught on the people's real enemies – poverty, disease and ignorance.⁵⁶⁸ The initial goals of the SRC were to eliminate the clan rivalry that had produced corruption and nepotism. Barre therefore had an interest in minimising clans as a basis for advancement. All political parties considered to have been formed on the basis of clannism were banned (the tribalism of the party system was regarded as destructive). The decisive criteria for political participation was personal loyalty to the

⁵⁶⁴ D Laitin, 'The political economy of military rule in Somalia' (1976) 14 (3) *Journal of Modern African Studies* 449-468.

⁵⁶⁵ The announcement of the advent of scientific socialism was coupled with vehement denunciation of tribalism. The military regime also abolished the payment of blood money, the core of the Somali clan system. Barre's government tried to establish unity among clans by forming a government devoid of clan affiliation. In 1971, it banned clannism, and effigies of tribalism were symbolically burned and buried. The word *jaalle* (comrade) was to replace the term *ina adhere* (cousin), which was a traditional way of addressing people. See A Issa-Salwe (1994) 56.

⁵⁶⁶ Samatar AI (2001).

⁵⁶⁷ Ibid.

⁵⁶⁸ Lewis (2002) 208.

president. In the early 1970s, the military and political leadership thus represented a relative clan balance. Members of the Isaaq, Hawiye and Darood clans exercised political power. As Laitin and Samatar put it: ‘Appointments, for the first time in the republic’s short history, were made not according to clan affiliation.’⁵⁶⁹

The SRC’s toughest political position was closely connected to the campaign to break down the solidarity of lineage groups. Tribalism was condemned as the most serious impediment to national unity, with President Barre characterising it as a disease hindering Somali development. The government punished those who failed to obey a broad category of proscribed activities classified as tribalism.⁵⁷⁰

As in the earlier years of democratic government, the government of Siad Barre initially enjoyed widespread support from the Somalis. Improved economic performance, more social services and less nepotism and corruption ensured this support.⁵⁷¹ In addition, citizens could relate to, and approved of the military government’s rhetoric regarding anti-imperialism and being pro-Islam and pro-Marxist-Leninism (so-called scientific socialism).⁵⁷² However, the banning of opposition parties and increased clamp-downs on political dissidents turned the populace against the military government. Furthermore, the execution of 10 prominent Islamic scholars and the prosecution of numerous others who opposed Barre’s regime affected its popularity negatively.⁵⁷³ Apart from his oppressive authoritarian rule, various other factors contributed to Barre’s demise, chief of which were his renewed pan-Somali ambitions, the refugee crises of 1978–1980, general economic failure due to dwindling aid supplies and, ultimately, the civil war of 1988. As will be discussed later, many of the causes of the problems in Somalia can directly be linked to these issues.⁵⁷⁴

⁵⁶⁹ Laitin and Samatar (1987) 76.

⁵⁷⁰ Ibid.

⁵⁷¹ Laitin and Samatar (1987).

⁵⁷² Bradbury (2008) 36.

⁵⁷³ Ibid.

⁵⁷⁴ I M Lewis (2008) 40.

4.5.2 The rule of law and state institutions

The military government adopted the Constitution of the Somali Democratic Republic in 1979.⁵⁷⁵ The first presidential election under the new Constitution was held in 1986, with General Barre, the sole candidate, emerging victorious. The 1979 Constitution provided for a presidential system in which the President served as both head of state and head of government. It provided, furthermore, for limited fundamental rights, including the right to equality,⁵⁷⁶ work, freedom of publication and opinion,⁵⁷⁷ and for socio-economic rights.⁵⁷⁸ Similarly, the Constitution recognised the Universal Declaration of Human Rights and all generally accepted rules of international law.⁵⁷⁹

Under military rule, however, the independence of the judiciary was compromised. The SRC temporarily abolished the constitutional and supreme courts and placed restrictions on the remaining courts.⁵⁸⁰ The President established the National Security Court, the jurisdiction of which included the adjudication of crimes against public order and the violation of national security.⁵⁸¹ Members of the National Security Court were appointed from within the military and given broad powers of detention, arrest and seizure. Furthermore, they had the liberty to take away jurisdiction from all subsidiary and lower courts.

The judiciary was left in the hands of the governing elites and clan patrons, who pursued their personal interests. Opposition leaders were arrested and charged without fair hearing or trials. According to Sage, from the mid-1970s, political decision-making abandoned any appearance of judicial independence. The military used the Public Order Law of 1964, which, according to Sage,

⁵⁷⁵ Constitution of the Somali Democratic Republic, 1979, articles 8 and 20–34.

⁵⁷⁶ Somali Democratic Republic Constitution, 1979, article 6.

⁵⁷⁷ Article 24.

⁵⁷⁸ Article 40.

⁵⁷⁹ Article 19.

⁵⁸⁰ Somali Democratic Republic, Supreme Revolutionary Council, First Charter of Revolution, Law Number 12, 1969.

⁵⁸¹ *Ibid.*

was essentially an amalgamation of many colonial anti-resistance laws that were used to suppress dissent and civil society mobilisation.⁵⁸²

4.5.3 The weakening authority of traditional leaders and the *Xeer*

The military regime dismantled institutions of traditional authority and the *diya* system, traditionally the most stable political unit that guaranteed Somalis security of their life and property. Military officers intended to eliminate power vested in lineages and clans, and their newly-established committees, councils and cooperatives were all part of a new policy which aimed to replace the descent group and territorial unit system as the primary means of organising Somali traditional life.⁵⁸³ Another manifestation of this policy was the banning of weddings, burials and religious rites organised on a lineage- or clan-basis. According to the 1972 SRC decree, wedding ceremonies were to be held at orientation centres or other public places. President Barre sometimes participated in these occasions as the head of the rites and contrasted the benefits of socialism with the evils he associated with tribalism. Additionally, money for the burial of a dead member could not be raised from lineage members, and the law forbade religious rites tied to local traditions.⁵⁸⁴

Clans were purposely mixed within the settlements, and the settlers were expected to deal with local councils, committees and courts, whose members were also heterogeneous. Three years later, nearly 45 per cent of adult males had left the cultivating settlements, presumably to resume herding.⁵⁸⁵ Dislocating the nomads and severing their ties with the land to which they had belonged for centuries, the government undercut clan solidarity. In many instances, real improvement in the living conditions of resettled nomads was evident, but despite government efforts to eliminate it, clan consciousness, as well as a desire to return to nomadic life, persisted. Thus, efforts to convert

⁵⁸² A Le Sage (2005).

⁵⁸³ Ibid.

⁵⁸⁴ Laitin and Samatar (1987).

⁵⁸⁵ Ibid.

the nomads into farmers were largely unsuccessful, and in the early 1990s most herders were still nomadic or semi-nomadic.

The Barre regime, thus, sought to erode social stratifications inherent in traditional society. All these measures were designed to break down the traditional clan structure, to weaken the role of traditional religious leaders, and to strengthen the personal control of President Barre. As Laitin and Samatar observe:

The elite was said to be created on the basis of shared political ideas within a state, rather than personal ambitions and the utilisation of kin ties. In reality, however, the guiding principle for Siad Barre was to use any means that could secure his political survival.⁵⁸⁶

4.5.4 Pan-Somali ambitions

President Barre continued with his pan-Somali ambitions. The Somalis in the regions held by Ethiopia formed the Western Liberation Front (WSLF) and demanded self-determination, after rejections of their demands, they too started guerrilla operations.⁵⁸⁷ The independent Somali government was supportive of insurgency; as a result, in January 1964, border skirmishes broke out between the two countries.⁵⁸⁸ The WSLF continued fighting the Ethiopia regime.⁵⁸⁹ Shortly after Emperor Haile Selassie of Ethiopia was overthrown in 1974, President Barre decided to take advantage of the political instability and launched a military attack in support of the WSLF's reclaiming of the Somalis and the Ogaden area.⁵⁹⁰ The Ogaden war or Somali–Ethiopian war (July 1977 to March 1978)⁵⁹¹ was one of the largest interstate wars in contemporary Africa. It was waged in the Ogaden region in the east of present-day Ethiopia. This part of the Ethiopian plateau is

⁵⁸⁶ Laitin and Samatar (1987) 159.

⁵⁸⁷ Laitin and Samatar (1987) 78.

⁵⁸⁸ The conflict was contained within months after Somalia and Ethiopia signed a ceasefire agreement in Khartoum.

⁵⁸⁹ Lewis (2008) 43.

⁵⁹⁰ Bradbury (2008) 38.

⁵⁹¹ Ibid.

mainly populated by the Ogadeni – meaning ‘those of the plateau’⁵⁹² – a Somali sub-clan which makes up one-third of the total Somalian population.⁵⁹³

The Somali army eventually invaded Ethiopia in 1977. In the first few weeks, it conquered most of the Ogaden region, after which long and costly battles were fought over the larger Ethiopian cities, such as Jijiga, Harer and Dire Dawa. When the USSR and Cuba, originally supporting Somalia, switched sides and allied with the Ethiopian Derg and its President Mengistu, Somalia finally lost the war and retreated into its own realm. The people living in the Ogaden desert were first overwhelmed by the WSLF,⁵⁹⁴ then by the Somali regular army, and eventually by the avenging Ethiopian troops.

Following diplomatic agreements between the Ethiopian and Somali governments, Somalia in 1988 officially stopped supporting the Somali militias who were fighting the Ethiopian army. However, combat in the area never stopped. In 1984, the Ogaden National Liberation Front (ONLF) was established and remains active in the region until today, even though it no longer fights for a greater Somalia but an independent Ogadeenia.⁵⁹⁵ Until recently, the Islamist group Al-Ittihad al-Islamic (AIAI), which later changed its name to the United Western Somali Liberation Front, was also active in the Ogaden region.

4.5.5 The military regime’s move from scientific socialism to clannism

The Ogaden war had a profound impact on economic, social and political life in Somalia.⁵⁹⁶ Development project funds were diverted to the war. The wave of refugees, estimated to be more than a million in number, required financial assistance that the country could not afford. Somalis

⁵⁹² Laitin and Samatar (1987) 159.

⁵⁹³ H Adam, ‘Systematic factors and the conflicts in the Horn of Africa: 1961–1991’ in K Fukui, E Kurimoto and M Shigeta, ‘*Ethiopia in Broader Perspective*’, *Papers of the XIII International Conference of Ethiopian Studies*. Vol. II (1997) Kyoto, 111.

⁵⁹⁴ M O Omar, ‘*The Road to Zero: Somalia’s Self-destruction*’ (1992).

⁵⁹⁵ The ONLF and its leaders were removed from the terrorist list and later freed from jail in July 2018 by Ethiopia’s new prime minister, Abey Ahmed.

⁵⁹⁶ As for the crimes of the Barre regime, almost ten years later Samatar wrote ‘*Somalia: A Nation in Turmoil*’, which provides a good outline of Barre’s collective clan punishments of civilians. Hardly anything has been written to further document the years of incitement to clan hatred.

thus had to rely on foreign aid. Many refugees fled from Ethiopia to Somalia, bringing along their modern weapons from the war front in Ethiopia, a wave that was to transform Somalia.⁵⁹⁷

General Barre's much-feared nightmare appeared to have come true on 9 April 1978 when an ill-planned coup, led by Colonel Maxamed Sheikh Cisman 'cirro', took control of the capital. Nevertheless, by mid-morning the troops loyal to Barre had contained the situation and rounded up some of the ring-leaders. The mastermind behind the coup, Abdullah Yusuf,⁵⁹⁸ south front commander, fled to Kenya. As a result, Barre's regime killed many innocent Somalis who belonged to the clan of coup leaders, namely Majeerteen clans in the Mudug and Bari regions. From the regime's perspective, they were guilty by association or because they shared an identity, at times a distant one, with the officers allegedly responsible for carrying out the coup.⁵⁹⁹ A similar event, albeit larger in magnitude in terms of human suffering, occurred in north-west Somalia, the present-day 'Somaliland', in 1988.

After a long war, Barre signed a deal with Ethiopia in which they agreed to stop supporting their regimes' respective opposition groups. Following the agreement, President Mengistu Haile Mariam of Ethiopia stopped supporting Somali opposition groups, including the Somali National Movement (SNM). As a result, the SNM moved into Somalia, seized control of Bur'o city and then attacked government interests in Hargeisa, the second capital of Somalia.⁶⁰⁰ The military regime retaliated, killing thousands of people with military airplanes and tanks. The military leaders used brutal force against both opposition groups and people in general. Consequently, the legitimacy of the regime weakened, and the opposition gained strength. Several human rights groups condemned these acts; even the US, which earlier had supported the Barre regime, stopped providing military

⁵⁹⁷ Ibid.

⁵⁹⁸ General Abdulahi Yussuf later became the President of Somalia during the Transitional Federal Government.

⁵⁹⁹ Lewis (2002).

⁶⁰⁰ Lewis, 'In the land of the living dead' *The Sunday Times*, 30 August 1992.

assistance to the Somali government. Barre's tactics inflamed popular anger and strengthened the appeal of the various guerrilla groups.⁶⁰¹

As scientific socialism failed to deliver promised outcomes, the rhetoric of socialism faded and the military regime reverted to clannism. The dominant clans in the civilian period – the Hawiye, Isaaq and Majeerteen – were not preeminent in Barre's government; therefore, they felt legitimately deprived. Anxiety began to develop. As leaders of the Majeerteen, the Hawiye and Isaaq began to voice their misgivings about their status under Barre's rule, the President began to surround himself with people from his clan, forming associations of clans that he could trust and rely on. Consequently, in spite of the revolutionary regime's intention to denounce clannism, the government found itself in the centre of clannism. Barre's closest clan networks included the Daarood his kin community, which consisted of the coalition of the Mareehaan (Barre's clan), Ogaden (the clan of Barre's mother) and Dulbahante (the clan of Barre's son-in-law, Colonel Ahmad Suleiman Abdullah, who headed the NSS). This clan-based coalition was commonly referred to as the MOD. In doing so, Barre legitimised clannism in Somali politics. The MOD circle also had wide representation in the Supreme Council and other party organs.⁶⁰²

4.5.6 The opposition movement and fall of the military regime

In the aftermath of the Somalia military defeat in Ethiopia, various opposition movements appeared. The first armed opposition movement, the Somali Salvation Front (SSF, later renamed the Somali Salvation Democratic Front, SSDF), was formed on 8 February 1979 by Abdulahi Yussuf and was headquartered in Ethiopia.⁶⁰³ With support from the Ethiopian army, this group conducted guerrilla warfare across the border. In reaction to the SSDF's anti-government activities, parts of the Somali population, particularly those belonging to the Majeerteen clan, were punished by the military regime. Collective punishment included mass murder of Majeerteen clan

⁶⁰¹ M O Omar, *The Road to Zero: Somalia's Self-destruction* (1992).

⁶⁰² S Samatar *Somalia: A Nation in Turmoil* (1991).

⁶⁰³ Ibid.

members, the rape of women, destruction of infrastructure, poisoning of water wells, killing of livestock, forced removals, and uprooting of learning institutions.⁶⁰⁴ The Red Berets (*Duub Cas*)⁶⁰⁵ systematically smashed water tanks and wells in the area around Galkayo so as to deny access to water resources to the Umar Mohamud of Majeerteen sub-clan lineages and their herds. Consequently, in May and June 1979, more than 2,000 people died of thirst in the waterless area northeast of Galkayo, Garowe and Jariban. In addition, the clan lost an estimated 50,000 camels, 10,000 cattle, and 100,000 sheep and goats.⁶⁰⁶

The second opposition movement, the SNM, was formed in 1981 by a group of businessmen, religious leaders, intellectuals and former army officers drawn from the Isaaq clan. In reaction, the government intensified its repressive policies against the Isaaq. To create enmity between clans, senior military officers in the Somali army from Isaaq clan were deliberately posted in the Majeerteen regions where the government was waging war against the local people. Barre's campaign against the Isaaq clan was particularly bloody: it included the destruction in 1988 of Somalia's major northern city of Hargeisa, where bomb attacks were made. Among the consequences were that a large number of victims fled to neighbouring countries.⁶⁰⁷

The Hawiye-dominated United Somali Congress (USC) was formed in Italy in 1987. The USC was immediately divided into two rival factions from different sub-clans. The armed faction had an alliance with the SNM, which provided arms to General Aidid, who was to become the leader of the faction. Barre attacked Hawiye in the central area around Mogadishu. The Hawiye's fighting units had been active in the central region (Mudug), first as part of the SSDF's struggles of 1983–1986 and, after 1988, on their own.⁶⁰⁸ Barre's government tried a divide-and-rule strategy by offering amnesty to some groups in order to split the opposition. This strategy led to the creation

⁶⁰⁴ *African Watch Report*, 'Somalia: A Government at War with its Own People', January 1990, 10–15

⁶⁰⁵ A dreaded elite unit recruited from Barre's Mareehaan clansmen.

⁶⁰⁶ *Ibid.*

⁶⁰⁷ S Samatar, 'Somalia: A Nation in Turmoil' (1991). Details on the activities, formation and role of the SNM in the establishing Somaliland is elaborated in Chapter 6.

⁶⁰⁸ *Ibid.*

of two opposition movements – the Hawiye-dominated USC and the Manifesto Group, also predominantly a Hawiye initiative.⁶⁰⁹

A few more opposition movements were formed during the civil war in the south, but the large number of factions with S-prefixed acronyms appeared after the intervention of UNOSOM. The Ogadeni-led Somali Patriotic Movement (SPM) was formed in 1989 following the arrest of General Gabyo, the then Minister of Defence and the highest-ranking Ogadeni in government.⁶¹⁰ Gradually, opposition rebels started uniting with the common goal of getting rid of President Barre. This was eventually achieved by the Hawiye-dominated USC forces, essentially without assistance from the other rebel groups. USC fighters entered Mogadishu secretly at the end of December 1990 to assist clan members who had formed popular self-defence committees to protect themselves from attacks by a rival clan that supported President Barre. The presence of the USC guerrillas prompted the intervention of the Red Berets.⁶¹¹ The USC defeated the Red Berets and continued fighting the regime until its demise. The ensuing struggle for power became deadlier this time, as both the government and the opposition were inclined to use bullets rather than ballot boxes to retain power or gain access to the resources of the state.

4.5.7 The fall of the military regime

The collapse of Barre's government, which occurred at the end of the 1980s and the beginning of the 1990s, and civil war and state collapse in Somalia were consequences and reflections of the many changes taking place in the international order at the time. The Somali state failed before it collapsed, as the number of people benefiting from state policies diminished and security declined.

⁶⁰⁹ The armed factions of the SNM, SPM and USC-Aidid wing were bound in an alliance by the Mustahil Agreement of June 1990. The agreement was consolidated in October 1990 and rejected any negotiated settlement with the Barre regime. However, the civilian USC wing in Mogadishu was furious with General Aidid and the possible return of military rule in Somalia. It seems that the divided USC and Mustahil agreement, with one of its factions causing the precipitate formation of the interim government.

⁶¹⁰ MO Omar, *The Road to Zero: Somalia's Self-destruction* (1992).

⁶¹¹ The Red Berets were an elite military unit serving as bodyguards for Siad Barre and acting under the command of his eldest son, Maslah Mohammed Siad Barre. See M Osman (1992); *African Watch Report, 'Somalia: A Government at War with its Own People'* (January 1990) 37.

When Barre's government was finally overthrown on 26 January 1991, society and political authority fragmented and the Somali state as a unitary administrative, ideological and territorial entity ceased to function.⁶¹² All legislative and judicial state institutions collapsed, along with all other state bodies such as the army, banks and educational institutions. The human cost was enormous. A quarter of a million people died in the famine that raged between 1992 and 1993, an estimated 90,000 people were killed in fighting, and many more became refugees or internally displaced.⁶¹³

On 28 January 1991, a provisional government was announced, with Ali Mahdi Mohamed designated as the interim president. However, General Mohamed Farah Aidid opposed his appointment. This polarised the USC into two antagonistic armed camps based on clan and sub-clan lines: the Ali Mhadi camp and the General Aidid camp.⁶¹⁴ The fierce fighting between the two camps lasted more than a hundred days and resulted in an estimated 25-30,000 deaths. The UN mediated a ceasefire in March 1992,⁶¹⁵ but the fighting continued, furthermore. Cases of conflict between the Somali National Front (SNF) and USC faction of General Aidid were also reported.⁶¹⁶ In December 1992, international forces led by the US landed in Mogadishu, consisting of more than 38,000 troops from 22 nations.⁶¹⁷ However, the UN withdrew from Somalia when the mission was aborted on 3–4 October 1993 after fighting erupted between peacekeepers and General Aidid.⁶¹⁸

⁶¹² For a comprehensive account of the rise and fall of the military regime, see Ingriis, M *Suicidal state in Somalia: The rise and fall of the Siad Barre regime* (2016).

⁶¹³ Samatar and Laitan (2008).

⁶¹⁴ The two contesting leaders, Ali Mahdi and Aidid, belonged to two closely related Hawiye sub-clans, the Mudulood and Habar-Gidir, respectively. For reasons of political expedience, these were mobilised in the power struggle.

⁶¹⁵ To uphold the ceasefire and assist humanitarian relief efforts, the UN Security Council adopted Resolution 751, which authorised the deployment of a security force of 50 UN troops to monitor the ceasefire in Somalia, an intervention code-named United Nations Operations for Somalia (UNOSOM-I).

⁶¹⁶ The conflict between General Aidid and the SNF resulted in further death and destruction.

⁶¹⁷ In November 1992, the US offered to establish a multinational force, the Unified Task Force (UNITAF), under its leadership to secure humanitarian operations. UNOSOM-1 was duly replaced by UNITAF. In March 1993, the UN decided to replace the UNITAF mission with UNOSOM-II. The latter's mandate was to enable continued relief efforts, restore peace and rebuild the Somali state. See Samatar, AI *'The Somali Challenge: From Catastrophe to Renewal?'* (1994) 3.

⁶¹⁸ Between 1992 and 1995, Somalia saw the presence of intervention forces comprising the United Task Force (UNITAF) and United Nations Operation in Somalia (UNOSOM). This operation led to the death of 24 Pakistanis, 19 US soldiers, and 500–1,000 Somalis. See Sahnoun, M *'Somalia: The missed opportunities'* (1994).

In the years thereafter (1991–2000), Somalia was wracked by civil war that resulted in death of many civilians and population displacement – millions were uprooted – on a scale the country had never seen before.⁶¹⁹ Samatar refers to this period as ‘*Dad Cunkii*’, the era of cannibalism.⁶²⁰ Warlords and sectarian elites continued battling with each other for power, notwithstanding that, as Samatar notes, none of them had any programme for national reconstruction.⁶²¹ Instead, they destroyed infrastructure and institutions, making the lives of ordinary people worse than unbearable⁶²² and in the process obliterating what little of the old regime was left.⁶²³ During these stateless years, elite political entrepreneurs and warlords used clans in their efforts to gain a monopoly of power, consequently fragmenting the country into clan fiefdoms.⁶²⁴ At the same time, Somalia witnessed numerous multinational armed interventions and failed warlord-driven reconciliation conferences.

4.6 Anatomy of Somali conflicts

As discussed in Chapter 1, no single issue can explain the failure and collapse of the state of Somalia.⁶²⁵ Scholars have instead identified several contributory factors, key among them being the fact that the country’s strategic location connecting Asia, Middle East, Europe and Africa attracted colonial competition and efforts at domination.⁶²⁶ Moreover, forming part of the Suez Canal, Somalia attracts oil-rich Gulf regions into its politics.⁶²⁷ Again, Somalia has been drawn into regional conflicts stemming from geopolitical tensions between Egypt and Ethiopia involving

⁶¹⁹ Samatar et al. noted that ‘a nasty civil war has engulfed the country since 1988 and the demise of the political order has produced an untold tragedy by consuming nearly 700000 lives and displacing over 3 million citizens’. They described the political calamity as one of the worst humanitarian crises in the world. See Samatar, AI; Lindberg, M and Mahayni, B ‘The dialectics of piracy in Somalia: the rich versus the poor’ (2010) 31(8) *Third World Quarterly* 1377-1394.

⁶²⁰ Samatar, AI ‘Destruction of State and Society in Somalia: Beyond the Tribal Conventions’ (1992) 30 (4) *The Journal of Modern African Studies* 325-641.

⁶²¹ Ibid.

⁶²² Samatar, AI ‘Fate worse than. Artificial borders is the insidious African elite politics: the Somali case’ (2019) 101 (3) *South African Geographical Journal* 357-378.

⁶²³ Samatar, AI ‘Somali reconstruction and local initiative: Amoud University’ (2001) (4) *World Development* 641-656.

⁶²⁴ Political elites mobilise and manipulate clan anxieties and old disputes in pursuit of their agendas.

⁶²⁵ M O Omar, ‘*The Road to Zero: Somalia’s Self-destruction*’ (1992).

⁶²⁶ Farah, I ‘Foreign Policy and Conflict in Somalia, 1960-1990’ (PhD diss., University of Nairobi, 2009), 187

⁶²⁷ Ibid.

Nile River politics.⁶²⁸ Yet again war between Ethiopia and Eritrea where sides fought proxy war in Somalia.⁶²⁹ Furthermore, Lyons points to Somali nationalism, particularly the aspiration of uniting all the remaining Somali regions (the NFD in Kenya and Goding region in Ethiopia) and the unwillingness of the country's neighbours to cede the dispute territories, as another factor contributing to state collapse.⁶³⁰ Somalia went to war with Ethiopia in 1964 and 1977/78 and the developments that followed such as the establishment of armed opposition, and military regime widespread killing of innocent citizens discussed previously weakened the the military regime and subsequent led to state collapse.⁶³¹ All of these issues have contributed to and sustained conflict in Somalia.⁶³²

In recent years, neighbouring countries and the international community have become embroiled in conflict in Somalia. As noted in Chapter 1, involvement of neighbouring countries (mainly due to the fears and apprehension of the pan-Somalia ideology), economic interests, proxy wars and the desire of neighbour countries to weaken Somalia.⁶³³ For example, the Ethiopian invasion in December 2006–January 2009 resulted in chaos and severe humanitarian crises in Somalia.⁶³⁴ Another example is that members of the international community, notably the US, fear the growth of terrorist groups and perceive Somalia as a breeding ground for international terrorism.⁶³⁵ This became especially pronounced after the 9/11 attacks. All actors, including the US, continue to support one group in Somalia against the other and as is discussed in Chapter 9,

⁶²⁸ Abdullahi, O 'The Role of Egypt, Ethiopia the Blue Nile in the Failure of the Somali Conflict Resolutions: A Zero-Sum Game' (paper presented at the annual meeting of the International Studies Association, Hilton Hawaiian Village, Honolulu, Hawaii, March 2005).

⁶²⁹ Ethiopia and Eritrea, along with their respective allies, have been struggling to outdo each other in Somalia. Lyons, T 'The Ethiopia-Eritrea conflicts and search for peace in the horn of Africa' (2009) *Review of Africa Political Economy* 1-14. See also Nyawachi, H 'East Africa: Ethiopia, Eritrea fuelling Somalia war' (Global Policy Forum, 2010) available at www.globalpolicy.org/security-council/index-of-countries-on-the-security-council-agenda/ethiopia-and-eritrea/48755-east-africa-ethiopia-eritrea-fuelling-somalia-war.html Accessed 4 December 2019.

⁶³⁰ Lyons, T 'Crises on multiple levels: Somalia and the Horn of Africa' in Ahmed Samatar (ed) *The Somali Challenge: From Catastrophe to Renewal?* (1994) 193.

⁶³¹ Ibid.

⁶³² Moller, B *The Somali conflict: the role of external actors* (2009).

⁶³³ The neighbouring countries of Kenya, Ethiopia and Eritrea have been involved in Somalia's affairs for many years. See Moller, B (2009).

⁶³⁴ Moller, B (2009)

⁶³⁵ Ibid.

this has led to extended periods of anarchy in Somalia. Adam Hussein attributes the failure of the Somali state to ‘personal rule, military rule, clan rule, poisoning of clan relations, urban terror, neo-fascist campaigns against the north, and dwindling international aid’.⁶³⁶ Menkhaus argues that terrorist groups such as Al-Shabaab and mafia networks are also reasons for the prolonged conflict.⁶³⁷ Al-Shabaab is currently the main warring faction fighting against the Somali government and AMISOM.⁶³⁸

An underlying factor that led to the collapse of the Somali state is the impact of the colonial period. Colonialism disrupted indigenous society, reinforcing and creating ethnic divisions. Mamdani makes this clear in an examination of the ways in which European colonial politics strategically fragmented African societies along ethnic lines through unequal distribution of power and resources, consequently favouring certain ethnic groups over others and thus aggravating cultural differences and antagonism between ethnic groups.⁶³⁹

In many African countries, the methods of colonial rule continued to be practised after independence, initially through repressive policies aimed at building nations out of culturally or ethnically defined divisions but all the while ensuring that the economic interests of elites prevailed. When corrupt elites, most of whom had collaborated with the colonial masters, gained political power, they generally sought to consolidate their hegemony by exploiting their decision-making power through a neo-patrimonial order. As a result, political and economic power is often monopolised by interest groups organised along ethnic, linguistic, religious, racial and/or cultural lines. Discrimination along these lines is then utilised in a competition to control the economic spoils of the nation-state. Mamdani notes that the transfer of cultural identities to the political domain by the political elites was to hijack power by using identity as a basis for condemnation,

⁶³⁶ Adam, HM ‘Somalia: A Terrible beauty being born’ In Zarman (ed) *Collapse States: the disintegration and restoration of legitimate authority* (1995) 69-89.

⁶³⁷ Menkhaus, K ‘Governance without government in Somalia: Spoilers, state building and the politics of coping’ (2007) 3 *International Security* 71-106.

⁶³⁸ The rise of Al-Shabaab is discussed in Chapter 4.

⁶³⁹ Mamdani, M ‘*Citizen and subject-Contemporary Africa and the legacy of late colonialism*’ (1996).

discrimination and marginalisation.⁶⁴⁰ Similarly, Samatar argues that ‘the African elite’s self-serving political economic behaviour has reified the colonial system of governance and consequently produced acrimonious internal divisions that appear to be even more destructive than those artificial international borders.’⁶⁴¹

After the departure of the colonial powers from Somalia, its post-colonial government continued to manipulate clan affiliation to further its own ends, particularly in the period 1967–1969. The country became infested by corruption and clanship politics, which led the military to overthrow the civilian government with the aim, or supposed aim, of eliminating clannish practices and corruption in government and society. Initially the military government introduced public rituals negating clan identification, this as a step towards banning it entirely. However, when the military regime began to become unpopular among Somalis, it resorted to the manipulation of clans and adopted the same divide-and-rule policies which the colonial powers had used. Likewise, the sectarian elites who toppled the military regime followed the same trend afterwards, manipulating clans, engaging in fierce fighting and scrambling for economic and political power, as a result worsening the lives of ordinary people and bringing about the disintegration of public institutions.⁶⁴²

Clan manipulation continues to the present day, with the current Somali leaders using it to legitimise their claims and to access power and resources. Such manipulation is made possible by grievances and the anticipation of benefits in which groups along clan lines were presented with economic advantages, excluded from power or put into a position of grievances and greed.

As noted by Kapteijns and Farah Besteman, conflict in Somalia remains a conflict among elites who fight over resources and power while drawing support from the shifting networks of identities in the country. Such identities are not only clan-based but relate to factors such as city,

⁶⁴⁰ Ibid.

⁶⁴¹ Samatar, AI ‘Fate worse than artificial boarders is the insidious African elites politics: the Somali case’ (2019) 101 (3) *South African Geographical Journal* 357-358.

⁶⁴² Ibid.

regions and among the Islamist group. In view of this, Samatar,⁶⁴³ Besteman⁶⁴⁴ and Kapteijns⁶⁴⁵ argue that the clan is not the problem that created the conflict in Somalia and the collapse of the state; what is the problem is the political elites' manipulation of clans to achieve their goals.

Rasna Warah adds more dimension to Somalia conflicts highlighting how a mix of internal and external forces conspired to perpetuate political instability, destroying any possibilities of economic renewal, creating dependence on external food and other resources.⁶⁴⁶ She noted that those who benefited from conflicts includes;- aid agencies, international media, foreign governments. Some officials from multinational organisations such as the United Nations and humanitarian organisation colluded to keep Somalia in a permanent state of under-development and conflict.⁶⁴⁷ Most of the western non-governmental organisations, Somali warlords and elites have long been accused of using international aid as their personal slush fund.⁶⁴⁸ Warah noted that every UN and humanitarian agency has projects in Somalia, yet the Somali people are worse off today than they were under military regime.⁶⁴⁹ The looted resources further contributed to conflict. which become the reward against which the militias and clan-based fiefdoms weighted the benefits of peace.

4.7 The transitional period: A chronology of peace-building and constitutional development conferences

After Barre was ousted, Somalia was engulfed in a civil war that displaced innumerable people. As the war unfolded, there were attempts by the international community, particularly the neighbouring states, to find a solution to the conflict. Over the years, the international community and Somalis have hosted numerous peace conferences to solve Somalia's problems.⁶⁵⁰ These

⁶⁴³ Samatar (1992, 2000, 2019).

⁶⁴⁴ Besteman (1991, 1999, 2014).

⁶⁴⁵ Kapteijns (2012).

⁶⁴⁶ Warah, R *War Crimes: how warloads, politicians, foreign governments and aid agencies conspired to create failed state* (2014).

⁶⁴⁷ Ibid.

⁶⁴⁸ Ibid.

⁶⁴⁹ Ibid.

⁶⁵⁰ A I Samatar, 'The porcupine dilemma: governance and transition in Somalia' (2007) 7 (1) *Bildhaan: An International Journal of Somali Studies* 39-90.

national conferences include the Djibouti Conference, the Addis Ababa National Reconciliation Talks, the Sodere Conference, the Cairo Conference, the Arta Peace Conference, and the Mbagathi peace conference (briefly discussed below).

4.7.1 The Djibouti Conference (1991)

Five months after the Barre government was overthrown, the Djibouti talks were convened. Bradbury notes that the conference, which became known as Djibouti I, opened on 5 June 1991 and concluded a week later on 11 June.⁶⁵¹ A second conference was held in July 1991 and was referred to as Djibouti II. A lack of comprehensive representation and control over the militias by the delegates resulted in the failure of the implementation of the accord reached.⁶⁵² The result of the Djibouti I and Djibouti II conferences was the reaffirming of the appointment of Ali Mahdi Mohamed as the interim president of the Somalia Republic for a period of two years. However, General Mohamed Farah Aidid rejected the appointment of Ali Mohamed as the interim president; this further split the outcome of Djibouti Conference.⁶⁵³

While these conferences were regarded as failures due to General Mohamed Farah Aidid's rejection, they were conceptually a success, because they were able to adhere to their agendas. However, the conferences' agendas were conceived to be narrow in comparison to the issues on the ground, such as insecurity, conflict between rival clans, mistrust and chaos. The Djibouti talks inadvertently exacerbated political tensions, which culminated in the explosion of armed conflict that destroyed much of Mogadishu in late 1991. The rivalries between Ali Mahad and General Aidid led to a highly destructive war in Mogadishu in November 1991.⁶⁵⁴ This was the first large-scale war in Somalia after the fall of the military regime.

⁶⁵¹ M Bradbury, *'Somalia: Prospects for Peace'* (1994) 4.

⁶⁵² Ibid.

⁶⁵³ Ibid.

⁶⁵⁴ S Samatar *Somalia: A Nation in Turmoil* (1991).

The Djibouti talks did not have the backing of domestic constituents; the leaders who participated in them were arguably pushing for their own interests. Throughout 1991, according to Menkhaus, no UN diplomatic initiative was taken on Somalia, and the international community largely ignored the crisis.⁶⁵⁵ However, the UN's diplomatic engagement began in early 1992, when, in response to requests from the Organization of Islamic Countries, the UN Secretary General, Boutros Boutros-Ghali, dispatched a UN representative to Somalia on a fact-finding mission. The goal of the mission was to determine if the faction leaders would accept UN mediation efforts.

The fact-finding mission quickly revealed that Aidid, unlike Al Mahdi (who welcomed UN intervention), was opposed to a UN intervention.⁶⁵⁶ Aidid feared a UN ceasefire would negate the military advantage he held over his rivals, further complicating his efforts to gain power. Aidid also had strong personal contempt for Egyptian-born Boutros-Ghali, whom he considered responsible for Egypt's strong support of Barre during Boutros-Ghali's term as Egypt's minister of state for foreign affairs. Despite Aidid's hesitation, both faction leaders agreed to a UN-brokered ceasefire in February 1992. The UN managed to negotiate a ceasefire between the two main belligerents in Mogadishu.⁶⁵⁷

However, the ceasefire failed to improve the humanitarian situation. Food aid was still being looted by faction leaders, and NGOs continued to struggle to provide relief to the starving Somalis across the country. Since the negotiated ceasefire applied to the two main warlords, it was seen as a window-dressing affair with an arguably temporary peace deal. The Djibouti process

⁶⁵⁵ Menkhaus notes that as media coverage of the Somali war and famine intensified, the UN Security Council imposed an arms embargo on Somalia and authorised a small UN operation in Somalia to find a diplomatic solution to the conflict (K Menkhaus 'The crisis in Somalia: Tragedy in five acts' (2007) *African Affairs*).

⁶⁵⁶ John Hirsch and Robert Oakley, *Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping* (Washington, DC: United States Institute of Peace, 1995), 50.

⁶⁵⁷ M Bryden and A Farah, '*The Somaliland Peace Committee: Case Study of Grassroots Peace-making Initiative*', *Report for United Nations Development Programme Emergencies Unit for Ethiopia* (1995) Addis Ababa, Ethiopia 23.

lacked the aegis from Somalis who were polarized by their clan militia affiliation.⁶⁵⁸ The conflict continued, and a year later, the Addis Ababa Conference was convened.⁶⁵⁹

4.7.2 The Addis Ababa peace conference (1993)

The 1993 Addis Ababa Conference on national reconciliation was convened by the UN.⁶⁶⁰ In comparison to the Djibouti talks, the Addis Ababa talks convened 15 clan-based factions and, according to Menkhaus, produced a rushed, vaguely-worded accord that sparked tensions between the UN and some armed factions.⁶⁶¹ The tension arose around the issue of whether the creation of districts and regional councils was to be a bottom-up process or one controlled by factions.⁶⁶²

The structure of the Addis Ababa peace conference was a subject of criticism even before it was officially inaugurated. Bradbury reports that the main concern was that the signatories at the conference were 15 faction leaders who were warlords responsible for much of the suffering in Somalia and regarded as criminals by many Somalis.⁶⁶³ They were invited to the conference because the UN Task Force⁶⁶⁴ needed to protect its own forces in Somalia, and not because of the need to secure a successful outcome; a level of legitimacy was thereby conferred on the warlords.⁶⁶⁵

⁶⁵⁸ Touval, S and Zartman (1985)

⁶⁵⁹ Ibid.

⁶⁶⁰ M Bradbury (1994) 22.

⁶⁶¹ K Menkhaus, 'The crisis in Somalia: Tragedy in five acts' (2007) *African Affairs*.

⁶⁶² The crisis forced the two leaders of the USC, Ali Mahdi and Aidid, to find an agreement. In March 1992, a ceasefire was signed, and in April 1992, the UN decided to enforce a peace-making operation, UNOSOM (UN-resolution 751/1992).

⁶⁶³ Bradbury (1994) 23.

⁶⁶⁴ For a detailed analysis of the US intervention in Somalia, see Ken Menkhaus and Louis Ortmayer (2011), a work which outlines some of the key decisions made by the US during the Somali crisis. The book covers the US response to the Somali famine, the decision to intervene, the parameters of US intervention, the reaction to the 5 June 1993 attack on UN peacekeepers, and the US response to the 3 October 1993 battle in Mogadishu, where 18 American soldiers were killed. The study also provides detailed accounts of discussions among decision-makers in both the Bush and Clinton administrations, and outlines the options considered in response to the above-mentioned decision points. The work also provides a detailed historical account of US involvement in Somalia. K Menkhaus and O Louis, '*Key Decisions in the Somalia Intervention*'. (2011) Washington, DC: Institute for the Study of Diplomacy, Georgetown University, 2011.

⁶⁶⁵ The Security Council endorsed the deployment of another 3,000 troops to the region to protect relief efforts. See United Nation Security Council (UNSC) (1992a). Most of these troops were never sent, and the Security Council authorised member states, under the guidance of the US, to form the Unified Task Force (UNITAF), which aimed at establishing a safe environment for the delivery of humanitarian assistance. See UNSC Resolution No. 794/1992.

The 15 leaders signed the final agreement on 27 March 1993. The Addis Ababa agreement reaffirmed the January 1993 agreement on ceasefire and disarmament and reached an agreement on the formation of transitional mechanisms for the restoration of political and administrative structures. In particular, it was agreed that a Transitional National Council (TNC), a central administrative department, regional councils in 18 regions of the country, and direct councils in all districts of the country would be formed and a civil administration re-established. The TNC was supposed to consist of three representatives and to include one woman from each of the 18 regions, as well as five seats for Mogadishu and single-seat nominees from each of the 15 factions present at the Addis Ababa Conference. The structure was to be effective for a period of two years. Subsequently, four committees were established, dealing respectively with charter drafting, the peaceful settlement of disputes, rehabilitation and reconstruction, and ceasefire and disarmament. A charter for the TNC was to be ready for approval at the second session of the national reconciliation on 8 June 1993. In addition, the TNC was expected to be established by July 1993.⁶⁶⁶

The Addis Ababa agreement's scope was generally wider than that of the Djibouti Conference, and it had many signatories. However, there were no firm commitments by the international community to underwrite the process financially. It was during the Addis Ababa process that international diplomacy first gravitated towards the idea of establishing a central government, as opposed to focusing on the resolution of the conflict before state-building. The international community's preference stemmed from what Moller describes as a relentless quest for state-building, given that the international system is constructed around states to such an extent that it cannot hold stateless territories inhabited by people who cannot be classified as citizens of any state.⁶⁶⁷ A failure to underwrite the process finally resulted in delaying the implementation of the peace process, thus creating breathing space to allow factional leaders to resort to strategy, to form allies and strengthen their support base in the run-up to the formation of the TNC. The

⁶⁶⁶ A Bryden and H Hänggi (eds) *'Security Governance and Post-conflict Peacebuilding'* (2005).

⁶⁶⁷ Møller (2009) 14.

strategic objective of the political realignment of forces was to incline the balance of forces and power in favour of those who might become powerful with regard to the control and command of key territories.⁶⁶⁸

4.7.3 The Galkayo Peace Process

Factional leaders initiated internal regional peace conferences primarily to attain political superiority over their rivals. To this end, two peace conferences were initiated, one focused on Kismayu and the lower and middle Juba regions, and the second focused on Galkayo and the central regions of Mudug and Galgadud.⁶⁶⁹ The Galkayo process was locally driven and did not enjoy UNOSOM support, mainly due to the involvement of General Mohammed Farah Aideed. It was convened by the predominately Habr Gedir, Majerteen and Marehan sub-clans and a few elders in Mudug region. The initiatives followed the defeat of General Aideed by the Abdullah Yusuf Ahmed forces. The dispute was over the rich grazing land in the Mudug region. Significantly, the SSDF victory over General Aideed was a turning point in his party's willingness to participate in the Addis Ababa Conference.⁶⁷⁰

Both General Aidid and Abdullahi Yusuf Ahmed participated in the Galkayo peace conference, and Bradbury points out that it was not clear where the initiative for the peace conference came from.⁶⁷¹ One assumption is that it was initiated by General Aideed and Abdullahi Yusuf Ahmed, while another possibility is that it was initiated by the clan elders and hijacked by the two warlords to strengthen their own support base. General Aidid called a meeting on 29 May 1993 to draft a peace agreement for the central and southern regions of the country with the hope that UNOSOM would provide the financial and logistical support he had requested earlier. However, UNOSOM had not been involved in the Galkayo initiative and refused to recognise the

⁶⁶⁸ Brons, *Society, Security, Sovereignty and the State in Somalia: From Statelessness to Statelessness* (2001).

⁶⁶⁹ Bradbury (1994) 26.

⁶⁷⁰ Lewis (2008) 287.

⁶⁷¹ Bradbury (1994) 28.

conference as an official process or support it. There were suspicions about Aidid's willingness to bargain over Kismayu in return for a settlement in Galkayo; there was also concern about the participation of Omar Jess, who had been marginalised at the Kismayu Conference.⁶⁷² UNOSOM then made the strategic error of trying to marginalise General Aidid, thereby disregarding his important role in conflict resolution in Somalia.

During the Galkayo Conference, resolutions were made with the intention of normalising relations between the Habr Gedir and the Majerteen. These included the request that UNOSOM should assist in the demobilisation of encamped militias and in the restoration and maintenance of all technical equipment. Significantly, the conference resolved to re-open the route connecting north and south Galkayo and see the return of property seized during the conflict. As far as the UN was concerned, the most positive outcome of the Galkayo Conference was the return to the resolution of the Addis Ababa Conference. UNOSOM could not look beyond its narrow interests, and worked towards the implementation of the conference outcome, which was the demilitarisation of militia groups, as agreed on by the conference in the Karaan district of Mogadishu. UNOSOM was quick to support it. Because of UNOSOM's clear preference for the Ali Mahdi, General Aidid began to spread anti-UN propaganda.⁶⁷³

In addition, the 5 June 1993 killing of the Pakistani peace-keeping contingent of UNOSOM dealt a heavy blow to the Addis Ababa peace process. The situation turned into an urban war of attrition in Mogadishu between the UN and a faction of Somalis loyal to General Aideed. The TNC could not be conceptualised because of the various role-player's political manipulation and hidden agendas, evident in the internal peace conferences, of which some group were supported by the UN. Given the fact that the signatories to the Addis Ababa Conference were still at war with one another cognitively, emotionally and physically (all three of these dimensions are critical for

⁶⁷² Bradbury (1994) 28.

⁶⁷³ Ibid.

sustainable peace and security in Somalia),⁶⁷⁴ the TNC would have been rendered ineffective if it had been constituted.

4.7.4 The Sodere Conference (1996–1997)

The third major reconciliation effort was the Sodere Conference, held from 1996 to 1997. This meeting, according to Clarke et al., was convened by Ethiopia to revive a decentralised, federal Somali state as opposed to the unitary systems that were being advocated for by factions that opposed Ethiopia.⁶⁷⁵ At the same time, Menkhaus observes, a rival peace process was held in Egypt. The process was dubbed ‘the Cairo Conference’ and its purpose was to undermine the Sodere Conference. Despite this, the Sodere Conference was able to achieve a landmark principle of fixed, proportional representation by clans known by the short-hand phrase, the 4.5 formula.⁶⁷⁶ The 4.5 formula was an important principle that would be used later in other conferences and government appointments. Bryden and Hanggi argue that there has been an uncritical reliance on the 4.5 formula to determine clan representation in talks and in transitional governments, despite objections from several delegates.⁶⁷⁷

4.7.5 The Cairo Conference (1997)

The 1997 Cairo Conference was convened by Egypt to promote a unitarily centralised Somali state and to empower the Somali factions which had boycotted the Sodere talks.⁶⁷⁸ It emerged that the two broad coalitions from Sodere and Cairo formed the basis for the main political divisions in Somalia in subsequent reconciliation efforts. The rivalry stemmed from the fact that Egypt and Ethiopia were against each other’s effort and progress in peace-building.⁶⁷⁹ Therefore, the best

⁶⁷⁴ Ibid.

⁶⁷⁵ W Clarke and J Herbst (eds) *Learning from Somalia: The Lessons of Armed Intervention* (1997) 58.

⁶⁷⁶ Menkhaus notes that the power-sharing formula divided parliamentary seats between the four clan families of the Dir, Darood, Hawiye, and Digil-Mirifle and a .5 given to the Bantu, Benadiri and other minority clans. See Menkhaus (2007). Elmi (2010) 29 notes that in the peace talks, the fifth major clan – the Isaaq – was subsumed under the Dir clan.

⁶⁷⁷ A Bryden and H Hänggi (eds) *Security Governance and Post-conflict Peacebuilding* (2005).

⁶⁷⁸ K Menkhaus, ‘The crisis in Somalia: tragedy in five acts’ (2007) *African Affairs*.

⁶⁷⁹ Elmi and Barise (2006) 40.

way for the two states to make their differences clear was through the sabotage of the reconciliation efforts. The Ethiopians supported the Somali Salvation Alliance (SSA), which consisted of 15 factions, while the Egyptians supported the SNA, which consisted of 13 factions that were also supported by Libya.⁶⁸⁰ The SSA was led by Ali Mahdi, while the SNA was led by Hussein Mohamed Aidid.

The objective of the Cairo peace process was to re-establish the central government. The form and type of the future Somali government was contested by the international community, and no consideration was given to the Somalis. Ultimately, the Cairo Conference failed to put the root causes of the conflict on the agenda. Subsequently, it failed due to a lack of political focus on the underlying causes of conflict and due to the parties' overpowering desire to agree on amicable solutions to their conflict. The Cairo Conference, like the Sodere Conference, was testament to the destabilising role of external actors – in this case, that of Egypt and Ethiopia.

4.7.6 The Arta Peace Process (2000)

In August 2000, Djibouti's president Ismael Omar convened the reconciliation conference commonly referred to as the Arta Peace Process. It made an important political breakthrough in producing a power-sharing agreement to establish a Transitional National Government (TNG) that enjoyed a significant degree of acceptance in the country and reoccupied Somalia's seats at the UN and other international fora. This was due in part to a novel peace process that involved comprehensive preparatory consultations not only with the usual faction leaders but also with clan elders, civic leaders and businesspeople.⁶⁸¹ Although it adopted an externally driven, top-down state-building approach, the Arta Conference was able to incorporate civilians such as intellectuals and provided them with an opportunity to play a significant role as decision-makers.⁶⁸² Women were also given the opportunity to participate.

⁶⁸⁰ Ibid.

⁶⁸¹ V Jamal, 'Somalia: Understanding an unconventional economy' (1998) 19 (2) *Development and Change* 208.

⁶⁸² Ibid.

Arta's first most important political breakthrough was the creation of a TNG, based again on a 4.5 power-sharing formula and a principle of fixed proportional representation; a number of seats were allotted to each of the four major Somali clan families – the Hawiye, Darod, Dir and Digil-Mirfile – and a half-place to minorities and women.⁶⁸³ The adoption of the 4.5 formula for the proportional representation of Somali clans in government provided a mechanism for addressing the problem of representation.⁶⁸⁴ An important innovation of Arta was the inclusion of transitional tasks in the Charter, tasks which involved furthering national reconciliation, establishing security and drafting a constitution. Pressure from a group of factions and political leaders to reverse the model of a unitary state (agreed on previously) and replace it with the federated state espoused by the Somalia Reconciliation and Restoration Council (SRRC) did not materialise.

Abdulqasim Salat Hassan, the military regime's former Minister of Interior, was elected as a transitional president and Ali Kalif Galyedh as Prime Minister.⁶⁸⁵ The election of Abdulqasim Salat Hassan (Hawiye) as President was perhaps done to appease the Hawiye opposition into accepting the Arta process outcomes.⁶⁸⁶ The EU, the UN and the US, as well as Egypt, Italy and Libya, later endorsed the Arta Peace Process. Support for this conference was based on the expectation that a form of government structure would emerge. However, the notorious warlords from Mogadishu were absent. They had been invited, but not as veto-holders, and therefore most stayed away, complaining that they were devalued by not being treated as the top leaders of their respective communities.

⁶⁸³ Ibid.

⁶⁸⁴ Through the use of the 4.5 formula, 810 delegates were selected to participate in the Arta talks. Of the 810, 180 delegates were selected to represent each of the four major clans (including 20 seats reserved for women of major clans). Likewise, 90 seats were allocated to the delegates from minority clans, including 10 seats given to the minority women. Lewis (2008) 81–2.

⁶⁸⁵ Lewis (2008) 82.

⁶⁸⁶ The election of President Salat Hassan and Prime Minister Galyedh is seen as a key weakness of the TNG. Samatar notes that both of them are remnants of the military regimes and have no broad vision for the country. See Samatar AI (2008).

Despite the endorsement of the international community, the TNG had control only over a few streets in Mogadishu, while control over the greater parts of the country was divided among dominant warlords such as Mohammed Qanyere Afrah, Musa Sudi, Ali Osman Atto, Hussein Aideed and Mohammed Dhere. The failure of the Arta Peace Process can be ascribed to its lack of focus on conflict resolution and failure to create a mechanism to address the underlying causes of the conflict in a systematic and coherent manner. The focus instead on the creation of a government before completing the resolution phase was short-sighted. The conceptual framework of creating a government before making peace has since then become a defining feature of international diplomacy in the resolution of the Somali conflict, despite its shortcomings.⁶⁸⁷ Samatar argues that ‘the conference’s greatest weakness [was the] assumption that both clan identity and its associated numerical weight were used to be the mechanism for representation’.⁶⁸⁸ Furthermore, he observes that all the key leaders of TNG, including President Abdiqasim, were remnants of the military regime and had failed to atone publicly for their deeds, thus undermining popular hopes for the beginning of a new chapter in the country’s political history.⁶⁸⁹

Lewis argues that although they claimed to be legitimately appointed representatives, the delegates who attended the conference were self-appointed, a factor he views as an obvious error in a process that sought to appeal to all sections of the nation.⁶⁹⁰ The delegates did not have a role to play in the resolution of the conflict, yet they were given a prominent role in resolving it.⁶⁹¹ Similar mistakes were made in the Addis Ababa peace process. Both processes failed to persuade disputants to develop concrete measures to resolve the conflict, even though a ceasefire agreement had been signed and could not be successful without clearly defined implementation mechanisms

⁶⁸⁷ I Ahmed and R Green, ‘The heritage of war and state collapse in Somalia and Somaliland’ (1999) 20 *Third World Quarterly* 1.

⁶⁸⁸ Samatar, AI ‘The Porcupine dilemma: governance and transition in Somalia’ (2008) (7) *Bildhaan: An International Journal of Somali Studies*.

⁶⁸⁹ *Ibid.*

⁶⁹⁰ Lewis (2008) 81.

⁶⁹¹ K Menkhaus, ‘Traditional conflict management in contemporary Somalia’ in I Zartman (ed) ‘*Traditional Cures for Modern Conflicts: African Conflict ‘Medicine’* (2000) 64–71.

involving all major role-players in the conflict.⁶⁹² Ironically, the Mbagathi Peace Process detailed below is also based on the assumption that building a Somali state institution would translate into peace-making.⁶⁹³ Continued fighting between the president and prime minister eroded the trust placed in them by the international community, particularly the Djibouti people and government. The prime minister was eventually dismissed after a parliamentary vote of no-confidence.⁶⁹⁴

4.7.7 The Eldoret/Mbagathi Peace Process (2004)

The reconciliation initiative hosted by member states of the Intergovernmental Authority on Development (IGAD) in Eldoret/Mbagathi in Kenya represented the first sustained effort by regional states to broker peace in Somalia. It was managed by the frontline states of Djibouti, Ethiopia and Kenya, which aimed to mitigate the impact of conflicting regional agendas. As in previous conferences, Ethiopia continued to play a dominant role. The agenda of the conference was changed from reconciling the TNG and the workloads to establishing a government with a new agenda.⁶⁹⁵ The list of delegates was changed several times to accommodate Ethiopian interests and with no significant effort made to accommodate Somali resources person.⁶⁹⁶

At the conference, a committee was tasked to draft a new Transitional Federal Charter (TFC). As constitutional drafting become controversial, the committee broke into two groups and produced two different document; to reconcile the two documents, 13 Somali experts, led by Prof Abdi Ismail Samatar, were tasked to harmonise them.⁶⁹⁷ Unfortunately, due to the Ethiopian lobby and support from sectarian warlords, the good work done by the harmonisation committee, work widely welcomed by Somalis, was prematurely abandoned. As a result, the faction leaders and

⁶⁹² A Ismael, 'Somaliland, Puntland and Southern Somalia: Report on Conflict Prevention, Management and Resolution: Capacity Assessment Study for the IGAD Sub-region' (2001) *Djibouti: Inter Governmental Authority on Development* 3–5.

⁶⁹³ A Moravcsik, 'A new liberalism' in *The Oxford Handbook of International Relations*, C Reus-Smith and D Snidal (eds) (2008) 249.

⁶⁹⁴ Samatar AI and Samatar AI 'Somalia Reconciliation: Editorial Note' (2008) 3 (4) *Bildhaan: An International Journal of Somalia Studies*.

⁶⁹⁵ Ibid.

⁶⁹⁶ Ibid.

⁶⁹⁷ Samatar, AI (2008).

warlords that had the support of Ethiopia, IGAD, and Kenya imposed their will and version of the Charter through an illegitimate process. The TFC became the law of the land in subsequent years.

The elected delegates at the Mbagathi Peace Process created the Transitional Federal Institutions (TFI), including the Transitional Federal Parliament (TFP) and an executive branch, the Transitional Federal Government (TFG). The Ethiopians lobbied hard for Abdullahi Yusuf Ahmed to become president of the TFG. Lewis alleges that the process that led to the formation of the TFG repeated all the major mistakes made in previous peace processes.⁶⁹⁸ Samatar and Samatar note that ‘the entire operation had focused on power-sharing and the number of delegates representing different factions and groups rather than the issues that had brought Somalia to its dismal predicament’.⁶⁹⁹ The authors add that no significant efforts were made towards reconciling the warring factions.⁷⁰⁰

Ethiopia’s support of the process was seen as critical to the success of the Mbagathi process, as was evident in the IGAD’s desire to address Ethiopian interests without due regard to the interests of the Somali people. Samatar and Samatar point out that ‘Ethiopia seemed bent on helping [to] establish either a weak client state in Somalia led by a favourite warlord or, perhaps better, fragmented and Bantustan-like territories in which Addis Ababa would call the shots more directly’.⁷⁰¹ When Abdullahi Yusuf Ahmed was elected president of the TFG, his first act was to appoint a pro-Ethiopian prime minister, namely Ali Mohammed Ghedi (Abagal). Adam asserts that Ghedi is a close associate of the late prime minister of Ethiopia, Meles Zenawi.⁷⁰²

Sharif Hassan Sheikh Aden (former president of the South-West Federal Member State) was elected as speaker of the TFG in an attempt to strike a balance of power between the two factions in the TFG. The reason for this is that he was seen as unaligned to the pro-Ethiopia faction

⁶⁹⁸ Ibid.

⁶⁹⁹ Samatar, AI and Samatar AI (2008) 9.

⁷⁰⁰ Ibid.

⁷⁰¹ Samatar, AI and Samatar AI (2008) 11

⁷⁰² Adam (2008) 180.

of the president and the prime minister. However, he did maintain some level of neutrality with regard to the factions that emerged from the Mbagathi Peace Process. Nevertheless, he did not escape criticism from the pro-Ethiopia group, as he was labelled an Islamist due to his proposal that the TFG should start negotiations with the Union of Islamic Courts (UIC) (the rise and fall of which is discussed below under 4.12). The Ethiopian government was opposed to reaching out to the UIC; therefore, this led to the isolation of the speaker.⁷⁰³ The US and Ethiopian governments were of the opinion that the Somali Islamic Movement was ruled by the extremists who were harbouring terrorists, which included the suspects in the 1998 bombing of the US embassies in Kenya and Tanzania.⁷⁰⁴

Importantly, the US and Ethiopia's perceptions of the Somali Islamic Movement have influenced their foreign policy formulation and implementation. Their policies have revealed a neo-liberalist approach which views the conflict as a dangerous, high-stake game that can be won through domination, control and counter-control strategies.⁷⁰⁵ The Mbagathi Process took place at a time of challenging international security threats, characterised by the post-11 September 2001 attacks in the US. The fact that Somalia is a Muslim state meant that America had a strong interest in the direction the peace process was taking, mainly due to the Bush administration's global war on terrorism. As with Afghanistan, the failed state of Somalia was viewed by the Bush administration as a safe haven for Al-Qaeda-inspired groups. The US thus exerted considerable pressure on the state-building approach to conflict resolution in Somalia.⁷⁰⁶

4.7.8 The Djibouti Peace Process (2009)

The obvious defects of the TFG, the escalation of the conflicts, and the tragic humanitarian disasters led the international community to consider new peace talks. The aim was to reach out

⁷⁰³ U Tavolato, *'Djibouti to Mbagathi, Making or Breaking Peace'* Nairobi, 12 January 2004.

⁷⁰⁴ Adam (2008) 180.

⁷⁰⁵ Menkhaus (2003) 21.

⁷⁰⁶ Ibid.

to the moderate elements of the Alliance for Re-Liberation of Somalia (ARS),⁷⁰⁷ broaden the base of the TFG, and marginalise the radicals. With these objectives in mind, the Djibouti Peace Process was started in Djibouti on 9 May 2008. However, the peace process divided the ARS between the ARS-Djibouti (ARS-D), who were willing to negotiate, and ARS-Asmara (ARS-A), who were opposed to any dialogue with the TFG before the withdrawal of all foreign troops.⁷⁰⁸

It was in this difficult situation that the Djibouti Peace Process was initiated by the UN. It was intended to stabilise the country by forging a political alliance between the ARS and the TFG. However, ARS -A rejected any peace agreement with the TFG and vowed to fight until all foreign troops left Somalia. Its leader, Sheikh Dahir Aweys, went back to Somalia and joined Hizbul Islam to achieve this objective in April 2009 only a few months after the TFG II took over.⁷⁰⁹ In October 2008, the TFG and the Alliance for the Re-liberation of Somalia-Djibouti (ARS-D) signed the Djibouti Agreement and created a new Somali TFG II. In January, the new government expanded its parliament to include some 200 ARS-D members and 75 civil society and opposition representatives. Sheikh Sharif, former ICU leader from the Hawiye/Abgal clan, was elected as the new president by the expanded parliament, and Ali Sharmarke from the Darood clan was selected as a prime minister, which was followed by the election of 36 cabinet members.⁷¹⁰ One of the points of agreement between the TFG and the ARS-D was the full withdrawal of the Ethiopian military forces from Somalia. The Ethiopian withdrawal was eventually realised in January 2009, and the responsibility for stabilising and protecting peace in Somali shifted to the African Union Peace Keeping Mission in Somalia (AMISOM).

The ARS-D and the TFG agreed to form a new unity government by expanding the number of Somali parliamentarians to 550. The two sides also agreed to establish a Joint Security Force.

⁷⁰⁷ The Alliance for the Re-liberation of Somalia (ARS) was created in September 2007 when members of the Islamic Courts Union and Somali opposition leaders met in Asmara, the capital of Eritrea, and united to oppose Somalia's Transitional Federal Government (TFG) and the latter's Ethiopian allies. The group was active until January 2009, when ARS members were formally incorporated into the TFG parliament following a peace agreement.

⁷⁰⁸ Ibid.

⁷⁰⁹ Kidist (2009) 17.

⁷¹⁰ T Dagne, 'Somalia: Current conditions and prospects for a lasting peace' (2012) *CRS Report for Congress*.

Ethiopian forces fully withdrew as agreed by the Djibouti Peace Process. Despite the establishment of the new government, the security situation remained volatile. The Djibouti Peace Process took place under the sponsorship of the UN and was supported by IGAD member states.

4.8 Comments on peace-building conferences

Most of the above peace-building and reconciliation conferences were sponsored by international and regional efforts but failed to establish security and peace in Somalia. A common notable factor of these peace-building process was their similar failure. They failed in providing permanent and sustainable peace to the conflict in Somalia and reasons for the failure include the following.

1) The top- down approaches that did not include the people. The conference organisers ignored civic groups, the professional class, traditional leadership, community organisations and Somali academics. The latter were not part of the destruction of the Somali state and had invested in peace-making and civic actions at local, regional and the national levels, but were systematically excluded from participating in the process.⁷¹¹

2) The external agenda, in the sense that most of the conference process were hosted by the IGAD and supported by IGAD members including Kenya, Djibouti and Ethiopia. So, representatives of both Kenya and Ethiopia used the conferences to engineer the future they desired for Somalia.⁷¹²

As Samatar and Samatar rightly note, Ethiopia and Kenya managed the process and acted as unabashedly partisan facilitators and mediators.⁷¹³ They further argue that regional countries used their authority to undermine the integrity of the process and continued pushing their agendas into the conferences.⁷¹⁴ As such, many Somali scholars see the conferences not as Somali-driven, further to which the outcomes of the conferences were not widely accepted by Somalis.

⁷¹¹ Eno, M. A. *The Bantu-Jareer Somalis: Unearthing Apartheid in the Horn of Africa*. (2008) London: Adonis and Abbey Publishers Ltd.

⁷¹² For instance, Samatar and Lyons noted that ‘key regional and international actors endorsed the Djibouti peace initiative financially and technically as means to simultaneously pursue their own geopolitical and foreign policy interests’ Samatar and Lyons (2010) at 29.

⁷¹³ Samatar, A. I. and Samatar A. I. ‘Transition and Leadership’ (2005). *Bildhaan: An International Journal of Somali Studies*, 5, 1-30.

⁷¹⁴ Ibid.

3) The conference failed to address the major causes of the conflicts as well the inability of the conference to produce deals or an agreement that satisfied all the actors. Despite strong international support, most of these conferences had no tangible outcome due to political competition over leadership and representation, rather than a focus on compromise and reconciliation.⁷¹⁵ Samatar and Samatar attribute the failure of the conference to hapless leadership.⁷¹⁶

4) It is also alleged that in all the conferences, IGAD co-opted those responsible for the collapse of the Somali state and the perpetration of crimes against humanity.⁷¹⁷ These group includes former warlords, who dominated the conferences⁷¹⁸ Warlords profited from the war, they monopolised economic power and readily utilised corruption, fear, force and violence to undermine the peace talks which did not promote their core economic predatory concerns. Menkhaus noted that ‘...for some political and economic actors who have survived and thrived in a stateless setting, embracing a state-building agenda constitutes a leap of faith they are currently not willing to take.’⁷¹⁹ Menkhaus linked wartime actors’ behaviour to what he termed Somali factional leaders’ risk-averse tendencies, which he argued were to blame for the perpetually failing peace talks.⁷²⁰ Therefore, the rewarding predation and economic agendas and booming war economies were key deterrents to peace in Somalia.

Given the combination of the misplaced focus of the warlords, external actors and hapless leaders, in addition to a desire to continue with their predatory economic agendas, these actors were concerned and uneasy over the uncertainty of whom among the rival militia leaders would

⁷¹⁵ Menkhaus (2003). See also Mukhtar, MH, ‘African reconciliation conference: the unbeaten track’ (2006) 3 (5) *African Renaissance* 226-23.

⁷¹⁶ Samatar AI and Samatar AI (2005).

⁷¹⁷ Eno, M. A. ‘The Homogeneity of the Somali People: A Study of the Somali Bantu Ethnic Community’ (2005) PhD Dissertation, St Clements University, Turks and Caicos Islands.

⁷¹⁸ Elmi noted that ‘...criminal warlords and their militias continue with the killing, hostage-taking, displace and rape, the international community seems to tacitly endorse their actions by convening reconciliation conferences for warlaods while excluding civil society and traditional leaders. ; Elmi, A (2004).

⁷¹⁹ Menkhaus, K ; State collapse in Somalia: second thoughts’ (2003) 30 (97) *Review of African Political Economy* 406.

⁷²⁰ *Ibid.* at 405.

head the transitional authority which the peace-process might beget. Therefore, enticed by the rewards of predatory war economics, wartime actor's economic agenda and external interest become the dominant influence displacing political commitment to any reconciliation objectives of the peace process.

The next section briefly appraises the formation of the transitional government in Somalia and challenges it has faced.

4.9 Transitional government

4.9.1 Transitional National Government

The formation of the TNG in August 2000 was the most significant development that happened in the politics of Somalia in a decade. As mentioned above, the TNG became the first authority since the fall of Barre to fill Somalia's seat at the UN and regional bodies.⁷²¹ The UN and several Arab states supported it, but it failed to win the backing of Ethiopia or the confidence of major donor governments.

The selection of the president of TNG began on 13 August 2000. The 225 members of parliament were selected through the 4.5 power-sharing formula. President Guelle of Djibouti added 20 additional legislatures to de-escalate tensions among the clans. In turn, the 245 members of parliament selected the speaker of the parliament, Abdalla Derrow, and the transitional president, Abdulqasim Salad Hassan. Samatar contends that 'the TNG accord was made possible because the warlords were not allowed to dominate the gathering',⁷²² adding that 'the Somali government formed in Djibouti was broadly supported by the population'.⁷²³ Even so, the international community did not provide sufficient support to the TNG.

⁷²¹ The TNG was the first Somali government since 1991 to secure a measure of international recognition, enabling Somalia to reoccupy its seat at the UN and regional bodies.

⁷²² Samatar, AI 'Ethiopia invasion of Somalia, US warlordism and AU shame' (2007) 34 (111) *Review of African Political Economy* 155-165.

⁷²³ Ibid.

In 2001, groups that opposed the TNG, including Abdullah Yusuf, met with 17 other Somali political groups and alliances in Awasa, Ethiopia, where the Somali Reconciliation and Reconstruction Council (SRRC) was formed to oppose the Arta Peace Process and the TNG and promote the formation of a federal Somali state.⁷²⁴ Ethiopia supported the SRRC militarily and actively lobbied for it at the AU and other international organisations to unseat the TNG.⁷²⁵

In an effort to reconcile the TNG and the SRRC,⁷²⁶ IGAD launched a new national reconciliation process before the TNG mandate had ended. This process eventually developed into a major Somali reconciliation meeting. Commonly referred to as the Mbagathi Conference in Kenya (discussed above), the conference produced a ceasefire agreement, signed by 24 factional leaders, that emphasised the need to create a federal structure and reverse the unitary structure established at Arta.⁷²⁷

In Somalia, the TNG did not follow through on the reconciliation efforts begun in Arta and became associated with the powerful Mogadishu clans and the business class, which included Islamists. In the aftermath of the 9/11 attacks, the failed state of Somalia attracted renewed interest as a potential haven for international terrorists. The TNG's reputation suffered as the growing influence of Islamic courts and Islamic charities increased suspicions about its links with militant Islamists. To some Somalis, the return of government provided the best opportunity for Somalia for a decade, and they criticised Western governments for failing to support it adequately. The experience of the TNG also demonstrated the difficulty of securing lasting agreement in Somalia that did not address the interests and needs of both internal and external actors.⁷²⁸

⁷²⁴ The Somali Reconciliation and Reconstruction Council (SRRC) is an umbrella structure of warlords, created with help of Ethiopia.

⁷²⁵ Samatar, AI 'The Porcupine dilemma: governance and transition in Somalia' (2008) (7) *Bildhaan: An International Journal of Somali Studies*.

⁷²⁶ In March 2001, the principal warlords in Somalia established a coalition called the Somali Reconciliation Council and the Restoration Council (SRRC). The main actors in the coalition were Abdullahi Yusuf and Hassan Mohamed Nur (shatigudud) (see I W Zartman (2009)).

⁷²⁷ See Mbagathi peace agreement (discussed above).

⁷²⁸ *Ibid.*

Zartman asserts that the TNG's failures cannot be attributed only to Ethiopia's refusal to underwrite it, but exist primarily due to the uncontrollable warlords in Mogadishu and Bossaso. The Mogadishu-based warlords became a force to reckon with due to the inability of the TNG president Abdulqasim Salat Hassan to reach out to clan elders and undercut their support-base within the clan structures of Somali society.⁷²⁹ In addition, the warlords had a wider clan representation than the TNG. They had Mohammed Qanyere Aftrah (representing the Murosade sub-clan of the Hawiye), Musa Sudi Yalaho (an Abgal), Omar Finish (an Abgal), Ali Osman Atto (a Habr Gedir, Saad) and Rashid Rage (a Habr Gedir Ayr). One of the shortcomings of the Mogadishu warlords' strategy was that they only included the dominant Hawiye clan in their political formation. In addition, the TNG failed to rise to the occasion and to appeal to other clans not reflected in the Mogadishu warlords' structure.⁷³⁰ The TNG was succeeded by the TFG, which was established in Nairobi.

4.9.2 Transitional Federal Government

In 2002, IGAD took up the challenge of reconciling the TNG and the SRRC, each supported by an IGAD member state. The influence of external actors was apparent during the two-year reconciliation conference facilitated by Kenya. The TFG, which succeeded the TNG in November 2004, saw Somalia's leadership shift from the Mogadishu-centred, Hawiye- and Islamist-dominated coalition to the federalist, Darood- and Ethiopian-backed coalition. Abdullahi Yusuf was chosen as the transitional president.

However, like its predecessor, the TFG fell short of being a government of national unity. Power was concentrated in a narrow clan coalition, while Abdullah Yusuf was viewed as a client of Ethiopia. His immediate call for a military force from AU to help him establish his authority in the capital alienated his small support-base in Mogadishu. Without persistent international

⁷²⁹ W Zartman, 'Conflict resolution and negotiation' in J Bercovitch, V Kremenyuk and I W Zartman (eds) *The Sage Handbook of Conflict Resolution* (2009).

⁷³⁰ Ibid.

financial and military support, the TFG would not have survived either its internal divisions or the rise of the Islamic Courts Union (ICU) in 2006.⁷³¹

The TFG was established using the 4.5 formula, in which power was shared between all six clans. The biggest share (4 per cent of all key government positions) was allocated to the four main clan families of Somalia (Hawiye, Darrow, Digil-Rahanweyn and Dir), while the minority clans were given 0.5 per cent. The negotiations leading to the establishment of the TFG involved the enactment of a Transitional Federal Charter (TFC) as a transitional constitution. The TFG initially governed from neighbouring Kenya until June 2005. Parliament did not convene on Somalian territory until February 2006, when it had to meet in a converted grain warehouse in the western city of Baidoa due to security concerns about entering Mogadishu. Even when it did convene, the TFG lacked cohesion, which substantially undermined its power.

The TFG is internationally recognised as sovereign and is represented in the UN, receiving a sizeable amount of aid. Beyond that, it (officially) possesses negative sovereignty over all of the territories of the (former) Republic of Somalia, including Somaliland, which means that in the eyes of the world the de facto state of Somaliland is officially a part of the quasi-state of Somalia.

The interest groups of the TFG can easily be identified. It represented the people (opportunistic warlords and local clan leaders) and the (external) actors who fund it (the states of the multinational companies and international communities). In addition, the Somali societal structure, which is decentralised and locally rooted, is not naturally compatible with such a top-down approach. Because of this, the TFG remained illegitimate in the eyes of most ordinary Somalis, as they (rightfully) feel that the TFG was not representing their interests.⁷³² With only a few years in office, President Abdullahi Yussuf was accused of violating the division of powers, threatening the opposition, appointing minister without experience or qualifications, and, worse,

⁷³¹ M Bradbury, and S Healy 'Endless War: A Brief History of the Somali Conflict' available at www.c-r.org/ourwork/accord/somalia/endless-war.php, accessed 14 May 2017.

⁷³² G Ngwane, '*Settling Disputes in Africa*' (1996).

of being an Ethiopian puppet undermining Somalia's interests, sovereignty and territorial integrity.⁷³³

4.9.3 Union of Islamic Courts (UIC)

An important feature of Somalia is that it has seen the emergence of a variety of Islamist movements seeking to establish an Islamic state in the country. These range from traditionalist Sufi orders to progressive movements, such as Al-Islah, and Salafi- and Wahhabi-inspired groups, such as Al Itihad Al Islamiyah, pursuing a regional or global agenda. Their significance came to the fore in April 2006 when a coalition of Islamic courts, the ICU or UIC, in alliance with clan militia, expelled a coalition of US-backed warlords (the Alliance for the Peace Restoration and Counter Terrorism (APRCT)) from Mogadishu.⁷³⁴ Comprised mostly of warlords in and around Mogadishu, the APRCT is sponsored by the USA (through the CIA) to counter the threat of Islamic radicalism, to apprehend foreign terrorists involved in the 1998 US embassy bombings in Nairobi and Dar-es-Salaam and thought to be hiding in Somalia, and to prevent suspected al-Qaida elements taking root in Somalia.

The UIC started to become an operational force in 2005 and was supported by the local business community in Mogadishu, which was tired of losing revenue to the many roadblocks manned by clan militias.⁷³⁵ By June 2006, the UIC had managed to take over power in Mogadishu by defeating the warlords. Gradually it extended its influence to the south and central parts of the country.⁷³⁶ While not enjoying any form of democratic legitimacy, the UIC provided a higher level of security and brought about a modest economic upsurge. The UIC managed to get rid of clan-based warlord rule for the first time in 17 years.

⁷³³ Samatar, AI and Samatar AI (2008)

⁷³⁴ M Bradbury and S Healy, 'How does it end' in M Bradbury and S Healy (eds) *'Whose peace is it anyway? Connecting Somali and International peacemaking'* (2010).

⁷³⁵ A Le Sage (2005).

⁷³⁶ Ibid.

The UIC won public support for creating an unprecedented degree of security in the capital and quickly established a presence across most of south-central Somalia.⁷³⁷ It offered an alternative political system that could deliver services and security to the population, in sharp contrast to the failing authority of the TFG. When mediation efforts by the Arab League failed to forge an agreement between the TFG and UIC, Ethiopian forces, with implicit backing from Western governments, entered Somalia in December 2006,⁷³⁸ forcing out the UIC and installing the TFG in Mogadishu. The US Air Force attacked retreating UIC forces in an unsuccessful effort to kill Al-Qaeda operatives allegedly harboured by the UIC. The UIC leadership took refuge in Eritrea where, with other opposition figures, it established the ARS, which mobilised support against the Ethiopian occupation.⁷³⁹

Ethiopia had been opposed to the UIC, firstly because it feared the radicals in its midst, and secondly because it did not want to border a strong Islamic state. Fears in Ethiopia were aggravated by some of the UIC's leaders raising the 'greater Somalia' policy again, thereby fuelling Ethiopian concerns about the loss of the Ogaden.⁷⁴⁰ These two factors – the religious and territorial threat – led to Ethiopia's more active engagement in Somalia, probably in addition with the encouragement of the US. After the UIC threatened to attack Baidoa and demolish the TFG there, the then Ethiopian prime minister, Zenawi, launched a military intervention on Christmas eve in 2006. As the UIC did not have a strong military, it was unable to resist the combined forces of Ethiopia and the TFG. By the new year of 2007, the last stronghold of the UIC, the city of Kismayo, was captured. Many leaders of the UIC were scattered and arrested, and others were killed. After the routing of the UIC, the TFG, which had hitherto been based in the town of Baidoa,

⁷³⁷ A I Samatar, 'The Islamic Courts and the Mogadishu Miracle: What comes next for Somalia' (2006) *Review of African Political Economy*.

⁷³⁸ S Tesfamariam, 'Ethiopian air strikes in Somalia: Violation of Geneva Conventions' in *American Chronicle* 10 January 2007, available at www.americanchronicle.com/articles/view/18949, accessed 3 June 2018.

⁷³⁹ S Shay, 'Somalia between Jihad and Restoration' (2008) 95.

⁷⁴⁰ *Ibid.*

was able to enter Mogadishu, riding on the coat-tails of the Ethiopian forces and assuming control of key government buildings under heavy Ethiopian protection.⁷⁴¹

4.9.4 The second TFG and the rise of Harakat Al-Shabaab

In September 2006, the AU decided to send a peacekeeping mission to Somalia under the auspices of IGAD.⁷⁴² In early 2007, a small contingent of AU peacekeepers (the AU Mission in Somalia (AMISOM)) was deployed to Mogadishu to protect the TFIs. However, more than two years of efforts by the TFG and Ethiopia to impose a ‘victor’s peace’ provoked violent resistance from a mixture of clan militia and remnants of the militant wing of the UIC, particularly so from Harakat Al-Shabaab (‘the youth movement’).

During his four years in power, Abdullahi Yusuf’s government failed to carry out any of the transitional tasks of government. By inviting Ethiopia’s military to intervene against the UIC, he lost all semblance of legitimacy. Despite the fall of the UIC, the TFG was unable to establish its authority over the country. The UN mediated talks in late 2008 between the ARS-D, moderate eliminate of Islamism (elaborated on above), and the TFG in Djibouti to determine a timeframe for Ethiopian withdrawal.⁷⁴³ The 2009 Djibouti Peace Process (conducted mostly between the TFG and ARS-D) paved the way for the resignation of the TFG president, Abdullahi Yussuf, and the creation of a new TFG II under the presidency of the former chair of the UIC, Sheikh Sharif Sheikh Ahmed. Soon factions were also seen in the new TFG government. In 2010, for instance, the Somali parliament was paralysed by clashes between rival factions in the TFG loyal either to the president or the prime minister. The resulting political vacuum hindered the authorities’ ability to deal with the threat posed by hard-line Islamist groups such as Al-Shabaab and Hisbul al-Islam.

⁷⁴¹ Menkhaus (2007) 382.

⁷⁴² Ibid.

⁷⁴³ The withdrawal of Ethiopian forces and the establishment of a new ‘unitary’ TFG created an opportunity to establish a moderate Islamist government in Somalia that had considerable backing from Somalis and the international community (M Bradbury and S Healy (2010)).

These groups, which merged towards the end of the year, intensified their international attacks in Uganda and Kenya.

Early in 2010, the new TFG tried to strengthen its position by signing a power-sharing agreement with the moderate Islamist group, Ahlu Sunnah wal Jama'a. However, mooted changes within the clan-based government soon led to a crippling rift. Ahlu Sunnah pledged to join government troops on the ground in exchange for government positions. After initial tussles over the prime ministership, it settled for five cabinet seats. Despite their differences, Ahlu Sunnah continued to fight alongside government troops in several parts of Somalia.⁷⁴⁴ On the other hand, Al-Shabaab continued to fight the new TFG. Menkhaus and Boueck note:

[W]hen Ethiopia withdrew in January 2009 after the two-year insurgency, Al-Shabaab lost the two things that it defined itself as being against – the Ethiopian occupation and leader of the Transitional Federal Government, Abdullahi Yusuf Ahmed, who was pressured to resign. Still, the new coalition in the transitional government was unable to take advantage and Al-Shabaab successfully recast itself as a resistance to the African Union peacekeeping force. The terrorist group painted the peacekeepers as armed infidels occupying Somalia and portrayed the transitional government as apostates and puppets of the West.⁷⁴⁵

Al-Shabaab is currently the main faction fighting against AMISOM troops and the present FGS. The second TFG also failed both to cash in on international support and public goodwill and to deliver any meaningful progress in establishing rule of law and governance.

4.9.5 Somali Federal Government

In September 2012, Hassan Sheikh Mohamoud was elected as the president of Somalia following the dissolution of the second TFG. An indirect election was held in which 135 clan elders nominated 275 members of the House of the People of the Federal Parliament, who then elected a speaker and the president. Despite its international recognition, the government under President Hassan remained fragile and dependent upon AU troops. Most of the territory outside the capital

⁷⁴⁴ S Shay (2008) 95.

⁷⁴⁵ K Menkhaus and C Boueck, *'Terrorism out of Somalia'* (2010)1 Carnegie Endowment for International Peace.

is governed or controlled by other authorities, whose relationships with the FGS range from the pragmatic to the openly hostile. Nonetheless, President Hassan was credited with transforming federalism from an idea on paper into a political reality on the ground. Significantly, several FMSs were formed under his leadership.

Again, in 2016, an indirect election was held, which Hassan lost to the new incoming president, Mohamed Abdullahi Mohamed, also known as Farmajo. In this election, 275 MPs in the Lower House were elected by an electoral collage of 51 electors. The 14,025 voters (51 x 275) were selected by 135 traditional leaders from across Somalia, whilst members of the Upper House were nominated by each FMS. In both the 2012 and 2016 indirect elections, rampant corruption was reported. Aspiring parliamentarians corrupted elders;⁷⁴⁶ similarly, presidential aspirants corrupted parliamentarians standing for election.⁷⁴⁷ Several analysts, investigators and Western diplomats criticised the elections for their high degree of corruption.⁷⁴⁸

4.10 Concluding remarks

This chapter explored historical events that shaped and explain the present. The first part of the chapter examined Somalia's colonial era and highlighted how Somalia was partitioned among different colonial powers.⁷⁴⁹ Colonialism disrupted indigenous society, reinforcing and creating ethnic divisions.⁷⁵⁰

⁷⁴⁶ In 2012, parliamentary aspirants bribed clan elders with good and cash close to US\$5000; similarly, in the 2016–17 indirect election, they bribed elders with millions of dollars. McCormick, TY 'Somalia's Presidential Election for 14000 people' <https://foreignpolicy.com/2016/09/20/allegations-of-abuse-corruption-cloud-election-in-somalia/> accessed 4 September 2018.

⁷⁴⁷ See also G Jefferey, 'Fuelled by Bribes, Somalia's Election Seen as Milestone of Corruption' www.nytimes.com/2017/02/07/world/africa/somalia-election-corruption.html accessed 1 August 2017.

⁷⁴⁸ BBC, 'Somalia Election: Huge Corruption' www.bbc.com/news/world-africa-38105023 accessed 28 July 2017. See also G Jefferey, 'Fuelled by Bribes, Somalia's Election Seen as Milestone of Corruption' www.nytimes.com/2017/02/07/world/africa/somalia-election-corruption.html accessed 1 August 2017.

⁷⁴⁹ As discussed above, colonial regimes divided Somalia into five territories; in the same way, in contemporary Somalia clanship is manipulated and, in the process, each clan seems to be creating its own self-styled president, along with the five states of Galmudug, Hirshabelle, Jubaland, Puntland and Southwest (elaborated in chapter 8).

⁷⁵⁰ Growing numbers of scholars have attributed failure and fragility in Africa to colonial legacies and post-colonial politics. See Mamdani (1996), Haggmann and Peclard (2010). This is true of Somalia as well. See, for instance, Baadiyow (2017) Samatar, AI (2019), Samatar, AI (2006) Menkhaus (1998) 220, Ingridiis (2016a; 2016b).

The colonial strategy of creating differences along clan lines became embedded in social categories and continues to undermine Somalis' collective constellations, social interactions and political development. As such, colonial administrative system of divide and rule worsened the rivalry among the clans in Somalia. The chapter demonstrated that, following the departure of colonial government, successive Somali governments and elites used the same colonial strategy of divide-and-rule to manipulate clan affiliations to further their own interests. For instance, the military regime as well as the sectarian regime that toppled it adopted the same approach. Clan manipulation continues into the present day, with current Somali leaders using clanship to legitimate their claims and access to power and resources. As a result, in both the pre-and post-civil war period, the conflict in Somalia has been a conflict among elites competing for resources and power by drawing support from the dominant networks of identities in the country. In the process, warlords and faction leaders have fragmented Somalia into 'clan' fiefdoms.

The chapter also discussed the following:

- The political history of Somalia and how clans have been part of it.
- How turmoil was caused by the leadership's use of clans as political tools. The first civilian government was weakened by clan politics, especially between 1967 and 1969. Under Barre's regime, clans were used as tools to seize and retain power. President Barre poisoned clan relations, instigating conflicts, and providing arms and funds to protagonists. After the fall of military regime, the wartime actors such as war lords and corrupts elites manipulated social structure to perpetuate their economic and political interests.
- The chain of events that led to the formation of the fragile transitional and federal governments.

CHAPTER 5: FEDERALISM IN SOMALIA- FORMATIVE STAGE

5.1 Introduction

Chapters 3 and 4 discussed Somalia's political and cultural background. This chapter builds upon the discussion by examining the process that led to the formation of federal system in Somalia. The first section discusses the origins of federalism in Somalia; the second section highlights the negotiations that led to the adaptation of federal system; and the third section presents debates about the suitability of federalism. Finally, the chapter discusses the research methodology and methods used in the study. This section presents the study's research approach, research design, data collection methods, research instruments, sampling methods, data analysis techniques, and findings.

5.2 The origin of the federal system in Somalia

Discussion of the applicability of federalism started as early as 1947 and was led by the Hizbia Dastur Mustaqil al-Somali (HDMS) political party, which represented historically marginalised Digil-Mirifile clan families. Mukhtar argues that the Digil-Mirifile were the first Somalis to propose a federal structure as a way of protecting minority rights, particularly those of the agrarian clans, prior to independence in 1960.⁷⁵¹ In 1947, a commission composed of representatives of the United Kingdom, United States, France and Soviet Union was sent to Somalia to consider the country's future political system. It held meetings with, among others, Sheikh Mohamed, commonly known as Bogodi, the founder of the HDSM, who told the four-power commissioners⁷⁵² the following:

My people are those who behave themselves better than others. We always prevent other people from making trouble or robbing. ... The other people who are not Digil and Mirifle, they may live and stay with us, but we want them behind us, and recognising the land as belonging to us and not to them.⁷⁵³

⁷⁵¹ Mukhtar, MH (1989).

⁷⁵² The commission was tasked to investigate the future of former Italian colonies. See Mukhtar MH (1983).

⁷⁵³ M H Mukhtar, '*Italian Somaliland from Trusteeship to Independence*' (unpublished PhD dissertation, University of al-Azhar, 1983) 87–106.

One of the three requests Sheikh Mohamed Bogodi made of the commission was that the regions which the Digil-Mirifle inhabit always be regarded as belonging to them and that the government include these regions in discussions on issues relating to their welfare.⁷⁵⁴ Bogodi wanted to see a federalism in which shared and self-rule were recognised and protected. For that reason, the HDMS party continued to pursue this federal idea until 1960. It felt that pastoralists and other Somalis has been displacing them from their lands and that if Somalia were to be independent, they would continue to be side-lined from political and economic power.⁷⁵⁵ It believed federalism would protect their interests, as it involves power-sharing by the centre and the periphery and the protection of minorities. Thus, the HDM saw federalism as a way for it to hold power over its own region and be at the centre of decision-making that affected it.

Mukhtar notes that a clan-based federal system was debated in 1957 and rejected by parliament. The proposal did not gain much support at the time because most of the political elites favoured the unitary model. The 1960 Somali Constitution was drafted and ratified in a political environment dominated by the SYL, which won the 1960 elections and was also the main party representing pastoralists.⁷⁵⁶ Subsequently, the leading proponent of federalism, who also happened to be the leader of the HDMS, Hon Osman, was gunned down in 1960 for his espousal of the federal agenda.⁷⁵⁷

While the issue of federalism in Somalia dates back to 1947, that is, before independence,⁷⁵⁸ it was only in the early 1990s that contemporary discussion about it began to take root in efforts to rebuild Somalia. After more than a dozen unsuccessful reconciliation efforts, as discussed in Chapter 4, the Transition Federal Constitution (TFC) was adopted, after which the TFG was established in 2004. This paved the way for federalism to be formally enshrined in the

⁷⁵⁴ Ibid.

⁷⁵⁵ Ibid.

⁷⁵⁶ AM Abow, 'Federalism: The Past and the Present' (2011) available at www.wardheernews.com/Articles_11/Jan/Abow/27_Federalism_The_Past_and_Present.html, accessed 3 May 2017.

⁷⁵⁷ Ibid.

⁷⁵⁸ MH Mukhttar (1983).

Transitional Federal Charter (TFC) and later in the 2012 Somali Provisional Federal Constitution.⁷⁵⁹

Aspirations for building federalism in Somalia did not develop overnight; rather, they were borne out of 24 years of configuration and reconfiguration. A brief survey of the outcomes of Somali peace processes since 1991 reveals that federalism emerged out of a consultative process and that, in almost all peace process conferences, decentralisation was considered as one of the ways out of the chaotic and persistent insecurity that prevails in the country.⁷⁶⁰ However, successive transitional governments were unsuccessful in instituting a federal system in Somalia, largely because their effectiveness extended little beyond the capital, Mogadishu. A major breakthrough in the implementation of a federal agenda came with the election of President Hassan Sheikh Mohamed and the end of the interim period in September 2012. Even then, the process lacked a clear framework for implementation.

5.3 Negotiations towards the adoption of a federal system

As stated previously, the constitution-making process in Somalia started in 2004 with the signing of the cessation of hostilities⁷⁶¹ and the adoption of a TFC.⁷⁶² The TFC was followed by recommendations for the drafting, completion and adoption of the 2012 Provisional Constitution. Thereafter, the federal journey, which began formally at the Mbagathi conference and resulted in the creation of the TFG and a decentralised system of administration based on a federal system, was officially adopted.

⁷⁵⁹ Heritage Institute for Policy Studies (HIPS) 'Federal Somalia: Not if but how' Policy Briefing (2015) 10, available at www.heritageinstitute.org, accessed 3 June 2017.

⁷⁶⁰ See Chapter 4 for a comprehensive account of Somalia's reconciliation and constitutional development conferences.

⁷⁶¹ At the conclusion of the Mbagathi Peace Conference, the stakeholders (including armed warlords and civil society groups) signed a cessation-of-hostilities document, agreed on a National Charter, and formed a 275-seat parliament that elected HE Abdullahi Yusuf Ahmed as the second transitional president of Somalia (elaborated on in Chapter 4).

⁷⁶² A draft National Charter was adopted at the Mbagathi Conference. This Charter was to serve as a precursor to a national constitution. Delegates agreed on the formation of a broad-based government that could bring about peace and engage in economic and social development. The Charter contained a timeline of two years to complete a draft. In addition, a significant number of stakeholders made sure that the Charter referenced a federal governance model - hence the title of the 2004 charter, *The Transitional Federal Charter of Somalia*.

Somalia's constitutional development has gone through a number of phases, including the drafting of a transitional charter, the establishment of a commission mandated to draft the Charter, and the drafting of the constitution. Elmi notes that 'the process of the Somali's constitution-making has passed through three phases: mandate and selection of the commission members, drafting of the constitution articles, and the adaptation of the draft constitution'.⁷⁶³ He adds that 'political expedience, secrecy, exclusion and hastiness shrouded all three stages'.⁷⁶⁴

In August 2004, at the Ethiopian-controlled and Kenyan-hosted Mbagathi Peace Process, a committee was tasked to draft a new TFC. Predictably, the constitution-drafting process became so controversial that the committee split into two groups. Eventually, each group came up with its own version of the draft transitional charter. As mentioned earlier, to reconcile the two groups, 13 Somali experts, led by Prof Abdi Samatar, were tasked with harmonising the documents the two groups had produced.⁷⁶⁵ The recommendation by the harmonised committee was widely accepted by Somali communities because it was an authentic reflection of the desires of greater Somalia.⁷⁶⁶

Eno pointed out that 'a member of the IGAD Technical committee has pledged to disregard ... obstacles [to] the harmonised document and instead adopt the different versions produced through its backing'; the harmonised document 'was designed to depreciate and sabotage the harmonised official charter'.⁷⁶⁷ He further noted that because Ethiopia did not have an ally in the harmonised committee, it had to campaign vigorously to discredit the previous document.⁷⁶⁸ As a result, despite the significant work of the harmonised committees, their recommendation was abandoned.⁷⁶⁹ The version of the document produced by the warlords and factional leaders, with

⁷⁶³ Elmi, A 'Revisiting the UN-Controlled constitution-making process for Somalia' (2012)

⁷⁶⁴ Ibid.

⁷⁶⁵ I Samatar, and A Samatar, 'Somali reconciliation: Editorial note' (2003) 3 *Bildhaan: An International Journal of Somali Studies* 1–14.

⁷⁶⁶ Ibid.

⁷⁶⁷ Eno, A (2008).

⁷⁶⁸ Ibid.

⁷⁶⁹ Elimi, A (2012).

the support of Ethiopia and Kenya, became the TFC and law of Somalia in subsequent years.⁷⁷⁰

The TFC is widely seen as a document that represents the interests of Ethiopia and Kenya.⁷⁷¹

Article 11 of the TFC⁷⁷² sets out a clear roadmap of how a federal constitution should be established and calls on the government to establish an Independent Federal Constitution Commission (IFCC).⁷⁷³ The IFCC was established with the mandate of drafting a federal constitution and obtaining the views of the public.⁷⁷⁴ The IFCC, as expected, presented a draft constitution to parliament. More members, commonly referred to as the Committee of Experts (CoE), were added to the IFCC.⁷⁷⁵

In July 2010, the IFCC presented the first draft of the provisional federal constitution to the Somali public. A few workshops and seminars were held to inform the public of the content of the constitution. Contentious views were received from the public in regard to the relevance of federalism, the status of the autonomous regions of Somaliland and Puntland, the role of Sharia, and the structure of a federal government. A revised version of the draft provisional constitution was presented to the seven signatories of the 2011 United Nation Political Office for Somalia's (UNPOS) roadmap team.⁷⁷⁶ In May 2012, close to the finishing line of the roadmap regime, a constitutional conference was held at the AU's headquarters in Addis Ababa and attended by the

⁷⁷⁰ Elmi, A (2012).

⁷⁷¹ Ibid.

⁷⁷² The Transitional Federal Charter explicitly prescribes the process for the drafting of the Constitution. See Transitional Federal Charter of Somali Republic, article 11(1).

⁷⁷³ IFCC membership was based on the clan formulae of 4.5 developed during the Arta process. The manner in which IFCC members were selected has been the subject of great contention. Eno notes that 'IFCC membership did not have the necessary expertise to draft the constitution' (2008).

⁷⁷⁴ Public participation was enhanced through the mass media, including radio services such as the BBC Somali Service, the government's Radio Mogadishu and Somali National Television (SNTV), and the UN-sponsored Bar Kulan.

⁷⁷⁵ In 2008, a new political agreement was reached between the TFG-2 and the Alliance for the Re-Liberation of Somalia (ARS), an Islamist association established in 2007 out of the deposed Islamic Courts Union (ICU) and other Somali leaders opposed to the TFG. After the election of the former ICU chair Sheikh Sharif as TFG president in 2009, the size of the IFCC doubled in 2010 with the addition of 15 new members to reflect ARS' interests. Elmi, A (2012).

⁷⁷⁶ The seven signatories include the UN Special Representative of the Secretary General (SRSG), Ambassador Augustine Mahiga, and six Somali politicians. The six Somali politicians are the TFG president, Sharif Sheikh Ahmed; the TFG prime minister, Abdiweli M. Ali; the former TFG speaker, Sharif Hassan Sheikh Adan; Puntland president Abdirahman Mohamed Farole; Galmudug president Mohamed Ahmed Alim; and one of the leaders of the Ethiopian-supported Ahlu-Sunna Wal-Jama'a, Abdulkadir Moallim Nur. The seven comprised the entity that decided on all the major issues in Somalia, thus replacing the parliament, cabinet and all other political groups in the country. They were known as the roadmap signatories or the principals.

principal leaders, namely the president, the speaker.⁷⁷⁷ The prime minister of Ethiopia also attended the meeting, along with the roadmap signatories and members of the international community, fronted by then UN Special Representative to Somalia.⁷⁷⁸

One item on the agenda of the conference was the finalisation and harmonisation of the federal issues section of the constitution and, more specifically, the acceptance of the draft and the formula by which power and resources would be shared. Nevertheless, it was agreed that power- and resource-sharing clauses would be discussed and adopted when all the regions were free from Al-Shabaab and had formed their respective FMS units.⁷⁷⁹ In Nairobi in June 2012, the seven-member signatory finally endorsed the draft constitution, together with four protocols, one of which established a National Constituent Assembly (NCA). In addition, the Signatories Technical Facilitation Committee (STFC) was set up to steward the enforcement of the constitution through the NCA.

Two consultative constitutional conferences involving the TFG and other stakeholders were held in Garowe 1 and 2 in Puntland in December 2011 and February 2012. Key issues that were deliberated upon included federalism, a model of government, the design of an electoral system, and a plan for the nomination of the NCA and its composition and mandate.⁷⁸⁰ The conference agreed that the NCA would comprise 825 delegates, to be selected according to the 4.5 power-sharing formula. Subsequently, nominations for NCA⁷⁸¹ membership were made. The candidates' suitability was determined by the principal roadmap signatories following an

⁷⁷⁷ Elmi, A (2012)

⁷⁷⁸ Ibid.

⁷⁷⁹ Abdurrahman Hosh, 'Beware of quick-fix federalism, the shot-gun wedding type' (2004), available at <http://horntribune.com/be-ware-of-quick-fix-federalism-the-shot-gun-wedding-type/>, accessed 20 January 2017.

⁷⁸⁰ Federal Republic of Somalia, Second Somali National Consultative Constitutional Conference, Garowe principle 3(1)-3(3).

⁷⁸¹ The National Constituent Assembly comprises 825 prominent Somalis, including traditional elders, religious leaders, women representatives, minority clans, and Somalis in the diaspora, who were selected to represent all Somali clans. Nominations for NCA membership were made by the principal roadmap signatories, assisted by traditional leaders and civil society, and overseen by a 135-member Technical Selection Committee to evaluate candidates. Nominations were verified by an Interim Independent Electoral Commission comprising 15 voting members.

evaluation by the Technical Selection Committee, which was assisted by traditional leaders and civil society.

Eventually, the NCA, consisting of the 825 delegates, debated the draft constitution. The drafting process was concluded in 2012 with the adoption of the Provisional Federal Constitution of Somalia.⁷⁸² The STFC facilitated the endorsement of the Provisional Constitution through the NCA, with very few amendments to the signed document; the latter were made exclusively by the STFC.⁷⁸³ On 1 August 2012, the NCA approved the draft Provisional Federal Constitution by an overwhelming majority. Thereafter, the mandate of the TFI, which included the TFG, the TFC and the TFP, ended. In August 2012, the Federal Government of Somalia was established and Hassan Sheikh Mahmud elected as president.

Somalis had serious doubts about the process⁷⁸⁴ and outcome of the making of the Provisional Federal Constitution. There was growing controversy about the ownership, transparency, representative and accountability of the overall process, with Somali intellectuals, academics and civil society organisations feeling excluded. The drafting of the Constitution was conducted in an isolated manner primarily by a group led by the United Nations Development Programme (UNDP) and United Nation Political Office for Somalia (UNPOS).⁷⁸⁵ The negotiation

⁷⁸² There were only 645 NCA delegates present at the Constituent Assembly, of whom 621 voted for the document and 13 voted against it, while 11 abstained. See ‘Somali leaders back new constitution’ BBC News Africa, 1 August 2012, available at www.bbc.com/news/world-africa-19075685. 3 June 2018.

⁷⁸³ Protocol establishing the technical selection Committee, 22 June 2012.

⁷⁸⁴ See Sadia Ali Aden, ‘Somalia: the consequences of a cooked constitution’ 11 August 2012, *News Times Africa*, available at www.newstimesafrica.com/archives/27723, accessed 3 May 2017. See also Ndesanjo Macha, ‘Somalia: Deep divisions over new constitution, global voices online’, 21 June 2012, available at <http://globalvoicesonline.org/2012/06/21/Somalia-deep-divisions-over-new-constitution>, accessed 5 May 2017. See also Elmi AA, ‘Revisiting the UN-controlled constitution-making process for Somalia’, *E-international Relations* (2012) available at www.e-ir.info.2012/09-02/revisting-the-UN-controlled-Constitution-making-process-for-somalia, accessed 5 May 2017.

⁷⁸⁵ Ainte, Abdihakim, ‘Somalia, Legitimacy of the Provisional Constitution.’

process has been seen as marred by alleged corruption, meddling by neighbouring countries,⁷⁸⁶ and disagreement among the Somali clans.⁷⁸⁷

Elmi, for instance, argues that the process of drafting the provisional constitution was fundamentally flawed. According to him, the process did not reflect the aspirations of the Somali people. He contends that UNPOS and unrepresentative Somali politicians controlled all the processes of constitution-making, from the selection of experts and nomination of members of the constituent assembly to the adoption of documents.⁷⁸⁸ He notes that civil society members, traditional leaders,⁷⁸⁹ Islamic scholars and other political forces were excluded from the process, which was conducted in secret. He also observes that the quality of the Somali version of the draft constitution was inconsistent with the English version.⁷⁹⁰ Similarly, Uluso notes that the Provisional Constitution heightens tensions in Somalia,⁷⁹¹ while Sadia argues that the Provisional Constitution does not reflect the aspirations of the Somali people.⁷⁹² Arman views the 2012 constitution as a constant reminder that Somalia is guided by wishes and commands other than its own.⁷⁹³

By contrast, Abdiwahab Tarey sees the Provisional Constitution as the crown jewel of Somalis' ongoing social-political evolution, describing it as a landmark document with built-in mechanisms to guide Somalia out of its 'self-inflicted wounds and conflicts'.⁷⁹⁴ He further states

⁷⁸⁶ Elmi notes that neighbouring countries had been pushing their proxies to accept clan-federalism because this serves the long-term interests of Ethiopia and Kenya. These two countries have had issues with what they call 'Somali irredentism' or a united Somalia. For this reason, it is no secret that Kenya and Ethiopia wanted to install a weak and divided Somalia. As such, Ethiopia has been championing the 'building-block approach', while Kenya is determined to create a buffer zone in the Juba regions of Somalia. Both countries have troops in Somalia. See also M Bryden, 'New Hope for Somalia? The Building Block Approach' (1999) 26 (79) *Review of African Political Economy*, 134–140.

⁷⁸⁷ N Macha, 'Somalia: Deep division over the new constitution'. Global Voices online. <http://globalvoicesonline.org/2012/06/21/somalia-deep-divisions-over-new-constitution>. Accessed 20 November 2019.

⁷⁸⁸ Elmi, AA (2012).

⁷⁸⁹ Ibid.

⁷⁹⁰ Ibid.

⁷⁹¹ M Uluso, 'Provisional Constitution Heightens Tensions in Somalia', *International Policy Digest*, available at www.internationalpolicydigest.org/2012/08/08/provisional-constitution-heightens-tensions-in-somalia.

⁷⁹² Sadia Ali Aden, "Somalia: The Consequences of a Crooked Constitution", Think Africa Press, 14 August 2012; available at <http://thinkafricapress.com/somalia/consequence-crooked-constitution>. Accessed 24 May 2018.

⁷⁹³ Arman, A 'A constitution of ambiguity and deferment' 2012 foreign policy blogs.

⁷⁹⁴ Tarey, A 'responses to Abubar Arman 'a constitutional of ambiguity and deferment- foreign policy blogs

that the Constitution was adopted provisionally and therefore offers Somalis a chance to correct its shortcomings.⁷⁹⁵

5.3.1 Arguments for and against federalism

Advocates for federalism are found largely in international donor agencies, the US, UK and the neighbouring states of Somalia, among them Kenya and Ethiopia. The political elite and academic circles are strongly divided on the suitability and practicality of a federal system in Somalia.⁷⁹⁶ Some favour an unstructured form of federalism in the hopes that the pioneers such as Somaliland and Puntland could be included in an effort to reunite the country; others want a more centralised state, fearing that unstructured federalism would dismantle the country. However, past experience of centralised rule, and the fear that one or a few clans or factions could predominate, raises concern among Somali commentators, academics and elites.⁷⁹⁷ Others yet see federalism as a foreign imposition designed to weaken Somalia. The sections below examine these debates in more depth.

5.3.2 Proponents of federalism

Two of the most important drivers of federalism in Somalia are Somali elites and the politicians. They argue that federal principles such as shared rule and self-rule, equitable distribution of powers and resources, conflict regulation and the protection of fundamental human rights are ideal for Somalia. These groups include scholars and eminences such as Faisal Roble, Sharif Hassan, the former president of South-west, as well as the former president of Puntland, Mohamud Farole. They argue that it is a time for Somalia to embrace a constitutional, democratic and federal-based government. They believe that federalism is the only way to free the country from conflict and restore its long-lost national unity.

⁷⁹⁵ Ibid.

⁷⁹⁶ HIPS (2015).

⁷⁹⁷ P Woodward, 'Somalia and Sudan: A tale of two peace processes' (2004) *The Commonwealth Journal of International Affairs* 93(375) 469–481.

Similarly, veteran politicians such as Mohamed Waldo and Yusuf Al-Azhari⁷⁹⁸ contend that federalism is not only good for Somalia but would give each FMS (region) the right to govern itself. Mohamed Waldo argues that a federal system of zonal self-governing is the best approach that Somali communities could adopt under the circumstances. He claims that federalism would (a.) heal and overcome the fear, hatred and distrust of the bloody civil war; (b.) offer a solution in between an autocratic, centralised system of governance, on the one hand, and outright secession, on the other; and (c.) decentralise empowered districts and regional communities and offer more balanced and more productive socio-economic development opportunities.⁷⁹⁹ Abdi Aynte and the Somali politician and former MP, Nurani Bakari share similar views. Bakari argues that federalism would disperse power among the states and thus reduce centralised power. He characterises it as a solution to political instability in that it gives each region its own right to self-rule.⁸⁰⁰ Abdi Aynte argues that ‘due to the prolonged civil war and resulting trust deficit, decentralisation or any other form of federalism will quell Somalis’ yearning for the control of their politics’.⁸⁰¹

All the regional governments established so far indicate that they prefer a constitution that protects their regional governments’ interests through a well-defined federal system in which power is shared⁸⁰² and self-rule guaranteed. During the first decade of the independent Somali state, politics was centred in Mogadishu, while the rest of the regions were pushed aside. Although the country was democratic, many communities outside Mogadishu were marginalised. Huge economic investments were made in and around Mogadishu, which alienated other parts of the country. Since this investment in the capital diverted meagre resources away from the rest of the country, it created a sense of marginalisation in the excluded communities. Shawl is of the view

⁷⁹⁸ Al-Azhari Yusuf ‘*Somalia: An Unconvincing Progress*’ (2014) Report by Al Jazeera centre for Studies, available at <http://studies.aljazeera.net/en/reports/2014/01/20141297747673110.htm>, accessed on 4 September 2017.

⁷⁹⁹ A Mohamed, ‘The impracticality of Somali style federalism’ (2012) available at www.hiiraan.com/op4/2013/may/29164/the_impracticality_of_somali_style_federalism.aspx, accessed 4 July 2018.

⁸⁰⁰ The New Humanitarian, ‘briefing: can federalism work in Somalia?’ (Humanitarian, feb 5th, 2014) available at < <https://www.thenewhumanitarian.org/analysis/2014/02/05/briefing-can-federalism-work-somalia>> accessed 4th May

⁸⁰¹ Ibid.

⁸⁰² J Ali, ‘A will o’-the-wisp of centralized Somalia, and the Mogadishu of yesteryears’ (2012) available at www.wardheernews.com, accessed 30 July 2017.

that the political fragility of Somalia is the result of dispersed political power and military and economic resources. A formalised agreement on sharing and devolving that power is the only practicable way forward.⁸⁰³

As explained previously, the monopolisation of power and resources by a few created fear and mistrust and later led to the collapse of the Somali state. When the military took over in 1969, the marginalisation did not come to an end. Barre, in the late 1980s, became bluntly clannish. He was encircled by his own clans while excluding entire communities from power.⁸⁰⁴ Such marginalisation led to a growing lack of trust among the Somali clans and, finally, bloody civil war. Somalis, therefore, as Ainte rightly argues, prolonged the civil war. The resulting trust deficit fuelled the need for peace and trust, which can be enhanced through federal principles such as the sharing of power and resources, bringing the government closer to the people, and equal distribution of job opportunities.⁸⁰⁵ Therefore, federalism is seen as indispensable to maintaining peace and stability and to the effective delivery of services.

The historical marginalisation of the minority clans' dates back to the early days of the Somali state and instilled mistrust and fear in the Somali clans. Deep clan divisions and grievances are therefore some of the key drivers that create the need for federalism in the Somali state. Ainte concurs by saying that the marginalisation of communities in other parts of the country outside Mogadishu placed these communities and regions in a position of secondary importance.⁸⁰⁶ As mentioned previously, Digil-Mirifle and other minority clans viewed federalism as a way for them to hold power over their own regions and be at the centre of decision-making. Al-Azhari notes that the marginalisation of minorities and historical injustices created the desire in affected communities to look for alternatives to unitary governments⁸⁰⁷ that restrict the sharing of power

⁸⁰³ Feseha Shawl (2015).

⁸⁰⁴ HIPS (2015).

⁸⁰⁵ A Ainte, 'Somalia: Legitimacy of the provisional constitution' (2014) in *Accord* (Issue 25), available at www.c-r.org/sites/cr.org/files/Accord25Somalia.pdf, accessed on 5 July 2017.

⁸⁰⁶ Ibid.

⁸⁰⁷ Al-Azhari (2013).

and resources. He argues that a federalist system with a clear distribution of power and resources between states and the federal government would be an ideal system for Somalia. Hence, proponents of federalism advocate for a system that can heal the historical injustices, fear, mistrust and inequalities of the past and rectify historical marginalisation, while guaranteeing self-rule and shared rule.

5.3.3 Opponents of federalism

Opponents of federalism, on the other hand, are Somalis who fear that federalism will lead to the disintegration of the country and fuel conflict. They contend that having two levels of government is not economically viable. They also think that federalism is informed by a foreign agenda and would weaken Somalia by resulting in a number of small, unsustainable fragments of regional government and thus delaying national recovery. Critics of federalism highlight several aspects of it that make it unsuited to Somalia, such as the homogeneity of the country and the absence of the qualified personnel and funding necessary to run a federal state.

A key political figure who has opposed federalism from the onset is Abdirazak Hussein.⁸⁰⁸⁸⁰⁹ He argues that a federal system will not work in Somalia as the country lacks the necessary social, economic, political and civic standards that characterise successful federal systems.⁸¹⁰ He argues that a clan-based federal system would eventually lead to Somalia's self-destruction. His concern is that the current clan-based political dispensation is not only incompatible with the functioning of a modern state but would lead to the 'balkanisation' of the country. Hussein contends furthermore that a federal system for a small-sized nation such as Somalia is too costly and is bound to exacerbate clan rivalry and further divide the country.⁸¹¹

⁸⁰⁸ Abdirazaq Haji Hussein is a former prime minister of Somalia.

⁸⁰⁹ Hussein, AH 'The future constitutional structure of the Somali Republic: Federal or decentralized unitary state?' (2011) available at www.hiiraan.com/op2/2011/apr/the_future_constitutional_structure_...mali_republic_federal_or_decentralized_unitary_state.aspx, accessed 21 December 2012.

⁸¹⁰ Hussein, AH (2011).

⁸¹¹ Ibid.

According to Hussein, the homogeneity of Somalia makes it particularly difficult for federalism to prevail in Somalia.

Similarly, Abdurrahman Hersi contends that federalism in Somalia would lead ultimately to disaster. He claims that federalism will not bring much-needed unity but rather destruction.⁸¹² Similar views are shared by other Somali scholars such as Ali Abdirahman Hersi, Mohamed Mukhtar,⁸¹³ Michael Weinstein⁸¹⁴ and Omar Salad.⁸¹⁵ They contend that the current clan-based political dispensation is not only incompatible with the functioning of a modern state but will lead to the balkanisation of the country and exacerbate clan rivalry and animosity, which could further divide the country. Abdi Samatar believes that tribal clan-federalism is unlikely to be the recipe for peace and stability.⁸¹⁶

Others have argued that federalism serves foreign agendas. Hussein claims that the international community has been condoning clan federalism in Somalia as it suits its own security interests in the Horn of Africa.⁸¹⁷ Mohamed Uluso argues that neighbouring countries are determined to impose clan federalism in Somalia, which is against the aspirations and interests of the Somali people.⁸¹⁸ According to Hussein, most Mogadishu warlords endorsed Ethiopia's long-held strategic designs to prevent a strong Somali national state.⁸¹⁹ In a similar vein, Menkhaus notes that in 1998 Ethiopia spearheaded a building-block approach to state revival in Somalia in which existing regional governments in Somalia would federate into a decentralised state.⁸²⁰ Elmi similarly suggests that Ethiopia and Kenya harboured a secret agenda and that they sabotaged and

⁸¹² Ali, AH 'Democratic devolution of powers in Somalia: Administrative decentralisation or federalism' (2004) .

⁸¹³ Mukhtar, H *Somali Reconciliation Conferences: the Unbeaten Track*. African Renaissance (2013) UK.

⁸¹⁴ M Weinstein, 'Somalia: The Show-Down in Jubaland Begins' (2013) Jubaland Voice.

⁸¹⁵ O Elmi, 'Somalia: Implementation of Federalism Now is Premature' (2013).

⁸¹⁶ Smatar, AI (2009) 75.

⁸¹⁷ Hussein AH (2012).

⁸¹⁸ Uluso (2014b).

⁸¹⁹ A H Hussein, 'The Future Constitutional Structure of the Somali Republic: Federal or Decentralized Unitary State?' (2011).

⁸²⁰ K Menkhaus, 'Understanding state failure in Somalia: Internal and external dimensions' (2008) 6 in *Heinrich Böll Stiftung Writing on Democracy*, 30–49.

stage-managed Somali reconciliation conferences. According to him, these two countries are worried about the notion of a greater Somalia.⁸²¹

Proponents and opponents of federalism express their views publicly, with the public seeing them variously as genuine, clan-inspired or oblivious to realities on the ground. So far, the arguments of the two sides directly or indirectly reflect the views of the people at large. However, no official national polls have been conducted yet to determine the nature and extent of the public's views. The next section examines recent independent surveys conducted to ascertain the suitability of a federalism system in Somalia.

5.4 Recent studies on the viability of federalism in Somalia

In February 2015, the Heritage Institute for Policy Studies in Somalia (HIPS)⁸²² conducted a survey on the perceptions and views of Somalis on federalism.⁸²³ A survey was carried out in five major cities, namely Mogadishu, Baidoa, Kismayo, Garowe and Galkayo. A total of 213 people were surveyed at events organised by HIPS. The participants were diverse in gender, age and profession. The majority agreed that federalism was the most suitable form of governance, but criticised the current set-up and formation of administrations units as flawed, as it is seen as an externally facilitated scheme that promotes clan identity at the expense of citizenship.⁸²⁴ HIPS further notes that the majority of those surveyed regard federalism as the best way to achieve a power-sharing mechanism among the Somali clans.⁸²⁵

In June 2016, Abu Baker Mohamed conducted a survey on the acceptability of federalism in Somalia. He interviewed 165 participants drawn from different sectors and regions. His study revealed that majority of participants agreed that federalism is suitable for Somalia; however, he

⁸²¹ A Elmi, 'Decentralization options for Somalia. Mogadishu' (2014) *Heritage Institute for Policy Studies, Mogadishu, Somalia*.

⁸²² The HIPS has conducted a number of credible research studies in Somalia in the last few years; it is a non-partisan organisation driven by impartial and empirical research and analysis.

⁸²³ HIPS (2015).

⁸²⁴ Heritage Institute for Policy (HIPS) 'Federal Somalia: Not if but how', available at www.heritageinstitute.org/wp-content/uploads/2015/02/HIPS-Briefing-Federal-Somalia-ENG-3.pdf, accessed on 4 June 2017.

⁸²⁵ *Ibid.*

noted that majority of his respondent's views that current 4.5 power sharing formula and current set up of federalism is not designed for conflict resolution and state-building.⁸²⁶

In 2019, Ali, Dahir and Hersi conducted surveys on Somalis' attitudes to federalism and perceptions of challenges related to its adoption.⁸²⁷ Their study gathered data using self-administered online surveys on social media; a total number of 1,073 people participated. The study revealed that federalism is not suitable for Somalia. More than 56 per cent of respondents were of the view that federalism as it is currently structured is not suitable for Somalia and poses obstacles to Somali unity.⁸²⁸ On the other hand, the study revealed that the majority of respondents are of the view that the federal system could help in overcoming civil war and clan conflicts.⁸²⁹

Recent studies by Chevreau Oliver revealed that majority of the population in Jubaland are strongly supportive of federalism in principle and the manner in which it has been implemented.⁸³⁰ He states that the majority of his respondents view a federal system as a way of maintaining Somali unity whilst protecting local interests and meeting local needs. Similar views were expressed by Cleophus Thomas, who also conducted surveys on the acceptability of federalism in Jubaland.⁸³¹

5.5 Research methodology and methods

As discussed in Chapter 1, this study adopted two strategies for collecting field data. In the first approach, interviews were conducted with 20 Somali respondents in five major cities of South Africa (Pretoria, Johannesburg, Port Elizabeth, Durban and Cape Town); in the second approach, interviews were conducted with 21 respondents in major towns in Somalia (Mogadishu-Benaadir, Dhusamareb-Galmudug, Hiran-Hirshabelle, Buale, Gedo and Kismayu-Jubaland, Sool-

⁸²⁶ Abubakar, M 'The patterns of state rebuilding and federalism in Somalia' (2016) 10 (6) *African Journal of Political Science and International Relations* 89-95.

⁸²⁷ Ali, Y, Dahir, HA; Hersi, ZD 'Federalism in post-conflict states: Assessing Somalia's challenges and the way forward' (2019) 11(2) *Perceptive on Federalism* 54-94

⁸²⁸ Ibid. at 83.

⁸²⁹ Ibid.

⁸³⁰ Chevreau, O 'Federalism and Post-conflict state building: The case of Somalia' (2017) Unpublished Master's thesis, University of Bradford.

⁸³¹ Thomas, C 'Federalism in Somalia: obstacles, aspirations and opportunities in Jubaland' (2017) unpublished PhD dissertations, George Mason University.

Somaliland, Bokol-South-west and Bari-Puntland). These interviews were conducted telephonically, as were the interviews with respondents in Durban and Port Elizabeth; interviews with respondents in Cape Town, Pretoria and Johannesburg were conducted face-to-face.

5.5.1 Data collection, analysis and reporting

The data collection was conducted through tape-recorded interviews, written notes,⁸³² written responses to questions, informal e-mail exchanges, and face-to-face and telephonic conversations. The data gathering was done in two phases: the first consisted of open-ended questions that the participants completed at their own pace and before the face-to-face or telephonic interviews; the second consisted of face-to-face and telephonic interviews. Where a participant's response called for further exploration, a follow-up interview was conducted.⁸³³

The interview questions provided insight on the research questions (see appendix 1). All participants were assured that taking part was voluntary and that they could withdraw at any time. In all interviews, a discussion took place as to whether they were happy with the interview being audio-recorded.⁸³⁴ In face-to-face interviews, a small digital recorder was placed between the researcher and participant, and in telephone interviews, the digital recorder was attached to a telephone-recording device that linked directly to the researcher's laptop computer. Recording equipment was not turned on until consent to record was given. Prior to recording, participants were asked if they consented to anonymous direct quotations being used in the reporting of the data.

All participants signed consent forms (see Appendix 2). Respondents interviewed by telephone were sent consent forms following initial contact, along with the questionnaire. The

⁸³² Written filed notes are an important addition to enable the researcher to reflect upon any issues that may have impacted upon the way the interview was conducted.

⁸³³ According to Okoli and Pawlowski (2004) follow-up interviews may yield additional data; therefore, in-person follow-up interviews were conducted after the questionnaire process had been completed.

⁸³⁴ Loftland et al. argue that interviews should be recorded to allow for in-depth analysis of the data. Recording interviews also allows the researcher to be more responsive during them, which is important when sensitive issues are discussed. Loftland et al. (2006).

researcher ensured that a signed consent form was returned before the interview. The data collected via written responses to open-ended questions, interviews, or conversations did not contain the names or any other identifiers of the participants. Any data collected or stored electronically in the form of Word documents, Excel spreadsheets, or emails was stored on a flash drive that was password-protected by the author.

The selection of participants (interviewees) was made using purposive sampling. Social scientists define purposive sampling as a research method that requires a researcher to intentionally pick a small number of cases that will yield the most information about a particular phenomenon.⁸³⁵ Typically, purposive sampling targets a particular group of people from which a small sample size that addresses the research question is selected. One of the main advantages of purposive sampling, which was important to this study, is that it provides for greater depth of information than random sampling, as the participants are usually only people who match the desired criteria. In this way, a more is learned from a small number of carefully selected people than from a large, statistically significant sample. As such, to capture a diversity of perspectives, key informants were selected based on their extensive knowledge of socio-political developments in Somalia.

Given that interviews were used as a means of data collection, two considerations guided the use of key informants. First, they were used for information-gathering as they had unparalleled contextual insights into the subject of the research; secondly, they were used to triangulate the validity of some of the data collected through semi-structured interviews. While the first helped in gaining insight on the issues, the latter was helpful in collecting detailed knowledge and insights into the issues that arose from the study. Interviewees were provided with a copy of the

⁸³⁵ Bernard, HR. *Research methods in anthropology: Qualitative and quantitative approaches*. (2002).

questionnaire; the questions were administered in English and translated into Somali language when requested by the participants.⁸³⁶

‘A thick description’ method was used to analyse, and demonstrate how a federal system is taking shape in Somalia.⁸³⁷ In the presentation of the qualitative research findings, the actual words of the participants were used constantly. During the field research, following the counsel of Miles and Huberman, the detailed-memos method was used to take note of key ideas, emerging themes, patterns and relationships.⁸³⁸ Thereafter, respondents’ responses and the emerging thematic patterns from reviews of secondary materials were thematically categorised and analysed in order to map and interpret the dynamics of the federal system in Somalia.

5.5.2 Validity and reliability

During the research process, the study’s validity and reliability was enhanced in three main methods. First, a data triangulation strategy was employed, using reviews of secondary documents, expert consultations, and face-to-face confidential interviews in different settings with diverse categories of respondents. As Denzin notes, various forms of triangulation are key to enhancing research validity and reliability.⁸³⁹ Secondly, the author used peer-support, particularly in the Somali study, to make sense of data, events and political development in Somalia. The research design, findings and analysis were shared with knowledgeable scholars and practitioners to verify

⁸³⁶Interviews were conducted in English. Using English as the medium of interviewing poses difficulties, but as the section on methodology in Chapter 1 explained, participants were persons who had been in South Africa for significant periods. Many had improved their English, and this fact, combined with the simple, non-technical language adopted for the questionnaire and interview, meant that the issue of language was not a barrier.

⁸³⁷ Thick description is a procedure that is used in qualitative research to ensure validity and reliability. This procedure is concerned with describing the setting, the participants, and the themes of a qualitative research in detail. Denzin as quoted in Ponterotto defines thick description as follows: ‘A thick description ... does more than record what a person is doing. It goes beyond mere fact and surface appearances. It presents detail, context, emotion, and the webs of social relationships that join persons to one another. Thick description evokes emotionality and self-feelings. It inserts history into experience. It establishes the significance of an experience, or the sequence of events, for the person or persons in question. In thick description, the voices, feelings, actions, and meanings of interacting individuals are heard.’ Ponterotto, J.G. ‘Qualitative research in counselling psychology: A primer on research paradigms and philosophy of science’, (2005) 52 (2) *Journal of Counselling Psychology* 126-36. See also Denzin, N. K. *Interpretive interactionism* (1989).

⁸³⁸ Mathew B. M and M A. Huberman, *Qualitative Data Analysis: An Expanded Sourcebook*. Second edition (1994).

⁸³⁹ N K. Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods*, 3rd edition (1988) as cited in Colin Robson, *Real World Research: A Resource for Social Scientists and Practitioner-Researchers*. 2nd edition (2002) 174.

soundness. Finally, through conceptual triangulation, the data were examined from multiple perspectives and interpretive frames. Throughout the research process, the study's reliability was enhanced through careful and detailed record-keeping.⁸⁴⁰ The study also employed the audit trail approach, which entails keeping detailed entries of the entire research process, undertaking detailed recording and keeping reflective journals in the form of field notes.⁸⁴¹

5.5.3 Limitations

While the study tried to avoid ethical and methodological challenges, the nature of the study is such that some issues simply could not be avoided. One of the major ones is the question of representativeness. Given that the study sample is small, the study results cannot be generalised. One of the most significant problems with small-scale studies is that while they yield in-depth and valid information, they are not necessarily representative of the target population about which the researcher wishes to make claims. As such, they do not allow one to make accurate descriptive inferences about the groups in which one is interested.⁸⁴²

In view of the limitations laid out above, the findings of the study cannot be generalised to Somalia as a whole, nor are they presented as a definitive representation of the entire Somali population. Having said that, however, it is equally important to point out the significance which the study has in highlighting the responses of Somalis to the federal system and in providing a practical illustration of the issues surrounding the Somali federal system. The purposive data-gathering method offered an important advantage in the sense that the quality of information obtained from the carefully selected participants with relevant experience was rich. While the limited data size precludes generalisation, the study provides insights into the important area of federalism in Somalia, an area characterised by a dearth of academic literature. Moreover, the study provides a useful set of descriptive data that can serve as the basis for further study.

⁸⁴⁰ Robson (2002),

⁸⁴¹ See Robson, *Real World Research*, 174-6.

The interviews posed a few challenges. First, an empirical research component required that the candidate undergo a rigorous ethics clearance process which took several months. While this was pending, the covid pandemic reached South Africa with the resultant national lockdown from March to October 2020, which prevented the author from travelling to Somalia and other areas within South Africa. Following this, University of Cape Town introduced a covid research protocol that requires interviews be done remotely as much as possible, as such the researcher opted for remote interviews as discussed previously.

Second, some planned interview did not materialise due to changes in the schedules of some of the interviewees. In such cases, whenever possible, an alternative appointment for an interview was secured. Where that was not possible, a telephone interview compensated for it. Thirdly, the fact that the issues of federalism versus unitarism in Somalia are politically contested and involve sharp divisions may have influenced some of the information provided by the interviews. However, the information was triangulated with other sources.

Lastly, a key limitation of this study was the difficulties in securing a gender balance. The researcher faced difficulties in finding well-informed women to interview. This is not to say that there is shortage of such women in Somalia, but rather the researcher could not easily secure access to them within the limited time and consequently, they are not equally represented in the collected data. Attempts were made to represent their views whenever possible by reaching out to different regions and including them in the interviews, especially so in telephonic interviews, so as to maintain the quality and validity of the study and ensure that diverse perspectives are represented.

5.5.4 Ethical consideration

Careful attention was paid to ensuring that the questionnaire served to provide a valid level of data for the research purposes and met the ethical framework established by the Ethical Clearance Committee of the Faculty of Law at the University of the Cape Town. The issues of informed consent, confidentiality, anonymity, and doing no harm were taken in account prior to, during and

after the research. Furthermore, the researcher was conscious of other ethical issues that may have arisen during and after the data collection; however, no unforeseen ethical challenges arose during the interviews.

5.6 Findings of the field research

In this section, research findings are reported in four categories, as follows: suitability of a federal system; inclusivity and minority protection; federalism and conflict resolution; and resource and power-sharing.

5.6.1 Suitability of a federal system

Federalism in Somalia continues to be a contentious issue. As noted, Somalis are divided on the viability of federal systems. A number of respondents interviewed saw federalism as dividing the country into clan-based regional states.⁸⁴³ Four respondents noted that federalism is intended to weaken Somalia and make Somalis vulnerable to neighbouring countries, especially Kenya and Ethiopia.⁸⁴⁴ Similar views were expressed by a respondent in Kismayo⁸⁴⁵ and in Mogadishu.⁸⁴⁶ A female student contended that ‘those calling for federal system are practically calling for a permanent break-up of Somalia into a meaningless regional state’.⁸⁴⁷ The majority of respondents regard federalism as a foreign imposition.⁸⁴⁸ A Somali businessman in Durban said that ‘the current regional leaders have reduced Somali into clan Bantustans, or “clantustans”, leading to a balkanisation of Somalia in which every leader imagines he is running an independent state’.⁸⁴⁹

⁸⁴³ Interview 1 Male, Habargidir Clan, Mudug-Galmudug, Interviewed in Bellville, Cape Town; Interview 3 (via Telephone) Female, Habargidir Clan, Dhusamareb-Galmudug; Interview 4 (via Telephone) Male, Ajuuran. Middle-Shabelle, Hirshabelle; Interview 17 Female, Marehan, Gedo-Jubaland, Interviewed in Bellville, Cape Town.

⁸⁴⁴ Interview 12 Male, Dhulbante, Sool, Somaliland, Interviewed in Belleville, Cape Town; Interview 8 Male, Abgaal, Hiran-Hirshabelle, Interviewed in Cape Town; Interview 22 Female, Mursade, Galgaduud-Galmudug, Interviewed in Johannesburg; Interview 39 Male, Habargidir, Dhusamareb-Galmudug, Interviewed in Mayfair, Johannesburg.

⁸⁴⁵ Interview 29 (Via Telephone) Male, Ogadeen, Kismayu-Jubaland.

⁸⁴⁶ Interview 2 (via Telephone) Male, Sheekhal, Mogadishu-Benadir.

⁸⁴⁷ Interview 24 (via Telephone) Female, Habargidir, Dhusamareb-Galmudug.

⁸⁴⁸ Twenty of the 34 people interviewed see federalism in Somalia as a foreign project. The following interviews specifically referred to an Ethiopian and American project in Somalia: Interview 1, Interview 2, and Interview 3 Interview 4, Interview 12, Interview 17 and Interview 39.

⁸⁴⁹ Interview 5 (via Telephone) Male, Hawadle, Hiran-Hirshabelle, interviewed in Durban South Africa.

For others, federalism was seen as good for the country, particularly after many years of conflict.⁸⁵⁰ One respondent argued that ‘thanks to federalism, Somalia is gradually taking its place in the international arena, especially in the UN and in regional bodies’.⁸⁵¹ Others attributed improved stability in Somalia to federalism.⁸⁵² In view of the above findings, Somalis continue to be divided about the suitability of federalism.

5.6.2 Inclusivity and minority protection

As discussed in Chapter 2, federalism is viewed as an institutional arrangement that is widely preferred for the protection of ethnic and other national minorities. The Provisional Constitution accords equal rights to all Somalis, regardless of their clan, clan affiliation, gender or social status.⁸⁵³ However, that has not been the case, throughout transitional period and under subsequent Somali federal government, as discussed in chapter 4, the 5 power sharing formula has provided the basis for allocating seats in the federal and states executives, national and state parliaments. In this arrangement, each of the four major clan groupings (Darood, Hawiye, Dir and Digil-mirifle and one group made up entirely of minorities) select their representatives to parliament and other government positions. While this formula may have provided some semblance of inclusivity, many Somalis are of the view that 4.5 does not meet the aspiration for greater democracy, inclusivity and accountability,⁸⁵⁴ as it encourages appointments based on clan identity rather than competence. In addition, it does not guarantee that all clans and sub-clans within those clan families are represented in elective positions. Elites continue to manipulate their clans to get positions and appointment.⁸⁵⁵

⁸⁵⁰ Interview 7 Male, Abgaal, Mogadishu-Benadir, Interviewed in Mayfair, Johannesburg; Interview 31 (via Telephone) Male, Ogadeen, Buale-Jubaland. Interview 9, Female Abgaal, Mudug-Galmudug, Interviewed in Bellville, Cape Town. Interview 40 (via Telephone) Male, Degodia, Gedo-Jubaland.

⁸⁵¹ Interview 9.

⁸⁵² Interview 9, Interview 19 Female, Habargidir, Galkayo-Galmudug, Interviewed in Cape Town; Interview 7 (Via Telephone) Male, Hawiya, Mogadishu-Benadir; Interview 16 (Via-Telephone) Male, Bokol-South West.

⁸⁵³ Minorities have been allowed to elect their MPs for seats in various regions. The acceptance of the participation of the minorities in the electoral process is in itself democratic.

⁸⁵⁴ Interview 1; Interview 2 (Via Telephone) Male, Sheekal, Mogadishu; Interview 22-Female, Mursade, Galgaduud-Galmudug, Interviewed in Johannesburg. Interview 4 Male (via Telephone) Ajuuran, Middle-Shabelle, Hirshabelle.

⁸⁵⁵ Interview 2.

While inclusivity has been a major preoccupation of Somali politics, more often than not it has been discussed in relation to whether enough members of a particular clan are present in politics (for example, in negotiations or allocation of seats).⁸⁵⁶ The expression *looma dhamma* – ‘not inclusive’ – has been used to dismiss peace agreements and justify a continuation of ethnic conflicts. This is especially true where a certain individual (or clan) is not represented in any of the executives, legislatures or even in peace negotiations. Political positions at federal, regional and district levels, including mayors, are chosen through a selection process predominantly determined by clan elders through the 4.5 formula, which is now becoming the norm.⁸⁵⁷ Clan-based political nominations or appointments are common even in Somaliland, even though Somaliland not refer to 4.5 formula explicitly. They have a similar approach in nominating elders to the Upper House of Parliament (House of Gurti) and other positions in government.⁸⁵⁸ Clan structures and related *xeer* norms (the Somali customary system that informs social relations between and within clans) are therefore integral in shaping who has access to political positions and economic resources under present-day Somali federalism.⁸⁵⁹ Consequently, many Somalis frame participation and representation around their clans, looking at whether clan members (elders) are part of negotiations and hold political office, or whether the clan’s needs are being met. The notion of ‘inclusion’ is therefore primarily linked to clan inclusion, that is to whether a person’s clan is part of a negotiation process, holds political office or has its needs met.

A female respondent from Dhusamareb noted that ‘in Somalia opportunities are mostly given to the older and wealthier man drawn from major clans. Opportunities for young people, women and minority clans are linked to their roles and positions within the clan structure.’⁸⁶⁰ She added that ‘time and again, to get a position one needs to have wealth and experience, and ability to have

⁸⁵⁶ Interview 1 Male, Habargidir Clan, Mudug-Galmudug, Interviewed in Bellville, Cape Town.

⁸⁵⁷ Interview 9.

⁸⁵⁸ Interview 12, Male. Dhulbante, Sool-Somaliland, Interviewed in Bellville, Cape Town.

⁸⁵⁹ Ibid.

⁸⁶⁰ Interview 3 (via Telephone call) Female 32, Habargidir, Dhusomareb- Galmudug State of Somalia.

sway with elders'.⁸⁶¹ As such, corruption and networks play a big role, while lack of wealth, experience and connections constitutes a barrier for young people to be included in the governments at both federal level and federal member-state level. Similar views were shared by the respondents from Mogadishu,⁸⁶² Baidoa⁸⁶³ and Dhusomareb,⁸⁶⁴ who asserted that wealth and the ability to wield influence and benefit for the clan are the main factors that influence selection to any political positions.⁸⁶⁵ As such, women, youth and minority clans lack the access to resources or influence that older men and those from larger, wealthier and more established clans have. Besides, one consistent characteristic of the selection process by the elders at both federal and state level is that women are rarely included. Women cannot become elders and therefore cannot participate in the selection process for any positions and at any level.

Mohamed Eno and Omar Eno view the 4.5 power-sharing formula as creating 'absolute discrimination and severe ethnic marginalisation,' their principal critique being that by elevating four major clans to a certain status and setting aside a half-clan status for all the other groups not only discriminates against already marginalised groups but reinforces the clan as the dominant political unit, which reduces the potential for democratic representation to emerge.⁸⁶⁶

The majority of respondents agree that the 4.5 formula does not sufficiently address the plight of minorities, youth, people with disabilities and internally displaced persons;⁸⁶⁷ indeed, as noted by the respondent from Bokol, the 4.5 formula only represents wealthy individuals and elites who continue to manipulate the clans to their advantages. He cited examples of South-West states where top politicians and wealthy individual continue to dominate the political and economic activities of the states.⁸⁶⁸ As elaborated upon in Chapter 7 and 8, minorities are not adequately represented

⁸⁶¹ Ibid.

⁸⁶² Interview 2.

⁸⁶³ Interview 34 (via Telephone) Male, Rahwain, Baidoa-South West.

⁸⁶⁴ Interview 3.

⁸⁶⁵ Interview 15 (Via-Telephone) Male, Habargidir, Mogadishu-Benaadir.

⁸⁶⁶ Eno, Mohamed and Omar Eno 'Intellectualism amid Ethnocentrism: Mukhtar and the 4.5 factor' (2011) 9 (13) *Bildhaan: An International Journal of Somali Studies*.

⁸⁶⁷ Almost everyone interviewed shared the same sentiment that the Somali federal system and 4.5 power-sharing formula do not protect minorities sufficiently. Interviews 1 to 34.

⁸⁶⁸ Interview 16, Male, Rahwayn, Bokol-South West.

in all the elective and nominated positions. In Puntland, minority groups have no political representation within parliament;⁸⁶⁹ this is consistent with what Hill notes, namely that ‘Puntland has provided little protection or assistance to minorities’.⁸⁷⁰ A similar case has been observed in Somaliland, where parliament in 2012 rejected a proposal for a quota system for women and minorities.⁸⁷¹ In Galmudug and Hirshabelle, minorities are not sufficiently represented; instead, a few rich individuals occupy key positions they have gained through corruption.⁸⁷²

5.6.3 Federalism and conflict resolution

Federalism is increasingly seen as a tool for conflict resolution. As discussed in Chapter 2, it is said to have a broad set of beneficial effects in terms of reducing conflicts, accommodating minorities and holding nations together. However, many respondents see federalism as increasing conflict.⁸⁷³ A clan elder asserts that clan conflicts and disputes over boundaries have increased in magnitudes and intensity.⁸⁷⁴ He contends that federalism has amplified the differences amongst Somali community, noting that every clan now wants to have its own federal member state.⁸⁷⁵

The creation of new FMSs, the associated benefits of these units or layers of government and a selection system based on clan power-sharing have resulted in clan competition for political office, as well as clan-based service provision and access to resources, even where services are privately financed or administered by non-governmental organisations.⁸⁷⁶ The personal benefits of political office often encourage politicians to make deals with others, particularly clan elders or private companies, rather than pursuing a development agenda for the benefit of their constituents.⁸⁷⁷ Failure to reach compromise often leads to conflict.

⁸⁶⁹ Interview 28, Male, Abgaal, Galgaduud-Galmudug, Interviewed in Mayfair, Johannesburg.

⁸⁷⁰ Hill (2010) 19.

⁸⁷¹ Hoehne, MV ‘Continuities and changes regarding minorities in Somalia’ *Ethnic and Racial studies* (2015) 38 (5): 792-807.

⁸⁷² Interview 39, Male, Habargidir, Dhusamareb-Galmudug, Interviewed in Mayfair, Johannesburg.

⁸⁷³ Interviews (1, 2, 3, 4, 5, 17, 18, 19, 10, 20, 22, 26, 25).

⁸⁷⁴ Interview 13, Male Abgaal, Hiran-Hirshabelle, Interviewed in Mayfair, Johannesburg.

⁸⁷⁵ *ibid.*

⁸⁷⁶ Interview 1.

⁸⁷⁷ *Ibid.*

The dynamics of clan networks encourage corruption in that clan members who secure senior positions in the government through election or appointment are deemed as guardians of the interests of the clan before the state.⁸⁷⁸ Those who attain a position of influence or power are expected to share the benefit thereof within the extended clan's families. Not supporting such activities invites criticism, reproach and even conflict: serious efforts to overcome these challenges through nation-building frequently lead to further violence by those who believe that their identities and the privileges tied to them are threatened.⁸⁷⁹ The availability for rent-seeking leadership through corruption comes with price of state capture, or at least the capture of most lucrative positions by the ruling elites. In a country like Somalia, where there are greater than usual opportunities for corruption and less chances of being arrested and prosecuted, corrupt elites seek political office primarily to gain access to state resources.

One of the most critical challenges facing the reconstruction of Somalia's federal state has been the demarcation of disputed areas along the clan boundaries. For example, the boundary disputes between Somaliland and the Puntland state over the regions of Sool and Sanaag have claimed many lives.⁸⁸⁰ Clashes have also been reported between Galmudug and Puntland states over boundaries. The South-west state of Somalia claims that six regions belong to it: lower shabelle; Bako; Bay; Gedo; lower Jubbaland and Middle Juba.⁸⁸¹ The continued conflict between federal member states is a serious concern and is impacting significantly on the establishment of a stable federal system in Somalia.

5.6.4 Resource- and power-sharing

As discussed in Chapter 8, the most pressing issues related to the federal system in Somalia involve the distribution of power and resources. First, there is the challenge of the degree of distribution of powers, namely, the amount of autonomy or power the federal member states are

⁸⁷⁸ Interview 9.

⁸⁷⁹ Ibid.

⁸⁸⁰ Elaborated in chapter 7 and 8.

⁸⁸¹ Elaborated in chapter 7 and 8.

allowed to have. Also at the stake is the right of the federal member state to negotiate with foreign countries and multinational corporations on its own.⁸⁸² The Provisional Constitution is silent on these issues, and as a result there is growing tension between the federal government and FMSs. This failure has created leeway for the FGS and FMSs to encroach upon each other's jurisdiction, making the establishment of federalism extremely difficult.⁸⁸³

The FMS executives wield authority over huge regional resources and reap huge rewards, but with no resources going to the federal government.⁸⁸⁴ Similarly, the FGS has been accused of toying with FMSs by encroaching upon their jurisdiction, particularly that of Galmudug, Hirshabelle and South-West state.⁸⁸⁵ Everyone who was interviewed affirmed that there are no clear plans, policies or regulations agreed upon by both the FGs and FMSs in regard to the distribution of resources between them.⁸⁸⁶ Every FMS is believed to be running its affairs separately from the FG.⁸⁸⁷ One of the respondents cited the examples of Puntland and Jubaland, where the regional governments have their own security personnel independently of the federal government.⁸⁸⁸ The FMSs continually seen as either allies or opponents – a source of friction between the two layers which is derailing peaceful coexistence.⁸⁸⁹

5.7 Concluding analysis

This chapter explored the origin of federalism in Somalia. Federalism was under discussion before independence, yet it was only in the 1990s that it began to take root to the extent of being considered as a means to revive the collapsed state of Somalia. After many years of unsuccessful reconciliation efforts, the adoption of the Transitional Federal Charter and the establishment of the Transitional Federal Government paved way for the federalism to be formally enshrined in the

⁸⁸² Elaborated on in Chapters 7 and 8.

⁸⁸³ Elaborated on in Chapter 8

⁸⁸⁴ Power- and resource-sharing is examined in Chapter 7.

⁸⁸⁵ Interviews (13, 16 and 24).

⁸⁸⁶ Interviews (1 -34).

⁸⁸⁷ Interview 13.

⁸⁸⁸ Interview 10 (via Telephone) Male, Habargidir. Galgadud-Galmudug.

⁸⁸⁹ Interview 12.

Somali Provisional Constitution (PC). A major breakthrough in the implementation of the federal agenda came with the election of President Hassan Sheikh Mohamed. However, even though the PC is clear on the federal character of the state, there is no consensus on what federalism should entail or on the nature of power- and resource-sharing. Equally, Somalis are divided on the viability of the federal system.

Those supporting the adoption of the federal system include politicians, civil servants, and academics. Al-Azhari argues that previous systems of government restricted any sharing of power and resources: with resources mostly limited to the capital city, centralised national government restricted any sharing of power and resources with regions in an equitable manner; as a result, Somalis now want ‘a federal power-sharing system with a clear definition of the distribution of power and resources’.⁸⁹⁰ Others have argued that federalism is indispensable for maintaining peace and stability, bringing government closer to the people and availing effective service delivery.⁸⁹¹ Hassan Mohamed and Surer Mohamed point out that supporters of federalism take the view that ‘Somali politics cannot be remedied through Mogadishu alone. It requires the establishment of federal member states through which disempowered Somalis can influence their government.’⁸⁹² They contend that a trust deficit, resource distribution, and inclusivity are some of the reasons why Somalis prefer federalism.⁸⁹³

Critics of federalism, on the other hand, highlight features of it that make it incompatible with Somalia. These including the homogeneity of Somali society and its religious and cultural make-up. Among the critics are the former Prime Minister, Abdirizak Hajj Hussein, who contends that federalism will not work in Somalia because Somalis lacks the social, economic, political and civic standards that successful federal systems require. He argues that the current clan-based political dispensation will lead to a balkanisation of the contry.⁸⁹⁴ Abdulrahamn Hirsi shares

⁸⁹⁰ Al-Azhari (2013).

⁸⁹¹ Ainte (2014) Hashi (2013).

⁸⁹² Surere, QM & Hassan AM ,’ *Federalism and discount in Somalia, argument for the future of Somalia*’ (2015)

⁸⁹³ Ibid.

⁸⁹⁴ Hussein (2011)

similar views.⁸⁹⁵ Mohamud too notes that the balkanisation of Somalia into mini-states has the potential to spark new clan- and regional-based wars that could prolong the Somali conflict.⁸⁹⁶

This chapter reveals the outcome of the field research into Somalis' views on the desirability of the federal system. The study finds that the respondents are divided on its desirability: some support the federal system but are opposed to the structure of the current Somali government or one or another dimension of it, such as resource distribution, inclusivity or the rule of law, whilst others are opposed to in its entirety.

The study finds that the following are the most contentious issues in regard to Somalia's federal system: the distribution of power and resources, inclusivity, protection of minorities, boundary disputes, mechanisms of dispute resolution, and the rule of law. Chapter 8 critically examines these issues and highlights the prospects and challenges for implementing federalism.

⁸⁹⁵ Hirsi, A (n.d).

⁸⁹⁶ Mohamud (2011; 2012).

CHAPTER 6: AUTONOMOUS REGIONS IN SOMALIA – SOMALILAND AND PUNTLAND PERSPECTIVES

6.1 Introduction

In 1991, Somaliland emerged as an autonomous entity after unilaterally declaring its independence from the rest of Somalia, while Puntland was formed as an autonomous administration on 5 May 1980. Over the past two decades, both territories have managed to display an enviable measure of peace and stability.⁸⁹⁷ Through successive clan conferences, Puntland and Somaliland established relatively viable state institutions that have paved the way for the reconstruction of the state. Although the international community has not recognised Somaliland, the territory now functions with complete autonomy; it has built a functioning democracy and relatively strong institutions of government. It has held a series of successful presidential, It boasts a growing civil society, along with a relatively vibrant democracy and accountability to the rule of law. Somaliland has thus been depicted as ‘an oasis of stability in an otherwise chaotic Somali regional environment’.⁸⁹⁸ Similarly, Puntland has stood out as one of the few stable regions in Somalia.

The aim of this chapter is threefold. First, it evaluates the chain of events that led to the unilateral declaration of independence by Somaliland and to self-determination by Puntland. Secondly, it assesses the state-building process in both regions and identifies key role-players. Finally, it examines the structure of government in Puntland and Somaliland and their present-day relationship with the federal government of Somalia.

⁸⁹⁷ M Bradbury, *Becoming Somaliland* (2008).

⁸⁹⁸ For a comprehensive history of the state-building process in Somaliland, see M Bradbury, *Becoming Somaliland* (2008) Chapter 2, 22–49. See also M Lewis, *Understanding Somalia and Somaliland* 3 ed (2008).

6.2 Somaliland

6.2.1 Background

Somaliland is situated in the northern tip of the Horn of Africa, bounded by Djibouti, Ethiopia, the Puntland State of northeast Somalia and Yemen across the Red Sea. It covers a land area of 137,600 square kilometres and has a coastline of 850 kilometres. It had a total of about 3 million people in 1997.⁸⁹⁹ Pastoralists make up some 55 per cent of the population, with the rest composed of urban and rural dwellers. Territorially, Somaliland is divided into six regions: Northwest, Awdal, Sahil, Togdheer, Sanaag and Sool, which are subdivided into 30 districts. The largest city and the capital of Somaliland is Hargeisa, to which Britain relocated its colonial administration in 1941, while Boroma, Berbera, Burao, Erigavo and Laascaanood are Somaliland's other major cities. Somaliland's principal port is the strategic port of Berbera.⁹⁰⁰

The inhabitants of Somaliland are ethnic Somali, sharing with other Somalis a common language (Somali), religion (Sunni Islam), and a traditional livelihood system based on nomadic pastoralism. With regard to the clan lineages, they have similar clan lineages to the rest of Somalia (discussed in Chapter 3). Somaliland is dominated by three clan families: the Darood/Harti (including the Warsangeli and Dhulbahante) and the Dir (including the Isaaq, Iise and Gadabursi). Isaaq represents 66 per cent,⁹⁰¹ Darood 19, per cent and Dir, 15 per cent of the total population.⁹⁰² Somaliland clans are regionally distributed: the west is inhabited by the Iise and Gadabursi clans; the Isaaq clans live predominantly in the central part of Somaliland; and the Warsangeli and Dhulbahante clans live mostly in the eastern parts. Minority clan groups are scattered across the

⁸⁹⁹ Current estimates vary greatly from 1.7 to 3.5 million, with an urban population of between 748,000 and 1.2 million. See M Bradbury, *'Becoming Somaliland'* (2008) 52–53.

⁹⁰⁰ M Bradbury (2008) 52–53.

⁹⁰¹ The Isaaq clan-family is the most populous group in present-day Somaliland. The Isaaq is divided into six main clans: The Habar Yoonis and Iidagalle (collectively known as the Garhajis), Habar Tol Je'lo (commonly shortened to Habar Je'lo), Habar Awal (including the Esa Musa and Sa'ad Musa lineages), Arab and Ayyub. Historically, the largest sections of the Isaaq have been the Habar Awal, Habar Garhajis (especially the Habar Yoonis) and Habar Je'lo (M Bradbury (2008)).

⁹⁰² M Bradbury, *'Becoming Somaliland'* (2008) 52–53.

country.⁹⁰³ Minority clans consist of three sub-clans: the Yibir, Tumaal and Midgaan, collectively known as Gabooye. They are associated with artisanal occupations such as leather-working, hairdressing, metal-working and hunting.⁹⁰⁴ They are associated with their ‘host’ clan groups but they don’t commonly inter marry with other clans and are sometimes treated as outcasts or of lesser status.⁹⁰⁵

Economically, Somaliland pursues a traditional livelihood system based on nomadic pastoralism.⁹⁰⁶ Livestock production makes up the backbone of Somaliland’s economy, accounting for about 65 per cent of it.⁹⁰⁷ Somaliland’s economy is also heavily dependent on remittances from the diaspora.⁹⁰⁸ Estimated to reach US\$500 million per year, remittances constitute the largest single source of hard currency entering Somaliland. Remittances bring more currency to Somaliland than livestock export and international assistance combined.

6.2.2 Somaliland as part of the union

Historically, Somaliland was a separate region from the rest of Somalia before it voluntarily united with the Italian-occupied part of Somalia in 1960, as described in Chapter 4.⁹⁰⁹ The first formal treaties between the sovereign leaders of the people of Somaliland and the British were signed in the 19th century. The British Somaliland Protectorate was officially founded in July 1887 after Britain signed so-called ‘protection treaties’ with various northern Somali clans.⁹¹⁰ In 1897,

⁹⁰³ Ibid.

⁹⁰⁴ M Bradbury (2008) 11; Brons (2001) 95.

⁹⁰⁵ M Bradbury (2008) 11.

⁹⁰⁶ Somaliland Ministry of Planning and Development. *Somaliland in Figures*. Edition 7, available at <http://slministryofplanning.org/index.php/somaliland-in-figures.html>, accessed on 7 July 2018.

⁹⁰⁷ Ibid.

⁹⁰⁸ There are more than a 100,000 members of the Somaliland diaspora living in the US and Europe: Kaplan, ‘*The remarkable story of Somaliland*.’ For instance, some figures estimate that more than 60,000 politically organised and influential Somalis, mostly from Somaliland, live in London alone and advise the authorities in Somaliland (E Svedjemo, *In search of a state creating a nation: the role of the diaspora in Somaliland’s pursuit of recognised statehood* Master’s (unpublished dissertation, University of Sussex, 2002) 15, 22 and 27.

⁹⁰⁹ M Bradbury (2008) 26.

⁹¹⁰ The Anglo-French Treaty of 1888; the Anglo-Ethiopian Treaty of 1897; and the Anglo-Italian Protocol of 1894.

Somaliland officially became a British Protectorate⁹¹¹ and on 26 June 1960, former British Somaliland received its independence.⁹¹²

Only five days later, on 1 July 1960, former Italian Somaliland and former British Somaliland voluntarily joined and formed the independent State of Somalia ‘on the basis that Somalis are the same people, speak the same language, and have a common religion.’⁹¹³ Prior to the formation of the union, the leaders of British Somaliland and Italian Somaliland meet in Mogadishu⁹¹⁴ and agreed that the two territories be united on 1 July 1960. The New Somali Republic would be a unitary, democratic and parliamentary state. Additionally, leaders agreed to merge the legislative bodies of the two territories. The task of investigating and proposing solutions to the problem connected the two territories with the administrative, financial and judicial system was left with the merged National Assembly. The former Italian Somaliland, the United Nation’s Trusteeship, with the assistance of UN experts, drafted the 1960 constitution.

As discussed in chapter four the leaders of this newly emerging state sought, from the outset, to create a single superstate, a greater Somalia which would include the Ethiopian-administered Ogaden, the French-administered Djibouti, and Kenya’s North-Eastern Province. The first and most essential political factor which led to Somali leaders taking up the idea of a greater Somalia was that it served as a unifying concept for the consolidation of the various clan families into one Somali nation. It also served as a means to supersede the deep-rooted internal divisions between the former Italian and British colonies.

⁹¹¹ Bradbury (2008) 26.

⁹¹² B Farley, ‘Calling a state a state: Somaliland and international recognition’ (2010) 24 *Emory International Law Review* 2. Somaliland independence was recognised by 35 countries, including the United States and Israel.

⁹¹³ J Hansen and M Bradbury, ‘Somaliland: a new democracy in the horn of Africa’ (2007) 34 (113) *Review of African Political Economy* 461–476.

⁹¹⁴ Contini, P points out that ‘the decision to form a union was reached a conference of Northern and Southern Somali leaders held in Mogadishu between April 16 and 22, 1960’. Contini further notes that ‘a joint communique was issued at the end of the conference announced that it had been agreed that two territories would be united on July 1, 1960’. Contini, P ‘*The Somali Republic: an experiment in legal integration*’ (1969) London: Frank Cass. 8–11.

6.2.3 Somaliland under independent government (1960–1969)

After the union between British Somaliland and Italian Somaliland, a political arrangement was established based on democratic principles. Somali scholars have referred to the period between 1960 and 1969 as ‘the golden, democratic age’ in Somalia’s history.⁹¹⁵ The territory was administered by a civilian government, and there was a democracy with a multiparty system, the rule of law and tolerance for opposition political parties.⁹¹⁶ This gave a semblance of equity to the different parts. In the first government of Somalia, President Abdulle Osman and Prime Minister Sharmake appointed northerners to four of the 13 ministerial posts. Similarly, the position of speaker of parliament, along with top positions in the civil service, was given to people from former British Somaliland.⁹¹⁷ In the second government of Somalia (1964–1967), northerners held five important ministerial positions, including foreign affairs, defence, finance, agriculture and information. Similarly, top civil servants were given to them.⁹¹⁸ This is a clear demonstration of the Somali government’s commitment to integration. In the third government, the northerners were again given prominent roles, with the position of prime minister being given to the Egal.

In the north, a considerable majority belong to the Isaaq clan, making it a powerful force in British Somaliland. In a unified Somalia, they constituted a small minority significantly overpowered by the southern clans, but separation enhanced their position.⁹¹⁹ Clan and regional animosities were aroused as majority clans were able to exert more control than others, creating instability within the new government, the state and society. In addition, the unification of the two former colonies was never fully achieved, for there was a huge gap in terms of legal systems, the distribution of resources, government institutions and economic development.⁹²⁰ As Mogadishu became more and more powerful, Somalilanders had to go to Mogadishu for many basic services,

⁹¹⁵ Samatar (2002); Elmi (2010); Ismail (2008).

⁹¹⁶ Samatar (2008); A Samatar AI and Samatar AI (2006).

⁹¹⁷ Samatar, A and Samatar A, I (2006)

⁹¹⁸ Ibid.

⁹¹⁹ Hansen and Bradbury (2007) 63; Pham (2010) 140.

⁹²⁰ M Bradbury (2008) 55.

such as trade licences, passports and higher education. According to a popular joke at the time, even ‘the electric light has to be switched on from Mogadishu.’⁹²¹ It did not take long before the first cracks in the union emerged.

In 1961, a group of northern, Sandhurst-educated army officials revolted against their perceived exclusion and dominance by the southern leaders in Somalia’s military and attempted a coup aimed at ending unification.⁹²² Their efforts were swiftly suppressed. The coup leaders were arrested, but a British judge in Mogadishu who tried them for treason quickly dismissed the charges on the basis that there was no Act of Union in place between the two Somali territories on which to base a judgment.⁹²³ The dissatisfaction of the army officers who staged the coup mirrored the dissatisfaction of the people of Somaliland, and according to Lewis, the coup attempt was widely regarded as a signal of extreme disapproval of the union and an attempt at secession.⁹²⁴ Ultimately, as discussed in Chapter 4, clan politics, coupled with sectarian political parties and widespread corruption, created the political chaos that gave rise to a military coup led by General Barre.⁹²⁵

6.2.4 Somaliland under military rule

After Somalia’s brief experience of a civilian parliamentary democracy, General Mohamed Barre came to power in a bloodless coup on 21 October 1969. Northerners were sufficiently represented in the military regime; as mentioned by Samatar and Samatar, some of the key representatives in the Supreme Revolutionary Council (SRC) and the Council of Secretary included Vice President Colonel Ismail Ali Aboker, Colonel Ahmed Hassan, Foreign Minister Omer Arteh Qalib, and Planning Minister Ahmed Mohamed Silanyo.⁹²⁶

⁹²¹ Ibid.

⁹²² Lewis (2002).

⁹²³ M Lewis, ‘*Understanding Somalia and Somaliland*’ 3 ed (2008).

⁹²⁴ Ibid.

⁹²⁵ Laitin and Samatar (1987) 76.

⁹²⁶ Samatar AI and Samatar AI (2016)

Barre pursued a policy of bringing together all the lost territories of Somalia. He devoted the majority share of Somalia's national resources to an extensive military build-up and secured the Soviet Union's foreign assistance. His determination in realising the vision of a greater Somalia culminated in the 1977–1978 war against Ethiopia (discussed in Chapter 4). For many analysts, this was a watershed in the political history of Somalia. It signalled the end of pan-Somali nationalism and the beginning of the collapse of the Somali state.⁹²⁷ British Somaliland's feelings of marginalisation and discrimination intensified after the Ogaden war. Barre's ambitious invasion of Ethiopia (the Ogaden war was elaborated upon in Chapter 4) was met with stiff resistance and ended in a humiliating defeat. Somaliland leaders criticised Barre for overplaying his hand and were unhappy with the sudden influx of refugees into their lands.

Out of this discontent grew the Somali National Movement (SNM),⁹²⁸ formed in 1981. Despite its predominantly Isaaq composition, the SNM initially wanted to form a government at the national level, but by 1988 had developed into a separatist movement seeking Somaliland's secession.⁹²⁹ Structurally, SNM had two core units: the political movement and a military wing. The political movement was tasked with making political decisions and garnering logistics and physical support for the movement, while the military wing was responsible for fighting Barre's military forces. The reason SNM leaders gave for the existence of the two wings was that military power was necessary for the armed struggle, while the political component was of primary

⁹²⁷ Ahmed I Samatar (1988) 135.

⁹²⁸ The Somali National Movement (SNM) was formed in London on 6 April 1991 with the purpose of organising armed resistance against President Barre. By 1981, the SNM had initiated a guerrilla-style conflict against President Barre. For a comprehensive history of the SNM, see D Compagnon, 'The Somali opposition fronts: Some comments and questions' (1991) 13 *Horn of Africa* 1–3; D Compagnon, 'Somali Armed Movements: The interplay of political entrepreneurship and clan-based factions' in C Clapham (ed) *African Guerrillas* (1998) 73–90; A I Samatar, 'Light at the end of the tunnel: some reflections on the struggle of the Somali National Movement' in H Adam and R Ford (eds) *Mending the Rips in the Sky: Options for Somali Communities in the 21st Century* (1997) 21–38; G Prunier 'A candid view of the Somali National Movement' (1991) 14 *Horn of Africa* 1–2 and 107–120.

⁹²⁹ U Terlindenand M Hassan, 'Somaliland: 'Home grown' peace making and political reconstruction' (2010) 21 *Accord* 76–9.

importance and the focal point of the movement. Its stated goal was the creation of participatory democracy.⁹³⁰

The SNM had the ability, capacity and interest to govern Somalia.⁹³¹ Unlike most other Somali armed groups, it was well organised and ideologically cohesive, with its internal decision-making characterised by a version of participatory democracy (for example, from 1981 to 1991, the movement had five different chairmen, all elected). These values would come to shape Somaliland's future politics, as discussed below. According to Lewis, upon its formation, the SNM 'articulated Isaaq grievances, ranging from inadequate political representation, neglect in development, and the frustration of the local business community and poor economic growth'.⁹³² These grievances included the violent, repressive tactics used by the Barre regime in the north.⁹³³

In 1982, a group of Isaaq elders, emboldened by growing protests in British Somaliland and incensed at the growing level of repression, presented a detailed memorandum to President Barre explaining their grievances. They noted the trouble caused to pastoralist households by the Western Somalia Liberation Front (WSLF), their (corroborated) perception that non-Isaaq refugees were being preferred for housing, education and employment in Isaaq areas, the suppression of Isaaq trade, and the lack of development initiatives in the north.⁹³⁴ Barre's response was to have his foreign minister and third vice-president, both Isaaq, arrested on fabricated charges of treason, along with five senior southern politicians whom he also saw as a threat to his regime.⁹³⁵

As the government's concern with the uprising in the north turned to fear and then paranoia, human rights abuse became extreme. Rape, previously almost unheard of in Somali society, was employed frequently as a means of subjugating women and their communities, and summary executions became relatively common. Arrests of those suspected of displaying even a

⁹³⁰ Richards, R (2014).

⁹³¹ Bradbury (2008) 60.

⁹³² M Lewis, *A Modern History of Somalia* (2002) 252.

⁹³³ Ibid.

⁹³⁴ Africa Watch (1990) 32–37.

⁹³⁵ Africa Watch (1990) 40.

hint of sympathy for anti-government sentiments became frequent, and general levels of corruption increased markedly.⁹³⁶ Livestock was arbitrarily confiscated, trade flows through Berbera were disrupted, villages burnt, and pastoralists prevented from accessing key water-points.⁹³⁷ Consequently, a group of officers from a northern clan staged a coup d'état in 1978. No fewer than 10 clan-based opposition groups, including the SNM, took up arms against Barre's regime. The insurgency was matched by harsh government reprisals involving indiscriminate artillery shelling and aerial bombardments, which claimed the lives of many civilians and displaced hundreds of thousands from their homes.⁹³⁸

When Ethiopian president Mengistu's forces suffered a major defeat in the Eritrean town of Afabet in March 1988, he sought to conclude a peace deal with Somalian president Barre. An agreement was signed at the beginning of April, allowing for the exchange of prisoners and committing each party to end its support for insurgent groups operating within its respective territory. Consequently, SNM members were expelled from their bases in Ethiopia.⁹³⁹ Faced with expulsion from Ethiopia,⁹⁴⁰ the SNM was confronted with a crisis: effective dissolution or a hugely risky assault on targets within Somalia in an effort to carve out bases there. After much debate, it decided on assault, and at the end of May 1988, SNM forces attacked Bur'o, Berbera and Hargeisa. Surprised by the attacks, the government forces were overrun and the SNM took control of the whole of Bur'o and large sections of Hargeisa for a short period. The government promptly dispatched reinforcements from the south, ordering that the towns be retaken 'by any means necessary'.⁹⁴¹ The assault took the form of a vicious and indiscriminate ground attack backed with heavy artillery as well as air bombardment, in which mercenaries from South Africa and Zimbabwe joined Somali pilots in bombing runs from Hargeisa airport, almost completely

⁹³⁶ Africa Watch (1990); Searle (1992).

⁹³⁷ M Bradbury (2008) 58–59.

⁹³⁸ Ibid.

⁹³⁹ Waal (1991) 347–352.

⁹⁴⁰ Ibid.

⁹⁴¹ A Issa-Salwe (1996) 99.

destroying Hargeisa, and devastating Bur'oo. Estimates of loss of life range from 5,000 to 60,000, with up to half a million driven into the Ethiopia-Ogaden area and others fleeing to wherever they could.⁹⁴² Barre's notorious northern commander and son-in-law, General Mohammed Said Hersi Morgan, who gained the epithet 'Butcher of Hargeisa' for his role in the government counter-assault, directed the campaign.⁹⁴³

The artillery shelling and aerial bombardment only served to unite the Isaaq behind the SNM.⁹⁴⁴ The mounting repression against the Isaaq and Somaliland intensified in late 1988, as documented by Africa Watch:

The government exploited the emergency of the SNM to justify indiscriminate violence against individuals and groups that criticised government policies and leadership, or merely because of clan affiliation ... whenever the SNM launched an attack ... that was subject to harsh reprisals, including summary execution, the burning of villages, the destruction of reservoirs, the indiscriminate planting of landmines and the killing and confiscation of livestock, the lifeline of the nomads.⁹⁴⁵

The intensification of the conflict and the uprising by various opposition groups, as discussed in Chapter 4, eventually led to the fall of Barre's regime on 26 January 1991. The regime's policy of divide-and-rule exacerbated inter-clan competition between the Isaaq (in the central parts of Somaliland), the Dir (in the western parts), and the Darood (in the eastern parts), especially between the Isaaq, on the one hand, and the Dir and Darood, on the other, since both of the latter clans and including some Isaaq sided with the military regime.

The apparent defeat of the regime encouraged the Isaaq-led SNM to employ a clique of non-Isaaq fighters for inter-clan dialogues from early 1990 onwards.⁹⁴⁶ Despite SNM military dominance, they explored a consensual approach, together with clan elders, to resolve conflicts

⁹⁴² Ibid; Lewis (2002) 254–255.

⁹⁴³ Waal (1998) 133.

⁹⁴⁴ Walls and Kibble (2010) 38; Hoehne (2009) 258.

⁹⁴⁵ Africa Watch 'A government at war with its own people' (1990) 8–9; B Poore 'Somaliland: Shackled to a failed state' (2009) 45 *STAN. J. INT'L L.* 117. Hargeisa and Burao are now the primary and secondary capitals of Somaliland respectively.

⁹⁴⁶ Interpeace (2008).

and develop the idea of state-building.⁹⁴⁷ Subsequently, the SNM took effective control of the northern part of Somalia (Somaliland). In May 1991, the Grand Conference of Northern Peoples – composed of rebel leaders, clan elders, religious figures, intellectuals, artists and businesspeople – was convened in Bur’o in Somaliland. After exhaustive discussions, a decision was made for Somaliland to secede from Somalia, and on May 17, 1991 the conference issued a declaration of independence, creating the Republic of Somaliland.⁹⁴⁸

6.2.5 Traditional mediation approaches and the constitution-making process

In the early years following Somaliland’s unilateral declaration of independence, a civil war erupted in Somaliland between clans – a minority that supported the Barre regime and the Isaaq-dominated SNM.⁹⁴⁹ However, the violence was kept to a minimum after the fall of Barre. The SNM chairman, Abdurrahman Tuur, immediately sent SNM commanders and clan elders throughout Somaliland with instructions for SNM and Somaliland residents not to seek revenge against each other. As the SNM gained control over territories in the north, peace discussions were initiated, in some instances by the SNM itself, and in others, by opposing clans. In one of the most significant early examples of such an approach, the Dhulbahante’s elder Abdiqani initiated talks in the Ethiopian towns of Qararro, Danood, Gashaamo and Gowlalaale in February 1999 with representatives of the Habar Je’lo clan of the Isaaq.⁹⁵⁰ A similar conference took place in August of the same year in Gashaamo with the Habar Yoonis. These discussions resulted in truce agreements between the parties and underlined the SNM’s commitment to reaching peaceful settlements with neighbouring clans.⁹⁵¹

⁹⁴⁷ M Bradbury (2008).

⁹⁴⁸ Ibid.

⁹⁴⁹ Renders and Terlinden (2010) 729.

⁹⁵⁰ Bradbury (2008) 79.

⁹⁵¹ M Jhazbhay, ‘Somaliland: The journey of resistance, reconciliation and peace’ (2009) 1 *African Safety Promotion* 50–76.

The contemporary Somaliland reconciliation and state-building process began prior to the collapse of the Mogadishu-based government at the start of 1991 and continues until the present. The road to peace was paved by many peace and reconciliation conferences. Such conferences were concerned with constitutional issues and aimed at agreeing on a framework for power-sharing among Somaliland's clans, creating mechanisms for the participation of clan elders in government, structuring institutions of government, and establishing ways of maintaining security.⁹⁵² The period between 1990 and February 1997 was significant in Somaliland's state-building and peace effort. This period culminated in a major conference in which significant agreements were reached. The following section highlights some of the major conferences in this period.⁹⁵³

6.2.5.1 *Berbera Conference*

The first of the peace conferences was the brotherhood conference of the northern clans held in Berbera⁹⁵⁴ in February 1991. The Berbera Conference was referred to as 'a declaration of peace' conference where SNM leadership, various Isaaq clan elders and representatives of the minority clans came together to begin reconciliation.⁹⁵⁵ The objective of the conference was to restore trust and confidence between the Isaaq and non-Isaaq clans. The Berbera Conference was an expression of the SNM's reconciliatory policy of peaceful coexistence between all the clans; eventually a degree of peace was secured, largely through the efforts of the traditional clan elders. The conference laid the groundwork for larger conference that took place between April 1991 and February 1997. The SNM exhibited good leadership: instead of exhibiting authority through force, it consented to a peaceful clan-led process, thereby characterising clan elders as those responsible for peace and reconciliation in the post-war Somaliland.⁹⁵⁶

⁹⁵² M Jhasbhay, 'Somaliland: Africa's best kept secret, A challenge to the international community?' (1994) 9(1) *Oral Traditions* 185-202.

⁹⁵³ For a full account of the Somaliland National Conference, see APD (2006); WSP (2005); Bradbury (2008); Jhasbhay (2007). WSP *International Somali Programme. Rebuilding Somaliland, Issues and Possibilities* (2005).

⁹⁵⁴ Berbera was chosen primarily because it was the largest town to avoid destruction by Siad Barre's forces (Saleebaan Afqarshe (2007a)).

⁹⁵⁵ Bradbury (2008) 79.

⁹⁵⁶ *Ibid.*

6.2.5.2 *Bur' o Conference*

The Berbera Conference was followed by one in Bur' o in April and May 1991, convened and run by clan elders. The main focus of the Bur' o Conference was the consolidation of a ceasefire and an agreement on an interim system of administration for the territory. As Hohne notes, the Bur' o conference was the launching point for the new political powers that the Somaliland traditional leaders (*Guurti*) and SNM had gained since 1991.⁹⁵⁷ Brokered by institutionalised clan authorities and the SNM, this conference led to historical progress. This is where delegates reached agreement on secession from Somalia on 18 May 1991, as well as on the continuation of reconciliation efforts within their territory.

The conference was a turning-point in the many months of negotiations between the different clans and sub-clans. It led to the formation of a two-year interim government led by the SNM, the drafting of the Somaliland Constitution and the registration of political parties in preparation for a general election and constitutional referendum.⁹⁵⁸ Primary decision-making was expanded to include traditional leaders alongside the SNM central committee⁹⁵⁹ and, as an extension of the SNM's policy of reconciliation, leaders from each of the northern clans were invited to join a leadership group of traditional leaders. The Isaaq, Gadabuursi, Esa, Dhulbahante and Warsangeli clans were each represented by 10 elders.⁹⁶⁰ The political wing of the SNM, which had acted in the role of the executive during the liberation struggle, assumed interim leadership of Somaliland under the chairman and president of the SNM, Abdurrahman Ahmed Ali Tuur. The *Guurti* became an integral component of the new government, with elders who were delegates at the Bur' o conference filling the membership ranks of the interim upper house of parliament. As

⁹⁵⁷ M V Hoehne, 'Traditional Authorities in Northern Somalia: Transformation of Position and Powers' (2006) Working Paper No. 82; International Crisis Group. *Somaliland: Democratization and its Discontents* (2003) African Report No. 66.

⁹⁵⁸ These two years were guided by the SNM constitution of 1981. See Richards (2014).

⁹⁵⁹ See A Arieff, 'De facto statehood? The strange case of Somaliland' (2008) 3 (2) *Yale Journal of International Affairs* 60-70

⁹⁶⁰ *Ibid.*

such, the *Guurti* existed as both a legislative body and an advisory council, and both a traditional body and an institution within government.

Once the resolution of sovereignty had been declared in Bur'oo, the newly independent but internationally unrecognised territory experienced a period of optimism, economic growth and stability. However, it was not long before rifts began to appear between clans that had fought together for the liberation of Somaliland. One of the causes of the rifts was a power struggle among the clans: there were conflicts between the Isaaq sub-clans, Habar Yonnis and Habar Je'lo.⁹⁶¹ The conflict persisted between these clans and between others as well, according to Bradbury. Close to 300 people died as a result of these conflicts. The SNM interim government was 'mandated [by the *Guurti*] to continue with disarmament of firearms of all clans and lead the constitution-making processes. The interim authority moved to disarm the clans' militia'.⁹⁶² A remarkable feature of Somaliland's constitution-making process is that the SNM handed over power in 1993 to people who had never fought alongside it. The *Guurti* 'were not only crucial in this transition period, but throughout the constitution-making process, have been much more influential than the nascent government of Somaliland'.⁹⁶³ Peace became the main objective in the early phases of state-formation. President Tur increasingly relied on the *Guurti*, as well as on local traditional mechanisms, for reconciliation and conflict resolution, rather than on the SNM's political programme.

6.2.5.3 Borama Conference

Two years after the Bur'oo Conference, a series of conflicts of varying degrees erupted in Somaliland. These conflicts culminated in a national conference in Borama, where a transition was

⁹⁶¹ The Burco Clan Conference played a critical role in creating peace between the Isaaq clan and other clans in Somaliland, especially the Dir in the north and the Harti in the east. It had not addressed the grievances between Isaaq sub-clans and therefore internal conflicts between different factions of SNM – which had been suppressed out of necessity during the fight against Barre – broke out (M Jhazbhay (2010)).

⁹⁶² M Bradbury (2001); WSP (2005).

⁹⁶³ I H Jama, 'The Somaliland Constitution: Experience to Date and Future Developments' (2007).

effected from the interim military government installed in Bur'oo to a new civilian administration. As the majority of residents of Borama are from the Gadabuursi clan, the decision to hold the conference amongst the Gadabuursi was to show that the new state being created was not only for Isaaq clans.

At the Borama Conference, two significant agreements were reached: on the National Charter (NC) and on the Peace Charter.⁹⁶⁴ The Peace Charter aimed to reiterate the principles of clan determination in governance and to establish channels of socio-political deliberation, moving from *shuur* (elder's assembly as discussed in Chapter 3) groups to *Guurtis* (assembly) at local and national levels.⁹⁶⁵ In addition, the NC was adopted, as the national customary law (*Xeer*) and the Provisional Constitution. Traditional clan elders or *Guurti* were integrated into the state system as the legislature (i.e. the Upper House became the House of Elders).⁹⁶⁶ The conference debated a wide range of topics, agreeing on a security framework or Peace Charter and a national constitutional structure.⁹⁶⁷

It was agreed that the position of executive president would be retained, with a vice-president and ministers. A bicameral parliament was formed, consisting of 150 voting members of the conference and split into an upper and lower house, each with 75 members.⁹⁶⁸ Proceedings moved on to the election of the president and vice-president. Mohamed Ibrahim Egal was elected president and Abdirahman Aw Ali, vice-president.⁹⁶⁹ Consequently, clan elders took the leadership of the Isaaq-dominated SNM territorial leadership to a civilian administration. The peaceful transfer to civilian rule marked the start of the process of creating a democratic state in Somaliland.⁹⁷⁰

⁹⁶⁴ I H Jama, *The Somaliland Constitution: Experience to Date and Future Developments* (2007).

⁹⁶⁵ Interpeace (2008).

⁹⁶⁶ Bradbury (2008); Interpeace (2008).

⁹⁶⁷ Drysdale (1994) 143.

⁹⁶⁸ WSP-International (2005) 63.

⁹⁶⁹ Menkhaus (2000); WSP (2005); Bradbury (2008).

⁹⁷⁰ The Grand National Clan Conference of Borama was a watershed event in the formation of the Somaliland state. Bradbury (2001); Menkhaus K (2000); WSP (2005).

Borama, in brief, dealt with matters of structure of governance and the formula of power-sharing, and laid the groundwork for a peaceful transfer of power from the Isaad-associated SNM to a civil administration, based on clan representation that became known as the *beel* system.⁹⁷¹ This was described as a dynamic hybrid of Western and traditional systems of governance and consisted of an executive president, an independent judiciary and a bicameral parliament comprising an upper house of elders incorporating the *Guurti* and a lower house of representatives, the members of which were nominated on a clan basis by an electoral college of elders. Under the *beel* system, both the House of *Guurti* and the House of Parliament, selected by the *Guurti* at the Boroma conference, were established on the principle that the distribution of political seats should balance the centre with the periphery, i.e. secure national representation of all clans.⁹⁷²

The approach of pursuing a thin government – initially based on power-sharing along clan lines with only a minimum of authority and functions, while prioritising local processes of reconciliation driven by the traditional authorities – helped avoid turning the process of state-formation into a zero-sum, conflict-producing exercise.⁹⁷³ By securing the national representation of all clans, government in essence became a power-sharing coalition of Somaliland's clans, integrating tradition and modernity in one holistic governance framework. The framework aimed to foster popular participation in governance, or participatory governance, which might best define the essence of democracy without the encumbrance of a Western connotation.⁹⁷⁴ The Borama conference is today considered one of the most successful of Somaliland's reconciliation meetings.⁹⁷⁵

⁹⁷¹ The *Beel* system had been crucial in restoring law and order in Somaliland and securing participation in governance by all clans, and had thus proved far more legitimate and viable than previous Western-style political systems. See Bradbury M (2008).

⁹⁷² F Battera, 'State and democracy-building in Sub-Saharan Africa: the case of Somaliland – a comparative perspective' (2004) 4(1) *Global Jurist Frontiers* 1–23.

⁹⁷³ Bradbury M (2008).

⁹⁷⁴ Jhazbhay (2007) 70.

⁹⁷⁵ Ibid.

6.2.5.4 Hargeisa Conference

One final major national conference was held in Hargeisa in 1996 to 1997, commonly referred to as the Hargeisa Conference, in response to a renewal of violence and conflict within the government, and partly as a means of ending the deadlock between President Egal and parliament over the drafting of a permanent constitution.⁹⁷⁶ The Hargeisa conference was a means of bringing together fragmented population groups and a divided government, and resulted in significant changes for Somaliland. A peace agreement was signed, bringing an end to the fighting, and Egal was re-elected as president. Of particular interest is that the conference resulted in the start of a transition from a community- or clan-based (*beel*) government system that had thus far characterised the government, to a multiparty democratic system, and finally to the formal adaptation of an interim constitution alongside state institutions.⁹⁷⁷

6.2.6 The Somaliland National Charter for the transitional period

The peace-building process discussed above underpinned the constitution-making process, with the major conferences in Somaliland sometimes described as Somaliland's version of constituent assemblies.⁹⁷⁸ The conferences at Bur'oo and Borama legitimised the adoption of the NC in 1993, and a more detailed interim constitution followed in 1997.⁹⁷⁹ The first main constitutional document of Somaliland was the NC (*Axdi Qarameed*), which was signed at the Borama conference.⁹⁸⁰ The NC laid the foundation for Somaliland's stability and statehood for an interim period of two years.

⁹⁷⁶ Bradbury M (2008) 124-125

⁹⁷⁷ Bradbury (2008) 125.

⁹⁷⁸ A Abokor and S Abdillahi, '*Narbada iyo Caano (Peace and Milk). Linking Peace Building and Development in a Decentralized Somaliland*' (2002).

⁹⁷⁹ I Jama, 'Making the Somaliland constitution and its role in democratisation and peacemaking' in M Bradbury, and S Healy, '*Whose peace is it anyway? Connecting Somalia and International peacemaking*' (2010) London: Conciliation Resource.

⁹⁸⁰ The Charter was approved by the constituent assembly of 150 nominated representatives of all the Somaliland Communities on 25 April 1993 and was signed and came into effect on 3 May 1993.

The Charter was in force for a period of two years and was replaced by a constitution, which was approved by a public referendum.⁹⁸¹ In 1994, the then House of Representatives appointed a 10-member Constitution Committee, advised by a consultative body of 25 members comprising lawyers, traditional leaders, religious figures and politicians.⁹⁸² The committee produced a draft constitution, and in the same year, President Egal appointed a Sudanese lawyer to produce an alternative version. The two drafts were distinguished by the balance of power they accorded to the legislature and executive. At the Hargeisa Conference in 1997, the Constitution Committee combined the two drafts and presented one final version, which was subsequently endorsed as the Interim Constitution of the Somaliland Republic.

The period of the Charter's validity and President Egal's term of office was extended by a year and a half. Provision was made for this interim period to be increased by the two houses of parliament, and in early 2000, the two houses voted that the period be increased by one year. This was primarily to give more time for the revision of the draft Constitution (before its submission to the nation at a national referendum) and for putting in place the laws and mechanisms for changing the 'representative' democracy in Somaliland to a popular democracy, based on the direct election of the president and parliament of Somaliland. Although initially the Somaliland government proposed extensive amendments to the Constitution in 1999, the final revised Constitution was not very different from the previous one, and the reduction of the number of articles from 156 to 130 was largely achieved by the amalgamation of some articles rather than by extensive repeals. Unlike the earlier draft proposals, the parts of the Constitution relating to directive principles and to human rights were retained. Thus, the revisions tidied up the Constitution without making any fundamental changes to it.⁹⁸³

⁹⁸¹ Somaliland National Charter. Somaliland Government, 1993, Art. 5 National Charter, available at www.somalilandlaw.com/somaliland_national_chartercha.htm#Title., accessed on 6 November 2017.

⁹⁸² M Fadal (ed) *Challenges of Democratization: Immersion in Somaliland Elections Experience and the Role of the Independent Scholars Group* (2012) Hargeisa, Somaliland: SORADI.

⁹⁸³ Bradbury, M (2008).

6.2.7 Somaliland's Constitution

In 2000, a 45-member committee appointed jointly by the president and parliament came up with a universally acceptable draft Constitution.⁹⁸⁴ The Houses of Parliament of Somaliland adopted the Constitution of Somaliland ('the Constitution') on 30 April 2000, with a referendum held on 31 May 2001.⁹⁸⁵ The referendum marked the first time in 30 years that the people cast a democratic vote. It was crucial in terms of affirming that the population owned the popular aspiration for independence and in securing that, the particular 'ideal of the state' – framed in the Constitution – A clear and significant majority of the population endorsed the Constitution, thereby declaring their commitment to independence as well as to the transition from the clan-based system to a restricted multiparty democracy.⁹⁸⁶

When President Egal died during a private visit to South Africa in May 2002, Vice-President Dahir Rayaale Kahin was, without delay or objections, sworn in as his successor, in accordance with the Constitution.⁹⁸⁷ Notably, Rayaale is from the Gadabursi clan and thus does not belong to the majority Isaaq population. This event was hence perceived as the first test of actual commitment to constitutional law.⁹⁸⁸ Since the adoption of the Constitution, Somaliland has held a number of general elections, including local council elections in 2002 and presidential elections in 2003, 2010 and 2017. However, parliamentary elections (for the House of Representatives) was postponed several times; those who were elected in 2005 have served for more than 15 years.⁹⁸⁹

⁹⁸⁴ Somaliland Constitution, April 2005, available at

www.somalilandlaw.com/Somaliland_Constitution/body_somaliland_constitution.htm, accessed on 5 July 2018.

⁹⁸⁵ The Buraq Declaration has, since 1991, enabled the establishment of an elected government, a national development plan, and a national constitution consisting of 130 articles that define the state of Somaliland, its political powers, its legislative institutions and its structure of government.

⁹⁸⁶ Bradbury (2008).

⁹⁸⁷ Article 89 of the Somaliland Constitution stipulates that the vice president shall act as temporary president upon the death of the president, with election for the president to follow within six months. Rayaale, as vice president, therefore filled the vacancy.

⁹⁸⁸ ICG (2006).

⁹⁸⁹ Bradbury (2008) 125.

The Constitution of Somaliland consists of a preamble (*arar*) and five main chapters (*qaybo*), each of which is subdivided into parts (*xubno*), with a total of 130 articles (*qodobo*), 26 fewer than those contained in the 1997 provisional text, which contained 156 articles.⁹⁹⁰ The endorsement of the final version of the Constitution by 97 per cent of the electorate in Somaliland was an unequivocal declaration of its wish to preserve Somaliland's independence, albeit that there was considerable opposition to the referendum in the Spool region's Las Anod district, where limited voting took place.⁹⁹¹

The capital of Somaliland was named as Hargeisa and the citizens of Somaliland were declared to be those who were descendants of residents of Somaliland and who were born on or before 26 June 1960.⁹⁹² The Constitution establishes a bicameral legislative body, comprising two houses, the House of Representatives (*Golaha Wakiilada*)⁹⁹³ and the House of Elders (*Golaha Guurtida*), commonly shortened to *Guurti*.⁹⁹⁴ One important innovation within the Constitution is the formation of the second part of the legislature, the House of Elders, with the remit of reviewing legislation passed by the House of Representatives before it is forwarded to the president.⁹⁹⁵ Most importantly, the House of Elders has a special responsibility for passing laws relating to religion, traditions (culture) and security.⁹⁹⁶ In accordance with such responsibilities, members of the House of Elders must fulfil the same conditions as those elected to the House of Representatives, with two extra requirements: they must be over 45 years of age and they must have a good knowledge of the religion (Islam) or be well versed in the traditions.⁹⁹⁷ Judicial authority is vested in the

⁹⁹⁰ The Constitution of the Republic of Somaliland, also known as the *Dastuurka Jamhuuriyadda Somaliland*, 2000.

⁹⁹¹ M Aguilar, 'The Constitution of Somaliland: The problem of constitutional generations and clan dissolution' (2015) *Scientific Research Publishing*, 13 October 249.

⁹⁹² The Constitution of the Republic of Somaliland, 2000, articles 3 and 4.

⁹⁹³ According to the Somaliland Constitution, 'The House of Representatives consists of members who represent the public, and forms the first part of the country's legislative, passing laws and approving and overseeing the general political situation and the direction of the country.' Ibid, article 39.

⁹⁹⁴ The House of Elders of the Republic of Somaliland is the second part of the legislative, and shall review the legislation passed by the House of Representatives before it is forwarded to the President; and shall have special responsibility for passing laws relating to religion, traditions (culture) and security. Ibid, article 57.

⁹⁹⁵ Ibid.

⁹⁹⁶ Ibid.

⁹⁹⁷ Article 61(1).

Somaliland Judiciary.⁹⁹⁸ The judiciary consists of courts⁹⁹⁹ and the procuracy.¹⁰⁰⁰ The Somaliland Constitution guarantees the independent of the judiciary while performing its judicial functions.¹⁰⁰¹

The adoption of the Constitution also put in place, in a peaceful manner, the necessary steps to change Somaliland's political system from a clan-based administration to a limited form of multiparty democracy.¹⁰⁰² The Constitution introduced universal suffrage, enshrining in particular the right of women to vote. It also provides that the executive, the legislature and the local administrative units are to be formed through regular elections, although it restricts the number of political parties allowed to participate in presidential and parliamentary elections to three.¹⁰⁰³ Indeed, only the three political organisations that obtained the highest percentage of votes during local elections could register as political parties and contest presidential and parliamentary elections.¹⁰⁰⁴ The Somaliland Constitution also provides for the protection of minorities: article 8 affirms that 'all citizens of Somaliland shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on the grounds of colour, clan, birth or language'. Furthermore, article 8(2) abolishes discrimination on the grounds of ethnicity and clan affiliation.

6.2.8 Political parties in Somaliland

The nature of Somaliland's political party landscape is defined in its Constitution. Article 9 states that 'the number of political parties in the Republic of Somaliland shall not exceed three (3), and these parties shall not be based on regionalism or clannism'. This article was designed to curb the influence of individual clans on the political process, preventing any clan from forming its own

⁹⁹⁸ Article 97.

⁹⁹⁹ Article 99(1)

¹⁰⁰⁰ According to article 103, 'The Procuracy of the state shall consist of the Attorney General and his deputies.'

¹⁰⁰¹ Article 99(2).

¹⁰⁰² Bradbury (2008).

¹⁰⁰³ Article 9.

¹⁰⁰⁴ M Fadal, 'Gap in the Somaliland constitutional process: Reforming the Guurti House' in *Reflections and Lessons of Somaliland's Two Decades of Sustained Peace, State Building and Democratization* (2011) SORADI/ Heinrich Boell Foundation 118–125.

political party. It is a strategy designed to prevent party politics from mirroring clan politics (although, of course, clan politics still plays an important role).¹⁰⁰⁵

The rationale for this restriction was to promote the development of political organisations that would represent a cross-section of the population and thus avoid the sectarian politics which plagued Somalia in the 1960s, when numerous and fragmented parties chaotically contested elections, contributing to Barre's coup in 1969. 'Political associations' are allowed to contest local elections and there is no limit to the number of these organisations. The three most popular, according to a complicated algorithm that takes both the number of votes and their geographical spread into account, become the three official parties. Winning candidates from unsuccessful political associations are then obliged to join one of the political parties. This means that the stakes of local elections are extremely high, given that local elections determine who can contest national elections. The three dominant political parties are the Peace, Unity and Development Party (Kulmiye),¹⁰⁰⁶ the Somaliland National Party (Waddani);¹⁰⁰⁷ and the Justice and Welfare Party (UCID).¹⁰⁰⁸

6.2.9 The traditional governance system, democracy and role of Islam

The role of traditional authorities in the Republic of Somaliland became institutionalised in the decade after the secession in 1991. According to Walls and Kibble: 'Since 1991, community and clan-based reconciliation conferences and meetings have enabled the iterative construction of a resilient system of state, gradually widening the ambit of political consensus through sequential popular conferences and wide, albeit largely male, debate.'¹⁰⁰⁹

¹⁰⁰⁵ See the regulation of political parties in Somaliland, Consolidation of the Regulation of Political Parties Law Number 14 of 2011.

¹⁰⁰⁶ The Kulmiye Party is primarily associated with the Habar Jelo clans (*silanyo's* clan). It is supposed to be the most geographically diverse, putting it in a particularly strong position for parliamentary elections (M Fadal (2011)).

¹⁰⁰⁷ The Wadani Party is associated with Habar Yonis and Gadabursi (M Fadal (2011)).

¹⁰⁰⁸ UCID is predominantly aligned with a sub-clan of the Garhajis (M Fadal (2011)).

¹⁰⁰⁹ M Walls and S Kibble 'Beyond polarity: Negotiating a hybrid state in Somaliland' (2010) 45 (1) *Africa Spectrum* 40.

The traditional leaders' years of experience have contributed to the upper house's success not only in establishing security but also in obtaining popular support for the government and the introduction of democratic concepts and practices. As Lewis notes, 'In comparison with the heavy-handed and largely unsuccessful UN and other international efforts to impose peace from the top in southern Somalia, this [peace and state-building in Somaliland] was impressive testimony to the effectiveness of traditional grassroots Somali diplomacy.'¹⁰¹⁰

The influence of clan politics was not ignored by the SNM and traditional leaders. For example, the House of Elders was established specifically to give clan leaders a voice in government, and the three-party system is designed to force different clans and sub-clans to work together. The incorporation of these traditional elements means that Somaliland's political system is often described as a hybrid political system. The influence of clan politics extends far beyond its formal representation in the political system, and is an important factor in almost every political decision, as discussed above. Government officials are carefully selected to maintain a clan balance even if they are not best suited for the job. The judiciary plays second fiddle to clan justice mechanisms, which not only relieves pressure on overburdened courts but also makes it hard for the government to enforce laws.¹⁰¹¹

Leaders in Somaliland utilised the clan, both practically and symbolically, to facilitate the introduction of a central democratic government, and also to ensure continued stability throughout the state-building process.¹⁰¹² The traditional authorities performed their functions as mediators between conflicting groups (they were critical of the process of demobilisation) and as restorers of inter-clan relations; they ensured a consensus-based political system, which recognises kinship as a basic principle structuring social organisation. The legitimising power of the clan was

¹⁰¹⁰ M Lewis, '*Lessons from Somaliland: Appropriate Technology for 'Peace Process'*' – paper presented by Professor I M Lewis at the conference of the Somaliland Societies in Europe (SSS) (2010) 1–2 September.

¹⁰¹¹ M Bradbury (2008).

¹⁰¹² I S Spears, 'Reflections on Somaliland and Africa's Territorial Order' (2003) 30 (95) *Review of African Political Economy* 89-98.

recognised in its inclusion in government and the state. This inclusion was useful to the progress of the peace process. It is the continued negotiation, mediation and facilitation, and the efforts of clan elders, countless local *shiir* and *Guurti*, which have contributed to the maintenance of peace, stability and co-existence within a potentially volatile and often fragile environment. Positioning the traditional body within government has altered the traditional notion of the body and changed the nature of the council of elders as a historically apolitical body. The council of elders has become a legislative institution in a multiparty government structure.¹⁰¹³

Although the *Guurti* in many ways resembles the traditional body that negotiated agreements and established customary law, it is now also directly involved in the political practice of creating legislation and functioning as a government institution, making political neutrality difficult if not impossible. Thus, the *Guurti* exists in both the old and new ways of governing Somaliland. This ‘best-of-both-worlds’ (Western-style democracy and traditional) approach has been a major factor in Somaliland’s stability and development:

In spite of a heavily under-resourced post-conflict government and the need to grapple with challenges as fundamental as the accommodation of the competing interests of representative nation state democracy and a social structure based on egalitarian male kinship affiliation, Somali traditions, discourse and negotiation have enabled genuine progress.¹⁰¹⁴

The inclusion of *Guurti* in the central government of Somaliland undoubtedly has been a vital component of state formation in Somaliland, resulting in an extended period of peace and stability. However, critics argue that *Guurti* are not checked by the population through election but are accountable only to themselves and the president; others have argued that the appointment of *Guurti* mostly favours sub-clans in major cities and that the rural population is thus not adequately represented.¹⁰¹⁵

¹⁰¹³ Menkhaus (2006a); (2006); (2005).

¹⁰¹⁴ M Walls and S Kibble, ‘Beyond polarity: Negotiating a hybrid state in Somaliland’ (2010) 45 (1) *Africa Spectrum* 40.

¹⁰¹⁵ Battera, F (2004) State and Democracy Building in Sub-Saharan Africa: the case of Somaliland- a comparative perspectives’ (2004) 4(1) *Global Jurist Frontiers* 1-23.

6.2.10 Somaliland's argument for statehood

Despite impressive accomplishments, Somaliland's international recognition remains a mirage. The UN and the international community defer to the AU on the subject, and the AU has been reluctant to put the matter of Somaliland's status on its summit agendas. This is despite an AU fact-finding mission concluding in 2011 that Somaliland fulfils many of the criteria for statehood.¹⁰¹⁶ Somaliland scholars and politicians have advanced a number of arguments that make a legal and political case for Somaliland's recognition.¹⁰¹⁷ Its claim for political recognition rests on a number of points. For one, Somaliland gained independence from British colonial rule on 26 June 1960, and held the status of an independent state for five days, until 1 July 1960. In the process, the UN and 35 sovereign states duly recognised it.¹⁰¹⁸ The US secretary of State, Christian Herter, sent a congratulatory message, and the UK signed several bilateral agreements with Somaliland in Hargeisa on 26 June 1960.¹⁰¹⁹ Secondly, it is argued that Somaliland's voluntary union with former Italian Somaliland to form the state of Somalia is a compelling legal basis for its case for international recognition because, under international law, Somaliland has the right to abrogate the union into which it voluntarily entered.¹⁰²⁰

Indeed, the two territories had been distinct colonial territories or fragments for over 30 years and had grown independently, with widely divergent institutions, legal systems and colonial histories. Furthermore, the aspiration for independence is undoubtedly very strong among the bulk of the Somaliland people, who tasted the bitter fruits of discrimination, brutal political repression,

¹⁰¹⁶ SORADI 'Somaliland Statehood, Recognition and the Ongoing Dialogue with Somalia.' (2013) Somaliland Development Series 3.

¹⁰¹⁷ A J Carroll, and B Rajagopall, 'The Case for the independent statehood of Somaliland' (1993) 8(2/3) *American University International Law Review* 653-681. P Roethke, 'The Right to secede under International Law: The Case of Somaliland' (2011) 20 (2) *Journal of International Service* 35-48. See also Somaliland Government. Somaliland: Demand for International Recognition. Policy Document. Hargeisa: Ministry of Information (2001), available at www.somalilandlaw.com/Government_Recognition_Paper_2001.pdf, accessed on 4 June 2018.

¹⁰¹⁸ International Crisis Group 'Somaliland: Time for African Union Leadership' (2006) Africa Report No 110 Addis Ababa/Brussels/Hargeisa: International Crisis Group.

¹⁰¹⁹ D H Shinn, 'Somaliland: The Little Country that Could' (2002) Africa Notes 9 (November). Washington: Centre for Strategic and International Studies.

¹⁰²⁰ Peter Schraeder, 'Why the United States should recognise Somaliland's independence' 2006, available at www.hiiraan.Com, accessed 16 June 2008; Adan *The Case for Unitary Government*.

military attacks and economic deprivation before 1991, making the prospect of reunification with Somalia very distant even if the latter regains stability in the future. Indeed, ‘thirty years of unfulfilled promises and brutal policies ripped the fabric of the already fragile north-south political compact’.¹⁰²¹ The Somaliland people voiced their opposition to the 1961 referendum, staging a coup d’état in that same year and later engaging in armed struggle.¹⁰²²

In addition, the May 2001 Somaliland constitutional referendum was effectively a survey on views of independence. Somaliland has a distinct territorial base and is already exercising sovereignty, with the symbols and internal dynamics of a state.¹⁰²³ Thus, according to Somaliland’s authorities, the claim for recognition is well grounded. Moreover, Somaliland draws on international legal instruments which, it argues, support its position, including the Montevideo Convention on the Rights and Duties of States. This convention prescribes that a fully-fledged state needs to have ‘a permanent population, a defined territory, a functioning government, and the capacity to enter into relations with other states’. Somaliland leaders argue that they have met most of the conditions stipulated in the Montevideo Convention.¹⁰²⁴ The Somaliland parliament has passed a resolution stating that ‘it is allowed to seek the Somaliland interests from anywhere and any group deemed necessary for that purpose’.¹⁰²⁵ It argues that Somaliland’s Constitution and its national sovereignty are sacrosanct. Therefore, the priority in all of Somaliland’s international negotiations is to secure international recognition of Somaliland.

¹⁰²¹ Ibid.

¹⁰²² The government of Somaliland argues that it is a legal anomaly whose recognition would set no precedent relevant to the rest of Africa. It contends that Somaliland did exist as an independent country in 1960, albeit only for a few days, before voluntarily joining a union with Somalia. Since Somaliland currently exists within the old colonial boundaries of British Somaliland, its government argues that it is simply returning to its previous status as an independent state and that its existence does not threaten the inviolability of inherited colonial boundaries (Human Rights Watch *Hostages to Peace: Threats to Human Rights and Democracy in Somaliland* (New York: 2009) 52 and ICG *Somaliland: Democratization and its Discontents* (Nairobi/Brussels: 2003)).

¹⁰²³ Richards, R (2014).

¹⁰²⁴ ‘Montevideo Convention on the rights and duties of state’ available at www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf, accessed 4 June 2018.

¹⁰²⁵ Somaliland Government. Somaliland: Demand for International Recognition. Policy Document. Hargeisa: Ministry of Information. (2001) available at www.somalilandlaw.com/Government_Recognition_Paper_2001.pdf, accessed 4 June 2018.

At the same time, however, Somalia's federal government and the international community have vehemently opposed Somaliland's secession and any tampering with Somalia's border, since this would violate Somalia's sovereignty, territorial integrity and political independence. Further support for Somalia's territorial integrity comes from the UN Security Council (UNSC). The UNSC affirms its commitment to a comprehensive, lasting settlement of the situation in Somalia that respects the country's sovereignty, territorial integrity, political independence and unity, a position consistent with the purpose and principle of the Charter of the UN, which prohibits threats or the use of force against the 'territorial integrity of independent states'.¹⁰²⁶ Similarly, article 4 of the AU's Constitutive Act requires all members to respect 'borders existing on the achievement of independence'.¹⁰²⁷

However, modalities exist that the international community follows when it deals with deep-conflict situations where a straightforward cohabitation of the two parties under one sovereign state becomes untenable. These modalities revolve around creating a climate where the opposing forces can negotiate a 'divorce' or a new arrangement for political association. It seems that the easiest route that international actors favour is a 'one Somalia' state, which should emerge through negotiations for a power-sharing formula, preferably in a federal form. However, if there is going to be a separation, it has to come through a process of negotiation. Somaliland reclaimed its independence unilaterally, and not through negotiations with Somalia. Therefore, the first challenge for Somaliland is how to reconcile the requirement to negotiate with its unilateral declaration of independence, as enshrined in its Constitution.¹⁰²⁸ Although there is no incentive for Somalilanders to dismantle their hard-won achievements over the last twenty-some years, it is still imperative for them to negotiate to achieve their ultimate objective – international recognition or being given more autonomy in Somalia's federal system.

¹⁰²⁶ UN Charter, article 2, paras 4 and 7.

¹⁰²⁷ ICG (2006) 16.

¹⁰²⁸ Article 1 of Somaliland Constitution.

6.2.11 The status of Somaliland in the Somali federal system

As a result of insecurity, there has not been a single free and fair election in Somalia. Federal government officials and legislators are elected by clan caucuses and act as agents of their respective clans. Somaliland's representatives (as will be discussed in Chapter 7) in Somalia's federal political institutions, such as representatives in both houses of parliament, are included in order to maintain the appearance of inclusivity.¹⁰²⁹ Somaliland's self-exclusion from all international deliberations has led to de facto international support for Somalia's approach to unity and has effectively denied Somaliland's electorate the opportunity to influence international state-building deliberations. The explicit recognition of the unity and territorial integrity of Somalia incorporated in all the resolutions of the UNSC¹⁰³⁰ encourages the leaders of the federal government and its states to pursue the de facto incorporation of Somaliland in the federation process. This adds strategies of governance as a source of legal disputes. Somaliland was granted federal autonomy by the international community in the Somali Compact (SC). The SC is an internationally endorsed action plan that sets out Somalia's political development. Nonetheless, Somaliland's government has a long-standing foreign policy centred on its decision not to negotiate with Somalia.¹⁰³¹

Like their counterparts in Somaliland, some southern leaders argue that bilateral dialogue with Somaliland is tantamount to the recognition of the breakaway state. Nonetheless, in 2012 Somaliland decided to negotiate with Somalia. The change of heart of the Somaliland government came after the landslide victory of former President Ahmed Silaanyo. His predecessor categorically and outspokenly rejected the possibility of negotiating with Somalia. At the London

¹⁰²⁹ There are about 58 members of Somaliland origin in the current federal parliament in Mogadishu. Puntland's 66-member state assembly includes 26 members allotted to parts of the two eastern regions of Somaliland, in which Puntland has some claims. There are also eight senators nominated from the Somaliland regions (see Chapters 8 and 9 for details).

¹⁰³⁰ See UN Security Council Resolution A/2297 (2016), adopted under Chapter 7 of the Charter. The resolution limits its sovereignty but reaffirms its unity.

¹⁰³¹ Somaliland Government (2001).

Conference held to begin discussions, the need for the international community to support any dialogue between Somaliland and the FGS was discussed. In the aftermath of the conference,¹⁰³² there were several rounds of talks in the UK, United Arab Emirates and Turkey between 2012 and 2014. Early in 2020, the Somaliland president, Musa Bihi, and Somali president, Farmajo, met for the first time in the latest diplomatic effort by Ethiopia's Prime Minister Abey Ahmed. The meeting was held behind closed doors and no communique was released to the public. To date, no signs indicate any likelihood of further talks. For the citizens of Somaliland, their constitution is the foundation for all future negotiations, while Somalia is likely to base negotiations on the old agenda of creating a 'greater Somalia'.

It has become apparent that talks cannot be accomplished on amicable terms due to the FGS's fragile political legitimacy, which is not yet defined for the pursuit future rounds of talks. In addition, the release of sensitive information in the public sphere contributed to the fragility of the talks, at a time when both sides were encountering strong public opinions that had the power to destroy trust and end dialogue.

Any Somaliland government that moves towards dialogue with the south must be prepared to confront vigorous internal opposition, including allegations of a being a 'sell-out.'¹⁰³³ Before committing themselves to such a potent political risk, Somaliland's leaders are likely to first evaluate the credibility of their southern negotiating partners. Somalia's federal government may feel that bilateral negotiations between Mogadishu¹⁰³⁴ and Hargeisa would upset existing power-sharing arrangements among southern groups and established federal regions by awarding

¹⁰³² S Liban, 'London Conference on Somalia.' *WorldPress.Org* (2012) 29 March, available at <http://worldpress.org/Africa/3899.cfm>, accessed on 5 July 2012.

¹⁰³³ Among Somalilanders, Somaliland independence is sacrosanct and the right to debate independence publicly in the country is restricted under emergency laws. See M Bradbury (2008) 251.

¹⁰³⁴ In November 2005, Somalia's Prime Minister Ali Mohamed Geedi stated in an interview with the BBC that his government would not object to Somaliland's international recognition. He also stated in a subsequent interview that his administration would engage Somaliland in dialogue. Geedi was immediately condemned for a treasonable offence (see ICG 2006, 19; Samatar 2005; A I Samatar, 'Somali Prime Minister: An Act of Betrayal, Venality, and Incompetence!' (2005), available at www.somaliweyn.com/pages/poems/Dec_05/6Dec7.htm, accessed on 5 May 2017.

excessive importance and legitimacy to Somaliland and its administration.¹⁰³⁵ In the end, the consolidation of a Somali government could be followed by dialogue with Somaliland, leading either to a mutually acceptable association or to an amicable ‘divorce.’

6.3 Challenges of Somaliland state-building processes

Despite Somaliland’s impressive successes in peace-building and formal democratisation of its political system, a number of challenges remain to be solved. For instance, democratisation barely occurred in the eastern peripheries of Somaliland. The regions of Togdheer, Sool and Sanaag, where members of Dulbante and Warsangeli clans reside, are not adequately represented in the executive, legislative (both houses of parliament) and government institutions.¹⁰³⁶ This unequal political and socio-economic development has manifested itself in eruptions of violence – the latter are also partly related to conflict between Somaliland and Puntland, as will be discussed later.

The representatives and leaders of the Dulbante and Warsangeli clans based in the diaspora are now demanding federal member state status from Mogadishu. For instance, the Warsangeli diaspora announced the formation of their federal member states Maakhir;¹⁰³⁷ Khaatumo was declared in the diaspora as representing Dhulbante interests, and similar declarations were made by the Sanaag region. Puntland also challenges Somaliland over the ownership of the eastern parts of Somaliland inhabited by the Dhulbante and Warsangeli.¹⁰³⁸ Chapter 7 will appraise the asymmetric federal system as an alternative approach that could be taken in Somaliland.

¹⁰³⁵ Bryden (2004).

¹⁰³⁶ Interviews 9, elder from Lascaanood.

¹⁰³⁷ Ingiriss, MH ‘From pre-colonial past to the post-colonial present: the contemporary clan-based configuration of statebuilding in Somalia’ (2018) *African Studies Review*.

¹⁰³⁸ Ibid.

6.4 Puntland-Perspective

6.4.1 Social-cultural and political background

Puntland is situated in the north-east of Somalia. It borders the north-west regions in the west, the Gulf of Aden in the north, the Indian Ocean in the south-east, the central regions in the south and Ethiopia in the south-west. The total area of the state of Puntland is 212,510 square kilometres (roughly one-third of the entire Somalia). Puntland's population is estimated at 3.9 million.¹⁰³⁹ Its administrative capital is Garowe, and other major towns include Bossaso, Galkayo, Garowe and Gardho. Puntland's clans descend from a Darood clan called the Harti¹⁰⁴⁰ (Majeerteen, Warsangeli and Dhulbahante and other marginal sub-clans). Harti's descent, in turn, traces back to Darood, Ugas Laabe (a product of the Indian settlement around Laas Qoray, sometimes considered a sub-clan of Warsangeli, sometimes seen as independent) or Arab Salah (offspring of Yemeni-Somali marriages).¹⁰⁴¹ The main Harti clan in Puntland today is Majeerteen and its main division, the Mahamuud Salebaan, encompasses three major sub-clans, each of which dominates one of the three north-eastern regions. The southern-most Mudug region is inhabited by the Cumaar Mahamuud; north of them in the Nugaal region live the Ciise Mahamuud, while the Cismaan Mahamuud clan dominates in the Bari region on the tip of the Horn of Africa. These three clans are by no means the only Majeerteen clans.¹⁰⁴²

Puntland clans are organised on principles of patrilineal descent, while Somali customary law and Sharia law govern their inter-relations. The effective unit for regulating *diya* payment is normally a subdivision of the clan or a unity forged by some smaller divisions. For instance, 28 clans in the Bari region were subdivided into some 50 *diya*-paying groups.¹⁰⁴³ The main sources

¹⁰³⁹ Draft background paper on Puntland HDR September 2011.

¹⁰⁴⁰ These clans are also referred to as Harti/Amlaale/Koombe/Kablallah/Daarood. Awrtable are Yuusuf/Daarod; Leelkaase Tanade/Daarood.

¹⁰⁴¹ Often considered a brother of Darood.

¹⁰⁴² M Hoehne, 'Mimesis and mimicry in dynamics of state and identity formation in northern Somalia' (2009) 79 (2) *Africa* 261–266.

¹⁰⁴³ WSP, *Somali Programme, Rebuilding Somalia: Issues and Possibilities for Puntland* (2000).

of livelihood and income are livestock, agriculture, fishing and remittances. Livestock exports contribute to about 80 per cent of foreign exchange earnings, 40 per cent of the GDP and 60 per cent of employment opportunities.¹⁰⁴⁴ Promoting peace and reconciliation as well as preventing resource-based conflicts continue to rank high on Puntland's priority list.¹⁰⁴⁵

6.4.2 Brief historical background

The traditional life of the north-east regions was disrupted from 1900 to 1920 by the turmoil of battles waged by Sayid Mohamed Abdule Hassan against European and Ethiopian colonisation of Somali territories, and subsequently from 1923 to 1927 by the resistance of the Majeerteen Sultanates to Italian direct rule.¹⁰⁴⁶ From 1935 to 1936, more than 25,000 pastoralists were subjected to compulsory conscription by the Italians in their war against Ethiopia, and many of the young men who survived this later emigrated to southern Somalia, contributing to the socio-economic growth of the emerging towns there.¹⁰⁴⁷ Through their involvement in business and in the Italian and British colonial administrations, they acquired modern skills and expertise and played a prominent role in Somali politics, becoming an important component of the Somali state machinery after independence in 1960.¹⁰⁴⁸ For example, the last civilian president of Somalia, Abdirashid Ali Sharmarke (1967–1969), Prime Minister Abdirizak Haji Hussein, former President Abdulahi Yusuf (2010 to 2012), and former Prime Minister's Abdiwali & Sharmarke were all Majeerteen leaders.

During the 30 years that Somalia enjoyed a national government (1960–1991), Puntland territory was neglected in terms of infrastructure such as airports, ports and roads. In the late 1980s, during the last years of the military regime, a north-south tarmac highway and the small port of

¹⁰⁴⁴ World Bank, *Somali Reconstruction and Development Programme, Deepening Peace and Reducing Poverty* (2007) 3

¹⁰⁴⁵ UN HABITAT, *Somaliland, and Puntland: The Land Legal Framework: Situation Analysis* (2006) 10.

¹⁰⁴⁶ Issa-Salwe A (1996).

¹⁰⁴⁷ Puntland State profile (2006–2007).

¹⁰⁴⁸ Bernhard Helander (1998).

Bossaso were constructed in Puntland with a grant from the Italian government. Between 1969 and 1991, the Barre regime imposed political and economic restrictions on the Somali public, particularly marginalising Puntland communities. This policy led to years of discontent and uprising, and led to the formation of the first Somali armed rebel group (SSDF) from the Puntland community. In response, the military regime launched violent crackdowns on the political elite and communities of Puntland.¹⁰⁴⁹

The oppression of leading Majeerteen figures was a significant factor in the formation of the first armed opposition to the military government of Siad Barre in the aftermath of the Somali army's defeat in the Ogaden war with Ethiopia. A group of army officers led by Colonel Mohamed Sheikh Osman (a member of the Majeerteen clan) attempted a military coup in April 1978. Immediately after it was apparent that the coup had failed, a number of coup leaders, led by Abdulahi Yusuf Ahmed, fled to Kenya where the first Somali Salvation Front (SSF), later renamed the Somali Salvation Democratic Front (SSDF), was secretly formed.¹⁰⁵⁰ The group subsequently moved to Ethiopia (where the formation of the SSDF was officially launched) and began an insurgency in the Somali regions bordering Ethiopia. The regime responded with a punitive scorched-earth policy in the Mudug region and further repression against the Mohamoud Suleiman sub-clan as a whole. By the early 1980s, infighting and factionalism had plunged the SSDF into a deep political crisis. In 1985, Abdullahi Yusuf Ahmed was detained by the Ethiopian government and the SSDF weapons and other assets were confiscated. The SSDF assumed a low profile to avoid being drawn into an inter-clan civil war. Most of the central committee members sought refuge abroad, while the fighters drifted back to Somalia, principally Mogadishu and the north-

¹⁰⁴⁹ See Chapter 4 for details on the SSDF and the war with the Somalian military government.

¹⁰⁵⁰ It was initially called the Somali Salvation Front, then the Democratic Front for the Salvation of Somalia, and eventually SSDF (M Doornbos, 'Somalia: Alternative scenarios for political reconstruction' (2002) *African Affairs* 101).

east region. For the first 10 years of the armed opposition (1978–1988), the SSDF had been effective in weakening the Barre regime.¹⁰⁵¹

In April 1988, Barre and Mengistu of Ethiopia met in Djibouti and signed a non-aggression agreement with the commitment to restrain the armed political opposition movements operating in each other's country (discussed in Chapter 5). The SSDF and SNM chairmen, Dr Hassan Ali Mirreh and Ahmed Mohamed Silanyo, met with Mengistu in May 1988, complaining of Ethiopia's betrayal in signing a secret agreement with Barre at their expense. Mengistu in turn accused them of letting down their allies because of infighting between and within the factions; he offered to renounce the agreement if the factions united to form a joint armed opposition against the Barre regime. The SSDF, SNM and Ethiopia agreed to this, and a joint meeting in Dire Dawa in 30 days' time was planned to finalise a strategy to depose of the Barre regime. However, before the meeting could take place, the SNM invaded Burao and Hargeysa in May 1988, resulting in many casualties and the devastation of both cities.¹⁰⁵²

Following the overthrow of Barre's regime in early 1991, the state collapsed and Somalia was plunged into civil war. In southern Somalia, hundreds of thousands of people died and government institutions and the economic infrastructure disintegrated, with public and private property looted, squatted and destroyed. The civil war caused social and political disintegration along clan lines and massive internal displacement, including the Darood clan's exodus into the north-east as well as into southern regions of Somalia, as people were forced to flee the factional fighting and seek refuge in their ancestral territories. Another major impact of the war on the north-eastern regions was a massive influx of displaced people of the Harti clan group from the south and the north-west regions. The population of the urban centres doubled, and in the absence of local governance systems or municipal services, haphazard development emerged with little regard for public spaces. Many people headed for the port of Bosasso, either for livelihood opportunities

¹⁰⁵¹ I M Lewis, 'Blood and Bone: The Call of Kinship in Somali Society' (1994).

¹⁰⁵² WSP, *Somali Programme, Rebuilding Somalia: Issues and Possibilities for Puntland* (2000).

or to attempt the dangerous crossing to Yemen and onwards to Saudi Arabia and the Gulf States. Ferrying immigrants from Bosaaso and its coastal villages across the Gulf remains a lucrative business, despite the high risks and deaths en route.

The eventual fall of the military government motivated clans, civilian leaders and the SSDF to build the Puntland State of Somalia. The decision to revitalise the SSDF as a political organisation in 1991 reflected fears that the United Somali Congress (USC) and Al-Itihaad Al-Islam, located in south-central Somalia, would invade the region. This created a greater interest in establishing state administration in Puntland. Furthermore, the leaders were particularly concerned with the necessity of a local Puntland administration to provide stability, order and protection from armed incursions.¹⁰⁵³ The next section briefly describes the major peace conferences and agreements that resulted in the establishment of Puntland State.

6.4.2.1 The Mudug Peace Agreement (1993–1998)

After the collapse of the Somali state in 1991, the SSDF set about defending the north-east areas from the groups invading from the south.¹⁰⁵⁴ Between 1991 and 1993, there were 12 major armed conflicts between the SSDF and the USC, centred in Galkayo and the Mudug region. Facing internal challenges and recognising that they had reached a stalemate, Abdullah Yusuf, leader of the SSDF, and Mohamed Farah Aydiid, leader of the USC, brokered the Mudug Peace Agreement, which was hailed as one of the most successful peace initiatives in Somalia during this period.¹⁰⁵⁵ Following the peace agreement, the period from 1993 to 1998 was characterised by internal power struggles within the SSDF and multiple conferences that served to lay the foundations for what would become the State of Puntland. Although state governance structures did not exist during this

¹⁰⁵³ ICG (2009) and Interpeace (2008).

¹⁰⁵⁴ Interpeace (2008).

¹⁰⁵⁵ Ibid.

period, events gave political leaders the opportunity to practise negotiation and conflict resolution.¹⁰⁵⁶

6.4.2.2 *The Garowe Conference (1988)*

In 1998, at the Garowe Community Constitutional Conference, over 460 delegates approved a Provisional Charter that established the State of Puntland and the election of Abdullahi Yusuf as the president.¹⁰⁵⁷ Although Puntland's grass-roots approach to the creation of its government was hailed as an appropriate pattern for the rest of Somalia, there are underlying issues that pose problems.¹⁰⁵⁸ These issues play out in the ongoing political tensions throughout Puntland. From 2001 to 2003, armed confrontation between then President Abdullahi Yusuf, whose term was about to expire, and the newly elected President Colonel Jama Ali Jama, who was from a traditionally rival sub-clan, threatened to destroy the newly formed government.¹⁰⁵⁹ President Yusuf refused to step down. His forces took over key towns and he declared himself president, ruling through fear and with an iron fist.¹⁰⁶⁰

President Yusuf's refusal to hand over the presidency peacefully had long-standing consequences.¹⁰⁶¹ One of the results of his determination to stay in power was a weakening of the inter-clan consensus politics that had shaped the creation of Puntland State.¹⁰⁶² The erosion of clan cooperation is apparent in sub-clan conflicts that arose in two areas in 2004, an indirect result of Yusuf's actions. In Lassanood, the provincial capital of the Sool province, a territory over which Somaliland and Puntland are in dispute, tensions that simmered for years boiled over. The situation was exacerbated in 2007 when Somaliland troops occupied the town, forcing the evacuation of

¹⁰⁵⁶ Bryden (1999).

¹⁰⁵⁷ *Ibid.*

¹⁰⁵⁸ Interpeace (2008); Bryden (1999).

¹⁰⁵⁹ ICG (2009).

¹⁰⁶⁰ *Ibid.*

¹⁰⁶¹ *Ibid.*

¹⁰⁶² *Ibid.*

clan elders and hundreds of families.¹⁰⁶³ Much of the foundation for the conflict there lies in the grievances of the Dhulbahante and Warsangeli clans who are victims of both the Isaaq clan in Somaliland and the Majerteen in Puntland.¹⁰⁶⁴ Dhulbahante clan leaders, discouraged by the Puntland government's ability or willingness to regain control of Lassanood, have since determined to 'chart an independent course'.¹⁰⁶⁵ In Galkayo, similar tensions exist between the Darood and Hawiye sub-clans. Galkayo is divided between the two clans and violence between clans and sub-clans is frequent there.¹⁰⁶⁶ Additionally, over the past few years, clashes between government forces and sub-clans have occurred, as with the 'Battle for Galkayo' in September 2009.¹⁰⁶⁷

While tensions remain in both Lassanood and Galkayo, the major violent conflicts have been resolved through extensive negotiations and diplomacy. Despite the fact that these negotiations may have failed to resolve the fundamental grievances and sub-clan rivalries that brought the tensions to the fore, Lassanood, Galkayco and the constitutional crisis are good examples of what has become the pattern for conflicts in Puntland: tensions and conflicts arise but are typically resolved through mediation led by clan elders and other respected leaders, avoiding the type of long-running overt conflict seen in South Somalia.

The current conflict in Puntland is manifested in five main ways. It must be emphasised that it varies widely across the state, with some areas such as Iskushuban and Garowe being relatively calm, whereas in others – like Galkayo and the regions bordering Somaliland – violence can erupt quickly. Negotiations were facilitated between the two factions by respected elders and businessmen, resulting in a peace agreement, whereby Abdullahi Yusuf's presidential term was

¹⁰⁶³ Ibid

¹⁰⁶⁴ Ibid.

¹⁰⁶⁵ Ibid.

¹⁰⁶⁶ Ibid.

¹⁰⁶⁷ Ibid.

extended and Jama Ali Jama eventually became a member of the Transitional Federal Parliament.¹⁰⁶⁸

6.4.3 Puntland State and constitutional-building

During the early 1990s, the rule of law was maintained by traditional leaders. Puntland's court system functioned minimally under the purview of traditional elders and the rule of Sharia law. Most police stations were deserted, but they were neither looted nor beset by squatters. The only properly functioning major facility during that period of near-constant chaos was the Bosasso seaport, initially under the Islamist AIAI¹⁰⁶⁹ movement and later under the leadership of the SSDF¹⁰⁷⁰ and the elders. Although the region was spared from much of the devastating Somali civil war, in late 1992 the AIAI movement attempted to place it under Sharia rule. However, SSDF forces overwhelmed AIAI in early 1993 after prolonged and fierce battles.

As previously discussed, the SSDF played a key role in resisting President Barre, and after the fall of the military regime, it returned to its grass-roots (Puntland) to maintain peace and re-establish the rule of law. In 1994, a community conference organised by a divided SSDF (the Gardo Conference) failed to establish a credible administrative system. Not only did the conference fail to unite the SSDF, but it also widened the gap between the feuding factions represented by General Mohamed Abshir Mussa¹⁰⁷¹ and his opponent, Colonel Abdullahi Yusuf

¹⁰⁶⁸ Interpeace (2008).

¹⁰⁶⁹ Al-Itthad-Al-Islami (AIAI) was an Islamic coalition that was established in the 1970s but later split into a number of factions with different agendas and motives.

¹⁰⁷⁰ The Somali Salvation Democratic Front (SSDF) was an armed opposition group established in Ethiopia in the late 1970s. After recovering from almost total disintegration in the early 1980s, the SSDF was re-instated in the early 1990s after the collapse of the Somali state and eventually took over the administration of the north-eastern regions of Somalia. See Elmi, A and Barise, A (2006).

¹⁰⁷¹ General Mohamed Abshir Mussa was, in 1960, the first post-colonial Commander of the Somali Police Force. General Abshir was imprisoned in 1969 when the Somali Army overthrew the civilian government of Somalia. He was released in 1982. He was one of the prominent figures that established the 'Manifesto' group in 1989. See Crosby, J ' Mohamed Abshir Musa, leader of Somali Independent Movement, dies at the Age of 91' www.startribune.com/obituary-mohamed-abshir-musa-was-a-leader-of-somali-independence-movement/456731143/

Ahmed.¹⁰⁷² Several attempts to re-establish security and the rule of law failed. In this period, traditional leaders continued to maintain the rule of law, while elders handled almost all local and regional administrative and security responsibilities. The area, mostly inhabited by pastoral and coastal communities, had enjoyed strong kinship for centuries in the absence of a central government, and continued its traditional self-rule until 1998, when the Puntland State of Somalia was finally established.

In February 1998, the Garowe consultative conference was held, and discussions centred on establishing a shared administration in the light of growing insecurity and political disorder. A follow-up conference was held again in Garowe. The Garowe Constitutional Convention was attended by traditional clan elders and 480 conventional delegates from the administrative regions of Bari, Nugel, Sool, and Sanaag and from Buhodle District. After lengthy deliberations, delegates approved a Provisional Charter and elected a president, a vice-president (the first president of Puntland, Abdullahi Yusuf, and Vice-President Mohamed Abdi Hashi) and a 66-member House of Representatives. Puntland established functional government institutions and embraced a viable self-governing political course. Puntland State of Somalia was formally established and Garowe identified as the capital city. By 2001, many steps in this transition were incomplete, including a permanent constitution to replace the Charter. The legislature tried to extend the government's term by three years, infuriating the public and igniting a political crisis that led to chaos, civil strife, displacement and armed clashes.¹⁰⁷³

In June 2001, the administration attempted to extend its term in office at an extraordinary session of the House of Representatives under the pretext of reassuring the public that it would

¹⁰⁷² Abdullahi Yusuf Ahmed, a prominent Somali Army officer, joined the Army in the 1950s. He was imprisoned several times by Mohamed Siyad Barre's military regime. He fled to Ethiopia after the failure of the 9 April 1978 coup d'état. He formed the SSDF in 1979 and led it until Ethiopia's Mengistu Haile Mariam imprisoned him in 1985. He was released in 1991, and in 1998 he became the first president of Puntland. In 2004, he became the first president of the Transitional Federal Government of Somalia. He died in 2011.

¹⁰⁷³ International Crisis Group, 'Somalia: The trouble with Puntland' (2009), available at www.crisisgroup.org/africa/horn-africa/somalia/somalia-trouble-puntland, accessed on 20 July 2018.

complete the unfinished tasks. The government made public a rough draft of a Provisional Constitution, but this immediately met with stiff public resistance because it was not based on broad consultations. The government, headed by Abdullahi Yusuf, asked only for a one-year extension, but the House unexpectedly increased the government's request to three years, infuriating an already angry public and plunging the area into a serious political crisis.

Puntland's original Charter expired in mid-2001, with no permanent constitution to replace it. For more than two years, chaos and civil strife dominated the area. Successive armed clashes between the supporters of Abdullahi Yusuf and Jama Ali and then General Mohamoud Mussa Hersi (Adde) resulted in widespread displacement of people, animosity among neighbouring communities, and setbacks to a previously thriving economy. Though the militias generally avoided fighting in urban areas, the conflict took the lives of dozens of civilians and militia members. In May 2003, a group of elders and businessmen brokered a peace agreement between the feuding groups. The mission succeeded in brokering an agreement between Colonel Abdullahi Yusuf and General Adde, who signed a historic peace agreement in Bosaso on 18 May 2003. According to the agreement, the two leaders' militias would merge to form the new Puntland government.¹⁰⁷⁴

In 2005, Abdullah Yusuf was elected president of Transitional Federal Government (TFG) of Somalia. His vice-president, Mohamed Abdi Hashi, was sworn in as new president of Puntland and fulfilled this role until the presidential election in 2013. In May 2005, Mohamoud Mussa Hersi (Adde) was elected president of Puntland and Hassan Dahir Mohamud became the vice-president. President Mohamoud issued a five-point presidential decree on key issues his government wanted to implement, including the establishment of a Constitutional Review Committee (CRC), the nomination of an electoral commission, and the holding of a referendum and local and parliamentary elections. Subsequently, early in 2007, President Mohamoud appointed a 14-

¹⁰⁷⁴ The Darawiish was a paratrooper force consisting mainly of the remnants of the defunct Somali National Army and recruits from the various clan militias.

member CRC to work with a local and international team in drafting a constitution. However, the CRC had almost completed the constitutional review when the government suspended the review process. The reasons for the suspension were not made clear.

At the end of President Mohamoud Adde's tenure in 2009, a new president, Abdurahman Sheikh Mohamed (Farole), took office. Unlike his predecessors, President Farole adamantly embarked on the development of a multiparty democratic system of governance. The first revision of the Puntland Constitution had been concluded at the end of President Adde's term in 2008. In November 2009, the government completed a final revised draft of the Puntland Provisional Constitution, which the cabinet and House of Representatives then passed. The president signed the bill and the reviewed Constitution went into temporary use. The most controversial aspect of the revised Constitution had to do with the presidential term. Before the 2008 revision, the Provisional Constitution provided only a four-year term, but the revision increased it to five. When President Farole came to power in 2009, he allowed this increase to stand until the Constitution was adopted in April 2012. The opposition rejected this increase and labelled it an 'illegal extension' on the part of President Farole.¹⁰⁷⁵ This issue came up repeatedly in the run-up to the 2013 election, and was a major source of public distrust in President Farole's administration.

Farole's government introduced key laws and institutions. In January 2011, a new law established Puntland's first transitional electoral commission (TPEC). Interpeace worked with the TPEC to draft a roadmap to January 2014, when a popularly elected House of Representatives would elect a president and vice-president.¹⁰⁷⁶ In November 2011, Parliament passed the Constitutional Referendum Law, changing the means of ratification from a popular referendum to a Constituent Assembly Convention.¹⁰⁷⁷ In April 2012, this convention adopted a permanent Constitution with provisions that established a firm foundation for a democratic electoral system.

¹⁰⁷⁵ Puntland State of Somalia, Office of the President, 'The First 100 Days in Office' 26 April 2009, available at http://horseedmedia.net/wp-content/uploads/2012/12/farole_100_days.pdf, accessed on 20 July 2018.

¹⁰⁷⁶ Ibid.

¹⁰⁷⁷ Ibid.

The new Constitution was followed by key electoral laws, starting with the Local Council Election Law, passed in September 2012.¹⁰⁷⁸ Amendments to this law in April 2013 were controversial, especially the cancellation of voter registration and the issuance of voter ID cards, which ultimately led to an election boycott by two political associations.

Parliament passed the Political Associations Law in June 2012. In September 2012, the TPEC launched the registration of political associations.¹⁰⁷⁹ However, the timeframe was insufficient and barriers to registration too high, requiring the law to be amended twice. Controversy also emerged over President Farole's decision to form his own 'governing party/association' (Horseed), to which nearly all government officials would belong. After nearly eight months of political wrangling and repeated deadline extensions, in March 2013 six political associations were registered.

On 29 November 2011, Parliament passed the Constitutional Referendum Law which the TPEC had prepared. The aim of this law was to change the mechanism of constitutional ratification from popular referendum to a Constituent Assembly Convention (CAC) of 480 delegates. The CAC was held in Garowe from 15 to 18 April 2012. This well-organised and widely publicised convention included the presence of the Titled Traditional Elders (TTE), Puntland civil society, the Transitional Federal Government (TFG) of Somalia (as represented by its Minister of Commerce), members of the international community (including diplomats from more than eight diplomatic missions accredited to Somalia), representatives of the UN, and local and international media. The delegates, who included community leaders, government officials and diaspora representatives, officially adopted a permanent Constitution. The TFG acknowledged the success of the convention and promised to replicate it in ratifying a national constitution.¹⁰⁸⁰ In the January

¹⁰⁷⁸ Ibid.

¹⁰⁷⁹ A Ahmed and R Zamora, 'Puntland constitutional review process' in M Bradbury and S Healy (eds) 'Whose peace is it anyway? Connecting Somali and international peace-making', *Accord* Issue 21 (2010) 91.

¹⁰⁸⁰ 'Puntland approves new constitution', 19 April 2012, available at http://sabahionline.com/en_GB/articles/hoa/articles/newsbriefs/2012/04/19/newsbrief-01, accessed on July 20, 2018.

2014 presidential election, the former prime minister of Somalia, Abdiweli Mohamed Ali, defeated Abdirahman Mohamud Farole. The term of President Abdiweli was to end in 2018. In January 2019, Puntland witnessed a peaceful transfer of power when Said Abdulahi Deni was elected as the Puntland president.¹⁰⁸¹

6.4.4 General elections and political parties

The constitutional structure of the Puntland State consists of three branches of government: a legislative body (House of Representatives), an executive body (the presidency and the cabinet), and an independent judiciary. The state does not have strong political parties with national outlook, although the Puntland Constitution calls for the formation of a multiparty political system. In 2012, Abdirahman Mohamud Farole enacted relevant legislation, established the Transitional Puntland Electoral Commission and permitted the competitive formation of six registered political associations to compete for more than 700 seats in the local council elections in 37 districts of Puntland. The Puntland government suspended the implementation of the multiparty system on 14 July 2013, one day ahead of the local council elections.

The Political Associations Act was passed in July 2012, providing for the registration of political associations by the TPEC. To register, associations had to pay a \$7500 registration fee. In 2013, nine political associations applied for accreditation by the TPEC to contest the elections. Six were approved by it: Horseed (the political association of President Farole), Horcad, Midnimo, Wadajir, Puntland People's Party (UDAD), and Puntland Democratic Party (PDP).¹⁰⁸² All are still common political parties in Puntland, although this might change in the future. Puntland has held

¹⁰⁸¹ The EastAfrica, 'Somalia's Puntland gets new president' 8 January 2019 Available at www.theeastafrican.co.ke/news/ea/Somalia-Puntland-elects-new-president/4552908-4926228-mhjy0/index.html accessed 10 February 2019.

¹⁰⁸² Somalia: 6 Political Associations Registered in Puntland: Election Commission' *Garowe Online* 2 January 2013, available at www.garoweonline.com/artman2/publish/Somalia_27/Somalia_6_political_associations_registered_in_Puntland_Election_Commission_printer.shtml, accessed on 20 July 2018. The PDP was later disqualified from contesting the election. See also International Crisis Group, 'Puntland's Punted Polls' available at www.crisisgroup.org/africa/horn-africa/somalia/somalia-puntland-s-punted-polls. Accessed 5 June 2018.

five presidential elections – in 1998, 2001, 2005, 2009 and 2014 – with relatively peaceful transfers of power, thus underscoring the state’s democratic political culture.

Puntland was established as a state government on 1 August 1998. The local clans and communities of Puntland, predominantly the northern Darod clan family, appointed representatives to the 66-member House of Representatives (Parliament) allocated among the State’s various constituencies. The Constitutional Convention of 1998 was held in Garowe, which became the capital city of the Puntland State of Somalia. Subsequently, Puntland has had four elected presidents and vice-presidents.

6.4.5 Structure of government

The form of government in the Puntland State of Somalia is parliamentary, with both the president and vice-president elected by the parliament. The government is composed of the executive,¹⁰⁸³ legislature¹⁰⁸⁴ and judiciary.¹⁰⁸⁵ Executive authority is vested in the president, vice-president and cabinet ministers. The president is the head of state, elected by the House of Representatives for a four-year term and is eligible for re-election. Legislative authority is vested in the House of Representatives, which comprises 66 members of parliament, representing every region and clan in Puntland. It has a president (speaker) and two deputy presidents (speakers) who are elected from among its members.

Judicial authority is vested in the judiciary, which includes the Supreme Courts, the Courts of Appeal and the Primary Courts. The Chief Justice of the Supreme Court, the highest court in Puntland, is appointed by the president and approved by the House of Representatives. The Constitution stipulates the need for the separation of powers: article 58 specifies that ‘each state organ shall be independent in the exercise of its functions and powers and not subordinate to the

¹⁰⁸³ Constitution of Puntland state of Somalia 2009, article 57b.

¹⁰⁸⁴ *Ibid*, article 57(a).

¹⁰⁸⁵ *Ibid*, article 57(c).

other organs, except in the specific cases that this constitution explicitly establishes'.¹⁰⁸⁶ The Constitution further affirms that no individual shall be a member of more than one of the three organs of the state of Puntland at the same time.¹⁰⁸⁷ Nevertheless, the Constitution calls for cooperative governance among the state organs.¹⁰⁸⁸

6.4.6 The role of traditional authorities

Politically, Puntland is the homeland of the Darood clan family, while the majority of the Harti clan falls under the administrative jurisdiction of the Puntland State. Since the establishment of the latter, the traditional system of governance has been prominent in the region. The Puntland community has a strong system of traditional law and leadership that manages conflict through consensus or mediation, open dialogue, and sometimes a ruling by experienced judges (*Heer Beegti*). The traditional leaders have the trust and respect of the members of their communities, and played a vital role in founding Puntland State, working in this regard with businesspeople, religious leaders and Somalis in the diaspora. The resultant peaceful co-existence amongst the clans has contributed to resilient economic growth.¹⁰⁸⁹

The elders in Puntland are the greatest resource when crises or conflicts occur, but are also involved in daily issues of local governance. The traditional authorities still regulate community life, control access to land and maintain security through customary conflict-resolution mechanisms even where formal governmental structures exist.¹⁰⁹⁰ The challenge lies in the maintenance of the role of the traditional authorities in keeping peace, security and ensuring rights, while maintaining their integrity in terms of legitimacy, identity and trust.

¹⁰⁸⁶ Ibid, article 58(1).

¹⁰⁸⁷ Ibid, article 58(3).

¹⁰⁸⁸ Ibid, article 59.

¹⁰⁸⁹ WSP (2001).

¹⁰⁹⁰ Gundel (2006) 56.

6.4.7 Puntland's relationship with the Somali Federal Government

Under international pressure, the Puntland administration and TFG signed an agreement stipulating the nature of their cooperation until the federal system of Somalia was finalised in August 2009. The 15-point deal was supposed to break the deadlock over divisive issues regarding security, the Constitution, social affairs and power distribution, and was based on the National Charter (NC) that was agreed on by Somali factions in Kenya 2004. According to the agreement, Puntland would become a base for counter-piracy operations, host the process of drafting a federal constitution, and receive 25 per cent of the education funds allocated for Somalia (including scholarships). It also allowed Puntland to participate in international conferences on Somalia alongside TFG officials, enter into agreements with international agencies, and sign commercial deals with foreign companies until Somalia's Federal Constitution was passed and approved in a public referendum.¹⁰⁹¹

Article 4 of the Puntland Constitution states that 'Puntland is part of Somalia; its duty is to contribute to the establishment and protection of a Somalia government based on a federal system'.¹⁰⁹² The Constitution further indicates that Puntland will cede the power and functions that are reserved for the federal government, where the government competency of the Puntland State will be negotiated between the federal and Puntland governments.¹⁰⁹³ These provisions are, nevertheless, conditional. Should the federal government fail to agree on a federal system, and if the instability and wars in other parts of Somalia continue indefinitely,¹⁰⁹⁴ then Puntland will review its relationship with the federal government.¹⁰⁹⁵

The relationship between Puntland and FGS has been rocky. The former Puntland president, Abdiweli Gaas, was a vocal critic of the FGS, Puntland views itself as the protector of the federal

¹⁰⁹¹ International Crisis Group, 'Somalia: the trouble with Puntland' (2009) 64 *Africa Briefing* 7.

¹⁰⁹² Article 4(1).

¹⁰⁹³ Article 4(2).

¹⁰⁹⁴ Article 4(a) 4(b).

¹⁰⁹⁵ Article 4(4).

system in Somalia. Time and again, President Gass felt that President Farmajo was attempting to dismantle federalism, He accused FGS for running federalism as a unitary system, He blame the government for myriad of issues including lack of consultation, government failure to uphold rule of law, interference by the FGS in federal member state elections. For instance, in just concluding indirect Puntland election. Puntland alleged that the federal government has attempted to influence the outcome of the Puntland election by financially supporting candidates allied with the FGS. Current Puntland President Deni have also accused FGS for refusing to share powers, resources and foreign aid with the FMSs. President Deni noted that ‘ the national army trained to fight the terrorists is now being used to destroy and de-stabilize Federal Member State that have long enjoyed peace and security with the aim to turn the people against their government..¹⁰⁹⁶ nonetheless, Puntland remain committed to federal system in Somalia.

6.5 Boundary conflict between Somaliland and Puntland

There have been recurring boundary conflicts between Somaliland and Puntland. Both regions claim ownership of the Sool, Sanaag and Cayn. Puntland’s claims are based on kinship ties with the region’s dominant Darood clans, while Somaliland bases its claims on the original boundaries of the former British Somaliland Protectorate. Over the years, fierce fighting has been reported between the two regions.¹⁰⁹⁷

6.6 Concluding remarks

This chapter explored state-building in Somaliland and Puntland as well as the situation that has prevailed in these regions since independence. It retraced the chain of events that led to Somaliland’s unilateral declaration of independence and Puntland’s declaration of self-determination. In both regions, state building processes started at the grassroots, with traditional

¹⁰⁹⁶ MENAFN-SOM-Tribune, ‘Puntland President gravely accused President Farmajo of hijacking Somalia Federal System for his own ends’. Available at [www. https://menafn.com/1099673780/Puntland-President-Gravely-Accuses-President-Farmajo-of-Hijacking-Somalia-Federal-System-For-Own-Ends](https://menafn.com/1099673780/Puntland-President-Gravely-Accuses-President-Farmajo-of-Hijacking-Somalia-Federal-System-For-Own-Ends). Accessed 1 August 20.

¹⁰⁹⁷ Mahmoud, SO ‘Overlapping claims by Somaliland and Puntland: The case of Sool and Sanaag’ Available at <https://issafrica.s3.amazonaws.com/site/uploads/ear27.pdf> accessed 1 August 20.

governance systems playing a critical role in them. Somaliland went further to integrate traditional and Western institutional models in its governance structure. In its policy and legal framework, Puntland demonstrates conditional acceptance of Somalia's federal system.

Both Somaliland and Puntland are largely successful examples of Somali peace-building and state-formation from below, processes that involved a variety of actors ranging from guerrillas and traditional authorities to actors in the diaspora – a fact which underlines that peaceful political structures are tied to local legitimacy, something which is created from not from outside but through long-term and sometimes painful negotiations within the communities concerned.

Article 4(3) of the Puntland Constitution stipulates that 'pending the completion of the Federal Constitution, ratified by Puntland, and approved by popular referendum, Puntland State shall have the status of an independent state'. Therefore, Puntland will be part of Somalia once the Provincial Constitution of Somalia is ratified and approved by popular referendum. Once the conditions are met, it will cede the powers that fall within the ambit of the federal government to the federal government of Somalia, and the rest of the powers shall be negotiated between the federal government and the Puntland administration.¹⁰⁹⁸ Nonetheless, both Puntland and the federal government have continued building relationships, guided by the provisional federal constitution. On the other hand, Somaliland has declared unilateral independence, as demonstrated in this chapter. Somaliland today is thriving and enjoys a strong measure of stability. It has established a strong government based on the rule of law, and its citizen have made it clear that they want to secede from Somalia.

Efforts by the international community to reconcile Somaliland and Somalia have not borne any fruit yet. Discussions are still ongoing on the future relationship between them. The options are either reunification through a federal system, where Somaliland will be given more autonomy, or a peaceful divorce. Both options pose serious challenges to governance and future

¹⁰⁹⁸ Puntland Constitution, article 4(2).

stability. The options therefore need to be evaluated not in terms of victory and failure but in terms of their long-term consequences. The options pose short-term challenges but contain possibilities for a sustainable long-term settlement. The electorates of Somaliland and Somalia must peacefully and democratically decide between Somalia's goal of reunification and Somaliland's belief in a two-state solution. However, the settlement process must be based on internationally accepted democratic standards and implemented in collaboration with the UN.

CHAPTER 7: TOWARDS THE DEVELOPMENT OF SHARED RULE, SELF-RULE AND CONSTITUTIONALISM IN SOMALIA

7.1 Introduction

Shared rule, as discussed previously, is conceptualised in institutional terms as the constitutional rights that sub-state governments and parliaments have to participate in, give consent to, or share in the decisions about issues affecting them and their country as a whole. It refers to the common power-sharing mechanisms that characterise federations – for example, a bicameral legislation in which states are represented, formal or informal power-sharing mechanisms within the executive at the national level to facilitate power-sharing. Conversely, self-rule emphasises the degree of political self-government enjoyed by the constituent units with a multilevel state, with the focus on autonomy, separateness, independences, rule-making and the capacity to govern political communities. It is guarded through a formal allocation of legislative, executive and fiscal powers, such that each order of government has genuine autonomy across a range of policy fields.

This chapter appraises shared rule and self-rule as provided for in the Provisional Constitution and undergoing implementation in Somalia. The chapter is divided into four parts. The first part introduces the structure of the federal system in Somalia. The second assesses the country's formal and informal institutions of shared rule. The third part evaluates self-rule in Somalia, processes of FMSs creation and its governance structures. The last part assesses features of sub-constitutionalism and its implementation in FMSs.

7.2 The constitutional strategy of nation-building in Somalia

The endorsement of the 2012 Provisional Constitution of the Federal Republic of Somalia was a ground-breaking achievement. It put in place an overarching legal framework to guide Somalia's efforts to rebuild the nation in accordance with the rule of law. The Provisional Constitution clearly states that Somalia is a federal, sovereign and democratic republic founded on inclusive

representation of the people, a multiparty system and social justice.¹⁰⁹⁹ Furthermore, the founding principles explicitly state that the Federal Republic of Somalia is based upon the fundamental principles of power-sharing in a federal system.¹¹⁰⁰ The key federal features provided for in the Provisional Constitution include two layers of government, a federal-government level and a Federal Member State (which also includes a local government).¹¹⁰¹ In addition, the Provisional Constitution lays down several essential features of federalism and constitutionalism identified in Chapter 2, including the supremacy of the Constitution,¹¹⁰² separation of powers,¹¹⁰³ participatory, consultative and inclusive government, and respect for and promotion of fundamental human rights as well as socio-economic and environmental rights.¹¹⁰⁴

From the start it was foreseen that the Constitution that was adopted would need to be reviewed, with the ongoing process of state-building providing the building blocks. The review began in 2014, but progress has been slow due to a range of political and security factors. Both the New Deal Compact¹¹⁰⁵ and the Government's own Vision 2016¹¹⁰⁶ frameworks highlight the importance of a review process to establishing a constitutional framework that appropriately enshrines political agreements in the Somali context. Just recently, and in accordance with the Provisional Constitution, a Parliamentary Constitutional Implementation and Oversight Committee and an Independent Constitutional Review and Implementation Commission were established to strengthen the constitutional review process. A review process is central to

¹⁰⁹⁹ Puntland Constitution, article 4(2).

¹¹⁰⁰ Article 3(3).

¹¹⁰¹ Article 48(1).

¹¹⁰² Article 4(1).

¹¹⁰³ Article 3(4).

¹¹⁰⁴ *Ibid.*

¹¹⁰⁵ Federal Republic of Somalia, *The Somali Compact* (2013).

¹¹⁰⁶ In 2013, the FGS rolled out Vision 2016 in an attempt to translate the Provisional Constitution into a credible, achievable and broadly acceptable framework for the completion of the Constitution, development of the federal system and election of a new parliament before the end of its term of office. Vision 2016 identified three foundational elements in the Provisional Constitution: constitutional review and implementation, completion of the federal system, and democratisation. Available at www.villasomalia.gov.so/wp-content/uploads/2014/11/VISION2016-Final_COMMUNIQUE1.pdf, accessed on 1 May 2018.

solidifying the political settlement and to the success of the transition from decades of war and conflict to an era of stability and peace.

7.3 Territorial organisation of the state

The Provisional Constitution of Somalia calls for the creation of two layers of government, namely a federal government (FG) and a Federal Member State (FMS) that will together constitute the Federal Republic of Somalia.¹¹⁰⁷ The Provisional Constitution envisages that the boundaries of the FMS may encompass two or more regions that voluntarily agree to merge. This would need to be approved by the Federal Parliament, based on the recommendations of the nascent Boundaries and Federation Commission (BFC).¹¹⁰⁸ Despite slow progress, regions, in accordance with the federal government of Somalia's (FGS) Vision 2016 priorities, have begun to merge to form an FMS.

7.4 The federal structure in Somalia

7.4.1 The federal-government level

In 1960, Somalia adopted a semi-presidential system that gave the president the power to appoint and dismiss a prime minister; therefore, the prime minister had to retain the confidence of the parliament and the president.¹¹⁰⁹ In view of that, the committee that drafted Somalia's transitional charter agreed to go back to the 1960 Constitution so as to adopt the government system that was in place then, albeit with some modifications. In 2000, at the Arta Conference, Somalia had its first opportunity to deliberate on a suitable design for the executive branch.¹¹¹⁰ The Arta committee removed the power of the president to dismiss the prime minister, doing so in order to avoid another centralised presidential system that could lead to a dictatorial regime.¹¹¹¹

¹¹⁰⁷ Ibid. Articles 48 and 50.

¹¹⁰⁸ The draft bill on the establishment of the Boundaries and Federation Commission was approved by the FGS Council of Ministers and then by the FGS Federal Parliament House of the People in November 2014.

¹¹⁰⁹ The Constitution of the Somali Republic, 1960.

¹¹¹⁰ See Chapter 4 for more information about the Arta Peace Conference.

¹¹¹¹ See Chapter 4 for more information about the Arta Peace Conference.

The Provisional Federal Constitution provides for political power-sharing between the president as the head of state¹¹¹² and the prime minister, who is the head of the government. Both of these top constitutional offices hold several executive powers. For instance, article 90 of the Provisional Federal Constitution gives the president the power to: a) appoint a prime minister,¹¹¹³ as well as appoint and dismiss ministers and deputy ministers on the recommendation of the prime minister;¹¹¹⁴ b) appoint the chairman of the Constitutional Court, the High Court, and other judges at the federal-government level,¹¹¹⁵ in accordance with the recommendation of the Judicial Service Commission;¹¹¹⁶ c) appoint senior federal government officials and the heads of the federal government Institutions on the recommendation of the Council of Ministers;¹¹¹⁷ and d) appoint ambassadors and high commissions on the recommendation of the Council of Ministers.¹¹¹⁸

By the same token, the Provisional Constitution also provides executive powers to the prime minister and his Council of Ministers. Article 97 specifies that the executive power of the federal government shall be vested in the Council of Ministers, in accordance with the Constitution.¹¹¹⁹ Article 97(2) states that the Council of Ministers is the highest executive authority of the federal government and consists of the Prime Minister, the deputy prime minister(s), ministers, state ministers and deputy ministers.¹¹²⁰ Article 100 recognises the prime minister as the head of the federal government and provides that the premier has the powers to appoint and dismiss members of the Council of Ministers.¹¹²¹ Therefore, the executive powers as discussed above are shared by both the president and the prime minister.

¹¹¹² Article 87(1)(a).

¹¹¹³ The president can appoint a prime minister and dissolve the federal government if it does not get the required vote of confidence from the House of People of the Federal parliament by a simple majority (50%+1). Article 90(d).

¹¹¹⁴ Article 90(d).

¹¹¹⁵ Article 90(j).

¹¹¹⁶ Ibid.

¹¹¹⁷ Article 90(k).

¹¹¹⁸ Article 90.

¹¹¹⁹ Article 97.

¹¹²⁰ Article 92(2).

¹¹²¹ Article 100.

The Federal Parliament consists of two houses, the House of People (HoP) and the Upper House (Senate).¹¹²² The HoP is directly elected, according to the Constitution. The Senate is a body that can be elected directly or indirectly, in that members are nominated by the FMS parliaments. With reference to judicial powers, the Constitution vests judicial authority in the courts.¹¹²³ The Constitution stipulates that the judicial structure shall be regulated in a law enacted by the Federal Parliament.¹¹²⁴ The highest court will be the Constitutional Court, followed by the federal-government level courts and FMS-level courts.¹¹²⁵

7.4.2 Federal Member States

The formation of the FMS had not been finalised at the time of writing this thesis. The Constitution is silent on the structure of state governments and leaves the matter to state constitutions.¹¹²⁶ A review of the constitutions of the recently established FMSs, however, reveals a common government structure across the states. In all five of the established FMSs, the executive authority of the state is vested in the president of the FMS, who is elected by the delegate at the conference or state legislature from among its members. Like the national prime minister, the regional president has executive authority, together with other members of the state cabinet. Members of the state cabinet are responsible to the state legislature for the exercise of their powers and the performance of their functions.¹¹²⁷ The legislative authority of an FMS resides in its state legislature, whose members are duly elected by the population of each state. The Constitution envisages that an FMS establishes Federal Member State-level courts; the Federal Member State

¹¹²² Article 55(1) and (2).

¹¹²³ Article 105(1).

¹¹²⁴ Today Somalia has a nascent functioning judicial authority, albeit complex and disconnected as the result of the anarchy of the past decades having left a barely existent central Somali justice system. The difficulty of rebuilding the justice system is compounded by Somalia's complicated history of multiple legal systems that overlap with and sometimes contradict each other: secular statutory law, Sharia (Islamic law), and *Xeer* (customary or clan law). What currently operates in the judicial realm is a tattered patchwork of statutory, *Xeer* and Sharia law that needs to be coordinated and fully codified.

¹¹²⁵ Article 108.

¹¹²⁶ Article 120 stipulates that the 'the establishment of the legislative and executive bodies of government of the Federal Member States is a matter for the Constitutions of the FMSs'. Article 6(4) stipulates that FMSs shall have their own flags and national symbols in accordance with the federal system.

¹¹²⁷ Draft Interim Charter of the State Government of Jubaland of Somalia, articles 10 and 19. Also see article 74(2) of the Constitution of the Puntland State of Somalia; articles 57–8.

High Courts have the highest and final judicial power over state matters.¹¹²⁸ The structure of government units below the state administration is a matter left to the states.

7.4.3 Local government level

Local government is the third layer of government.¹¹²⁹ It is the lowest tier of elected or representative government in Somalia and is crucial to building confidence in government structures given its proximity to citizens and the likelihood of its being the people's primary point of contact with government. In strengthening the functions and role of local government in Somalia, new policy documents, known as the Wadajir Framework, is being developed.¹¹³⁰ The overarching goal of the Wadajir is to establish an efficient local government administration through community-owned and -led processes.

The Framework has five components: 1) fostering renewed trust, social cohesion and reconciliation; 2) building the capacity of local actors; 3) ensuring that all communities participate in forming their new governing structures through civic dialogues; 4) building the capacity of local councils and administrations; and 5) building momentum for dialogue, hope and possibility.¹¹³¹

7.5 Shared rule

7.5.1 Bicameral legislation

National legislatures in most federations are often bicameral. Bicameralism has been acknowledged as the most obvious mechanism by which constituent units can play a role in national institutions and takes a variety of forms. In one house of parliament, the national legislature is directly elected by reference to population numbers, giving broad effect to the democratic principle of one vote, one value. These house perform the usual functions of any popularly elected legislature. They make laws, they approve budgetary measures and they

¹¹²⁸ Article 108.

¹¹²⁹ Article 48(b) mentions local government alongside the FMS.

¹¹³⁰ 'Wadajir' means unity or partnership; it symbolises the connection between all levels of government (federal, regional and district).

¹¹³¹ Federal Government of Somalia, Wadajir National Framework for Local Governance (2015).

scrutinise the executive branch. In parliamentary systems, this is the house on which the government principally depends and from which the leader of the government is drawn. In presidential systems, this is the house in which impeachment proceedings typically start. The second house represents federating units.

The Somali Federal Constitution has a decentralised character. The legislative authority is vested in the parliament,¹¹³² and the Federal Parliament is bicameral, consisting of two houses (the House of People and the Upper House).¹¹³³ In principle, the HoP represents the citizens, while the Upper House represents FMSs. The Provisional Constitution accords functions, powers and responsibilities to the two chambers.¹¹³⁴ Both houses are designed to carry out their legislative duties in accordance with title four of the Provisional Constitution.¹¹³⁵ The details of their formation, composition and functions are discussed below.

7.5.2 The Upper House of the Federal Parliament

The Upper House of the Federal Parliament represents the interests of the FMSs. According to the Constitution, each of the 18 regions that existed in Somalia before 1991 will have three members, making the total number of members 54.¹¹³⁶ The Constitution further stipulates that all FMSs shall have an equal number of representatives in the Upper House of the Federal Parliament;¹¹³⁷ in addition, the Constitution provides that the Upper House of the Federal Parliament shall be representative of all communities of the Federal Republic of Somalia.¹¹³⁸

¹¹³² Article 55.

¹¹³³ Ibid.

¹¹³⁴ Articles 63 and 71.

¹¹³⁵ Article 55(2).

¹¹³⁶ Article 72.

¹¹³⁷ Article 72(b).

¹¹³⁸ Article 72(c) stipulates that the members of the Upper House of the Federal Parliament shall be representative of all communities of the Federal Republic of Somalia. This implies that minorities in Somalia will not be marginalised.

7.5.2.1 Structure and composition of the Upper House

State assemblies, beginning 19 October 2016 and ending the day before the presidential election on 7 February 2017, conducted the Upper House polls. The 54 members of the Upper House were elected indirectly by state parliaments, themselves appointed by clan leaders. Galmudug, Southwest, Hirshabelle and Jubaland elected eight seats, while Somaliland and Puntland elected 11 seats each (see Table 7.1). Seats were also reserved for women: to ensure compliance with the quota of 30 per cent women, a number of seats had to be contested exclusively by women. Both Puntland and Somaliland supposed to have nominated 3 women, while the rest of FMSs each are supposed to nominate 2 women.

7.5.2.2 Functions and duties of the Upper House

The primary function of the Upper House of the Federal Parliament is to represent the FMSs.¹¹³⁹ its legislative duties include participation in the process of amending the Constitution;¹¹⁴⁰ the election and dismissal of the president;¹¹⁴¹ and the process of declaring war¹¹⁴² and states of emergency. Similarly, the Upper House also participates in the process of appointing members of governmental institutions, as provided in the Constitution, including the members of the Judicial Services Commission, members of the National Independent Electoral Commission, and members of the Arbitration Committee.¹¹⁴³

7.5.2.3 Limiting and counterbalancing the federal government

The effective representation and participation of FMSs in central decision-making enhance the ability of the devolved units to influence central decisions and thus counterbalance power at the

¹¹³⁹ See article 71 on the legislative powers of the Upper House of the Federal Parliament.

¹¹⁴⁰ Article 71(a).

¹¹⁴¹ Article 71(d).

¹¹⁴² Article 71(f).

¹¹⁴³ See the function of the Upper House of the Federal Parliament, article 71(a)–(i).

centre.¹¹⁴⁴ This counterbalance in turn depends on the structure of and the powers exercised by the institutions of shared rule. The structure enables effective incorporation of the interests of devolved units in central decision-making. With regard to powers, the institution of shared rule is vested with powers that enable the FMS to participate in important central decision-making and thus effectively co-exercise and co-determine the central government agenda.

A directly elected or nominated Upper House gives it the political muscle to assert itself and therefore counterbalance central power. The equal representation of FMSs in the Upper House also helps smaller regions and minority clans to have a stronger voice at the national level, and therefore participate in the counterbalancing of central powers. The Upper House co-determines the legislative concerns of FMSs with the National Assembly. The Upper House also shares powers of impeachment of the president with the National Assembly, as well as powers over some appointments.¹¹⁴⁵ Similarly, it participates in the process of appointing the key members of government institutions such as the members of the Judicial Services, the chairman and judges of the Constitutional Courts, members of the National Independent Electoral Commission and members of the Boundary and Federation Commission, to mention a few.

The Upper House also plays an integral role in determining the suitability of the president. For instance, the power to impeach the president and the deputy president gives the Senate semi-judicial powers.¹¹⁴⁶ The review power of the Upper House on matters such as national government intervention in FMS governments, the suspension of FMSs and the transfer of powers enables it to counterbalance central power on these matters. Using these revisory powers, the Upper House can frustrate any effort by the national executive to use powers of intervention to intrude on the FMSs.

¹¹⁴⁴ B Baldi, 'Beyond the federal-unitary dichotomy' (1999) Working paper, Institute of Governmental Studies, University of California, Berkeley.

¹¹⁴⁵ Article 92.

¹¹⁴⁶ Article 89.

7.5.3 The HoP of the Federal Parliament – Lower House

The Provisional Constitution stipulates that the ‘House of the People of the Federal Parliament represents all the people of Somalia’¹¹⁴⁷ and that the ‘members of the House of the People of the Federal Parliament shall be elected by the citizens of the Federal Republic of Somalia in a direct, secret and free ballot’.¹¹⁴⁸ As with the Upper House of the Federal Parliament, the election of MPs as per the federal constitution was not possible because of the prevailing security and political situation in Somalia; therefore, after consultation with then powerful National Leadership Forum (NLF), the FGS withdrew its original plan of holding a popular election in 2016 and agreed to revert to the 4.5 model. In an attempt to make the selection more democratic and to mitigate corruption, the NLF selected the electorate of 14,025 clan delegates, which formed 275 electoral colleges comprising 51 electors for each parliamentary seat.¹¹⁴⁹ This marked the second time that Somalia abandoned popular elections in favour of clan selection, denying the Somali people the opportunity to vote in a genuinely democratic election for the first time in nearly 50 years.¹¹⁵⁰ The HoP now comprises 275 representatives.¹¹⁵¹

7.5.3.1 *Composition and structure of the HoP*

In the light of the agreement reached in Somalia’s national consultative process in 2015, the new Federal Parliament was constituted on the basis of a mix of community (clan) and geography. The 275 seats of the HoP were distributed in accordance with the 4.5 power-sharing formula between

¹¹⁴⁷ Article 63.

¹¹⁴⁸ Article 64(1).

¹¹⁴⁹ The Upper House was elected first by FMS assemblies. Of the 54 seats, 48 seats were distributed equally between six FMSs, while three additional seats were allocated to Puntland and Somaliland.

¹¹⁵⁰ The last democratic elections were the parliamentary elections held in 1969. The TFG intended to conduct popular elections to appoint parliament and a president in 2009; however, following delays and the extension of the TFG mandate, this was abandoned in favour of using a 4.5 clan distribution mechanism. Most Somali governments in the aftermath of 1991 have paid lip service to the idea of popular elections; however, it has only been under the Hassan Sheikh presidency in the run-up to 2016 political process that meaningful foundations were laid for the implementation of elections.

¹¹⁵¹ Article 64(2).

the clans. The four major clans (Hawiya, Darood, Digi -Mirfile and Dir) were each given 61 seats, with the remaining 32 seats allocated to ‘minority’ clans.¹¹⁵²

7.5.3.2 Powers and functions of the HoP

The legislative powers of the HoP of the Federal Parliament pertain to all the people of Somalia, and the legislative duties tasked solely to the HoP of the Federal Parliament are as follows: (a) to participate in amending the Constitution in accordance with Chapter 15 of the Constitution;¹¹⁵³ (b) to pass, amend or reject legislation tabled before it in accordance with Chapter 15 of the Constitution;¹¹⁵⁴ (c) to study laws passed by the Upper House of the Federal Parliament;¹¹⁵⁵ and (d) to delegate to the Upper House of the Federal Parliament legislative duties,¹¹⁵⁶ with the exception of its duty to participate in the procedures for amending the Constitution.¹¹⁵⁷

7.5.3.3 Oversight powers

Oversight usually refers to ‘follow-on activity’ on the implementation of laws and policies by the executive.¹¹⁵⁸ However, it can also extend to the preparation of policies and laws.¹¹⁵⁹ Common oversight tools include committee hearings, hearings in plenary sessions, commissions of inquiry, and use of question-and-answer time.¹¹⁶⁰ It is thus clear that while revisory powers have a ‘hard’ edge capable of frustrating the executive, oversight entails scrutiny and ‘soft’ measures that might not necessarily alter the direction of executive decisions.¹¹⁶¹ The Constitution empowers the HoP to exercise oversight over national institutions to monitor their activities and hold them

¹¹⁵² A Elmi, ‘A Decentralization Option for Somalia’ *Heritage Institute for Policy Studies* (2014).

¹¹⁵³ Article 63(a).

¹¹⁵⁴ Article 63(b).

¹¹⁵⁵ Article 63(c).

¹¹⁵⁶ Article 63(d).

¹¹⁵⁷ Article 62.

¹¹⁵⁸ N Kirira, ‘Public Finance under Kenya’s new Constitution’ (2015) 5 Working Paper 5.

¹¹⁵⁹ R Pelizzo and FC Stapenhurst, ‘Tools for legislative oversight: An empirical investigation’ (2004) 4 *World Bank policy research Working paper* 3380.

¹¹⁶⁰ *Ibid.*

¹¹⁶¹ *Ibid.*

accountable.¹¹⁶² The HoP has the power to summon a cabinet member to answer a question on any matter when required.¹¹⁶³ The HoP powers also include holding accountable and monitoring national institutions and ensuring the implementation of national laws.¹¹⁶⁴

7.5.4 General revisory powers of the Federal Parliament

The general revisory powers of the Upper House and HoP relate to their being components of the national legislature. These powers enable the Upper House, along with the National Assembly, to apply horizontal checks and balances to the national executive and the judiciary.¹¹⁶⁵ The HoP and the Upper House share the power to impeach the president and the prime minister.¹¹⁶⁶ The Constitution provides that impeachment proceedings should commence from the National Assembly. If supported by two-thirds of the National Assembly, the motion moves to the Upper House. The Upper House votes on impeachment charges after an investigating committee, drawn from the Upper House, makes recommendations for impeachment. A two-thirds vote for the impeachment of the president will see the president vacate office.¹¹⁶⁷ If the president is dismissed as a result, the speaker of the House of the Federal Parliament assumes the duties of the president.¹¹⁶⁸ Furthermore, all commissions and independent offices established by the Constitution are required to submit annual reports to the Upper House, National Assembly and the president. The National Security Council is likewise required to report to both houses. At any time, the Upper House, National Assembly or president can also require a commission or holder of an independent office to submit a report on a particular issue, which will be published.

¹¹⁶² Article 69(2)(b).

¹¹⁶³ Article 69(c).

¹¹⁶⁴ Article 69(2)(b).

¹¹⁶⁵ Articles 70(f), 71(e) and 92(1)–(4) of the Provisional Constitution.

¹¹⁶⁶ Article 69(2)(f).

¹¹⁶⁷ Article 92(3).

¹¹⁶⁸ Article 92(4).

7.5.5 Inclusivity and minority representation in the Federal Parliament

As explained in Chapter 3, minority groups in Somalia were historically marginalised. They faced a number of challenges, including difficulties in securing government jobs, business opportunities and equal rights. They were not fairly treated by the majority clans or the successive Somali government (see Chapter 3).¹¹⁶⁹ As they lie outside the majority clan system, clan structures pose particular difficulties to them. They have no political power, and they have been especially exposed during rises in conflict.¹¹⁷⁰ Nonetheless, recognition of and advocacy for minority rights are slowly increasing. The Provisional Constitution accords equal rights to all Somalis, regardless of their clan affiliation, gender or social status.¹¹⁷¹ Yet again, Article 72(c) stipulates ‘that the members of the Upper House of the Federal Parliament shall be representative of all communities of the Federal Republic of Somalia.’ Nonetheless, all transitional government including TNG, TFG and recently FGS have used 4.5 power sharing ratio, wherein minorities are given small representation in the executives and national assembly. The 4.5 power sharing ratio has been widely criticised by Somalis. It’s not inclusive enough and treat minority as a second class citizen.¹¹⁷²

Historically, women were marginalised in the Somali cultural context, as shown in Chapter 3; however, since the adoption of a federal system, the role of women has been recognised and included in the governance system. Article 3 of the Provisional Constitution acknowledges the

¹¹⁶⁹ Alienation of minorities such as the ‘Bantu’ communities and the failure to protect the rights of individuals are among the drivers of conflict. Somali governance is dominated by a male elite that excludes women, youth and minorities. Minority communities lacking geographical concentration may remain under-represented in democratic electoral processes unless special consideration is given to them. Somalia’s ‘lost generation’ (those born after 1991) have had limited access to education and little experience of governance. The majority of Somali youth have grown up in a society affected by chronic conflict. The implications of these conditions are yet to be fully understood. Conflict and humanitarian crises have displaced millions of Somalis, creating large refugee populations in surrounding countries, large numbers of internally displaced people across the territory, and a vocal diaspora community around the world. Significant numbers of people suffer from psychological trauma as a result of long-term conflict.

¹¹⁷⁰ Minorities in Somalia include (as discussed in Chapter 3) the Midgan/Gaboye, Bantu, Tumul, Reer Hamar, Ashraf, Yibir, Bajuni, Eyle, Tunni and Madhiban.

¹¹⁷¹ Minorities have been allowed to elect their MPs for seats in various regions. The acceptance of the participation of the minorities in the electoral process is in itself democratic.

¹¹⁷² Elaborated in chapter eight.

importance of women in political participation, saying that women must be effectively included in all national institutions, particularly in all elected and appointed positions the three branches of government.¹¹⁷³ The Vision 2016 framework guarantees that 30 per cent of parliament's seats are allocated to women.¹¹⁷⁴

In recent years, several measures were implemented to strengthen women's political participation and, as mentioned above, a 30 per cent quota in both houses of parliament is reserved for women. Other privileges given to women include reductions in registration fees for female parliamentary seats and their inclusion in the electoral colleges and NLF.¹¹⁷⁵ The NLF has prescribed that 'if a clan has three (3) seats in the House of the People, one of the seats should be contested exclusively by the women of that clan'.¹¹⁷⁶ To ensure compliance, the NLF mandated that female candidates only in reserved seats should contest 83 seats. In the Upper House elections, there must be two women-only seats in states electing eight members, or three for the state electing 11 members.¹¹⁷⁷ The communiqué stresses that if the clans do not put forward women 'runners', then the seats will remain vacant until the State Indirect Electoral Implementation Team (SIEIT) and regional authorities reach a decision on how to fill the seats. Even so, Somali women still hold small percentage of government positions and are excluded in key positions at both federal government and federal member state level. In 2012 federal elections women obtained 14% of the parliamentary seats. In 2016, 24% of elected members of parliament were women. This is significant increase, but still below the proposed target of 30. % Nevertheless, the inclusion of women in the two houses of parliament, as shown in the table below, represents significant progress in Somalia's democratic development.

¹¹⁷³ Article 3.

¹¹⁷⁴ Somali Federal Government, Vision 2016.

¹¹⁷⁵ For a parliamentary seat, the female candidate registration fee was 50 per cent less than that for male candidates; 16 of the 51 delegates of the electoral colleges were given to women.

¹¹⁷⁶ Garow Online, 'Somalia's leadership forum agrees on the electoral process' (2016) available at www.garoweonline.com/en/news/somalia/somalias-leadership-forum-agree-on-the-electoral-process. Accessed 11 December 2018.

¹¹⁷⁷ Ibid.

Table 7.1 Regional representatives in the houses of parliament

	House of People			Upper House		
	Male	Female	Total	Male	Female	Total
Benaadir	2	5	7	0	0	0
Galmudug	27	9	36	6	2	8
Hirshabelle	27	10	37	6	2	8
Jubaland	33	10	43	7	1	8
Puntland	31	6	37	8	3	11
Somaliland	31	15	46	8	3	11
South-west	55	14	69	6	2	8
Total	206	69	275	41	13	54

7.5.6 Informal representation

7.5.6.1 National Leadership Forum

The FGS established an NLF comprising national and regional leaders as well as members of the international community. This forum emerged in an extra-constitutional manner and became a de facto decision-making forum.¹¹⁷⁸ Since its formation, under the presidency of Hassan Sheikh the NLF makes most major decisions. Since President Farmajo came to power, NLF has been defective. The national leadership rarely meets.

NLF constituted an important platform for dialogue and consensus-building between the FGS and member states. It also used to serve as a platform for co-governance and for member states to discreetly influence national-level decision-making.¹¹⁷⁹

7.5.6.2 Council for Inter-State Cooperation (CIC)

¹¹⁷⁸ See Saferworld's briefing paper on the elections. 'Democracy delayed and diminished: Risks and possibilities for Somalia's 2016 political transition' available at www.saferworld.org.uk/resources/view-resource/1084-democracy-delayed-and-divided-risks-and-possibilities-for-somalia-as-2016-political-transition, accessed on 4 February 2017.

¹¹⁷⁹ See Garowe online, National Leadership Forum kicks off in Mogadishu, www.garoweonline.com/en/news/somalia/somalias-national-consultative-forum-kicks-off-in-mogadishu. accessed 1 October 2018.

As elaborated in chapter 8, the CIC was formed in 2017 by the FMS presidents; its objectives include enhancing intergovernmental collaboration by promoting constructive dialogue between partners and the federation. Since its formation, the CIC has not only become a support group among the FMSs but been transformed into a high-level platform for collectively co-ordinating action vis-à-vis the FGS. The tenor of the CIC's communiqués has become increasingly hostile towards the FGS, reflecting deep resentment against what its members see as an anti-federalist administration in Mogadishu. Since its inception, the CIC has suspended its cooperation with the federal government on a number of occasion in 2017 and 2018, including on legislative matters and the constitutional review processes.¹¹⁸⁰ It is calling increasingly for the resolution of key issues that have strained relations with the federal government.

7.5.7 Constitutionalism in Somalia

Scholars have defined constitutionalism in different ways. Li characterises constitutionalism in terms of the supremacy of the law. This usually relates to the constitution, the sovereignty of the people, limited government, an independent judiciary, judicial review, and rights protection.¹¹⁸¹ Louis Henkin presents an all-embracing definition of constitutionalism. He argues that constitutionalism has the following elements: a government that operates according to the constitution; separation of powers; sovereignty of the people and a democratic government; constitutional review; an independent judiciary; a limited government subject to a bill of individual rights; control of the police; civilian control of the military; and no state power (or very limited and strictly circumscribed state power) to suspend, in part or in full, the operation of the constitution.¹¹⁸²

¹¹⁸⁰ Xinya New, 'Five regional state cut ties with Somali central government' www.coastweek.com/4136-Five-regional-states-cut-ties-with-Somalia-central-government.htm accessed 1 October 2018.

¹¹⁸¹ B Li, 'What is Constitutionalism?' *Perspectives* 1 (6) available at www.oicyt.org/perspectives/6-063000/what-is-constitutionalism.htm, accessed on 4 February 2017.

¹¹⁸² L Henkin, 'Elements of Constitutionalism' (1994) Occasional Paper Series, Centre for Study of Human Rights.

Both Charles Fombad and Rosenfeld are of the view that constitutionalism entails the imposition of limits on the powers of government, adherence to the rule of law, and the protection of fundamental rights.¹¹⁸³ Fombad further identifies what he calls irreducible and possible minimum content values, which entail well-defined procedures to hold the government accountable. These core elements include the recognition and protection of fundamental rights and freedoms; the separation of powers; an independent judiciary; the review of the constitutionality of laws; the control of the amendment of the constitution; and institutions' support of constitutional democracy and accountability.¹¹⁸⁴ In view of this, this thesis now appraises these core elements of constitutionalism in relation to Somalia.

7.5.7.1 Recognition and protection of fundamental rights and freedoms

The Provisional Federal Constitution of Somalia contains extensive provisions that recognise and protect the fundamental human rights of citizens.¹¹⁸⁵ These include the rights to life,¹¹⁸⁶ human dignity,¹¹⁸⁷ equality,¹¹⁸⁸ freedom of association,¹¹⁸⁹ freedom of religion and belief,¹¹⁹⁰ freedom of expression and opinions,¹¹⁹¹ and freedom of assembly.¹¹⁹² In addition, the Constitution provides for just administrative action¹¹⁹³ and the right of access to information, among other rights.¹¹⁹⁴ Rights also include the right to access the court and the right to legal defence,¹¹⁹⁵ the rights of the accused and redress of violation of human rights. Nevertheless, the rights are limited if the

¹¹⁸³ M Rosenfeld, 'Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives' (1994). at 3. See also Charles Fombad, 'Strengthening constitutional order and upholding the rule of law in Central Africa: Reversing the descent towards symbolic constitutionalism' (2014) 14 *Africa Human Rights Law Journal* 2.

¹¹⁸⁴ Charles Fombad (2014).

¹¹⁸⁵ For comprehensive detail on the rights, see articles 13–41 of the Provisional Federal Constitution of Somalia.

¹¹⁸⁶ Article 13.

¹¹⁸⁷ Article 10.

¹¹⁸⁸ Article 11.

¹¹⁸⁹ Article 16.

¹¹⁹⁰ Article 17.

¹¹⁹¹ Article 18.

¹¹⁹² Article 20.

¹¹⁹³ Article 33.

¹¹⁹⁴ Article 32.

¹¹⁹⁵ Articles 34 and 35.

limitation is demonstrably reasonable and justified according to the values underlying the Somali Constitution.

The provisional constitution prohibits torture and inhuman treatment. Nevertheless, torture and other cruel, inhuman, or degrading treatment or punishment have occurred in Somalia. The FG and FMSs authorities have arbitrarily arrested and detained numerous persons, they frequently used allegations of al-Shabaab affiliation to justify arbitrary arrest. NISA agents routinely conduct mass security sweeps despite having no legal mandate to arrest or detain. They held detainees for long period of time without following due process. The UN Monitoring Group on Somalia and Eritrea (SEMG) reported that it received allegation that NISA official committed torture and inhumane treatment.¹¹⁹⁶

31 December 2018, the Somalia National Army summarily executed six men for being affiliated with Al-Shabab in the town of Bardera, Gedo region, without fair trial, the accused were in prison for five months before the executions.¹¹⁹⁷ In February 2019, the Ethiopian contingent of AMISOM were responsible for the deaths of five civilians. 6 November 2018 four civilians were killed by the Burundian contingent of the AMISOM allegedly opened indiscriminate fire in Huriwa District, near the Balad exit point checkpoint in Mogadishu. FGS and FMSs authorities have used excessive force against demonstrators and journalist, which resulted in deaths and injuries. Between 13 to 15 December 2018 FGS and South-West State, were accused of killing 15 civilian deaths, protesting the arrest of Mukhtar Robow.¹¹⁹⁸ The above action or (inaction) of the Somali authorities is violating Somali PC, International Human Rights and Humanitarian Law.

The PC provides for freedom of speech, including the press, but neither the FG nor FMSs have respected these rights. They have been accused of limiting this freedom. They have been accused of arresting, detaining, killing and blame for the disappearance of journalist. Somali

¹¹⁹⁶ The UN Monitoring Group on Somalia and Eritrea (SEMG) reports, S/2019/858 (2019).

¹¹⁹⁷ Ibid.

¹¹⁹⁸ Ibid.

Journalist Syndicate (SJS) reports that the government is suppressing scrutiny of its record ahead of this year's election.¹¹⁹⁹ On Wednesday 29, July the Benadir Regional Court sentenced Abdiiaziz Ahmed Gurbiye to six months in prison and a fine of five million Somali Shilling, against the Goodjoog Journalist. The secretary General of Somalia Media Association (SOMA) Mohamed Abdul Wahab, call this unfortunate incident and argues that 'the harsh sentence against our colleague Gurbiye is unacceptable and is a direct threat to the press freedom and undermines the media's obligation to inform, entertain and educate public.'¹²⁰⁰ Al Jazeera reports confirm that 16 journalist were detained in 2017, 12 in 2018 and 6 in 2019 in Somalia.¹²⁰¹ On February 2020 NISA officials arrested and detained Mohamed Abdiwahab Nur (Abuja) an editor at Radio Hiigsi, they took to him to NISA detention facilities. He was released 5 months later.¹²⁰² The limitation placed on the media and corcision of media houses, arresting journalists arbitrary violate Somali provisional constitution.

7.5.7.2 *Democracy, inclusivity and accountability*

A federation is closely associated with democratisation seeking to bring decision-making closer to the state and local communities in order to develop leadership; to expand the basis of democratic participation; to increase the accountability and transparency of government,¹²⁰³ to better protect minority and individual rights; and to facilitate power-sharing.¹²⁰⁴ The Provisional Constitution

¹¹⁹⁹ SJS, 'State of press freedom in Somalia in 2019: working under pressure and targeted attacks' available at [www. https://sjsyndicate.org/2020/01/05/state-of-press-freedom-in-somalia-in-2019-working-under-pressure-and-targeted-attacks/](https://sjsyndicate.org/2020/01/05/state-of-press-freedom-in-somalia-in-2019-working-under-pressure-and-targeted-attacks/) accessed 1 August 2020.

¹²⁰⁰ SJS, 'A chilling message to press freedom in Somalia: Banadir Regional Court sentences Goobjoog journalist Gurbiye to six months in jail and cash fine' available at [www. https://sjsyndicate.org/2020/07/29/a-chilling-message-to-press-freedom-in-somalia-banadir-regional-court-sentences-goobjoog-journalist-gurbiye-to-six-months-in-jail-and-cash-fine/](https://sjsyndicate.org/2020/07/29/a-chilling-message-to-press-freedom-in-somalia-banadir-regional-court-sentences-goobjoog-journalist-gurbiye-to-six-months-in-jail-and-cash-fine/) accessed 1 August 2020.

¹²⁰¹ Al-Jazeera News, 'Somalia detained record number of journalist in 2019, report' available at [www. https://www.aljazeera.com/news/2020/01/somali-government-detained-record-number-journalists-2019-200103184027608.html](https://www.aljazeera.com/news/2020/01/somali-government-detained-record-number-journalists-2019-200103184027608.html) accessed 1 August 2020.

¹²⁰² Ibid.

¹²⁰³ Article 46(1) provides that that the power of self-government begins and ends with the people, who have the power, where necessary, to hold public institutions and public servants accountable.

¹²⁰⁴ See M Ndulo 'Decentralisation; challenges of inclusion and equity in governance' In M Ndulo (ed) *Democratic reform in Africa: its impact on governance and poverty alleviation* (2006).

stipulates that ‘Somalia is a federal, sovereign, and democratic republic founded on inclusive representative of the people, a multiparty system and social justice’.¹²⁰⁵ The Constitution also provides a number of rights that relate to democracy as discussed above, such as freedom of speech, freedom of political participation,¹²⁰⁶ the right to demonstrate,¹²⁰⁷ and freedom of publication and opinion.¹²⁰⁸ Thus, in providing for these rights, the Constitution opens up a democratic space for citizens to participate in democratic elections and freely choose their leaders. Unfortunately, in the last few years the FGS has not prioritised or put significant measure in place for free and fair elections to take place. The government continues to rely on 4.5 power sharing model that reinforces existing faults lines, driving conflicts instead of resolving and this is hindering formation of democratic and unified state. Inclusivity as disuccsed previously shows that minority clans, youth and women are also not adequately represented in the government at all levels.

7.5.7.3 Separation of powers and the limitation of government

It is now generally accepted that, for constitutionalism to prevail, there has to be a separation of powers between the three arms of government – that is, the executive, legislature and the judiciary – at both the federal and state level.¹²⁰⁹ While it is acknowledged that there can be no total separation, it is accepted that the essence of separation of powers is that none of the three arms of government is so powerful that it undermines the independence and authority of the other by influencing their operations unduly.

The Provisional Constitution expressly provides for separation of powers, with executive authority vested in the president and prime minister (unlike before, when the president had all the power), legislative authority assigned to both houses of parliament, and judicial power vested in

¹²⁰⁵ Article 1.1.

¹²⁰⁶ Article 22.

¹²⁰⁷ Article 20.

¹²⁰⁸ Article 18.

¹²⁰⁹ MC Ville, ‘*Constitutionalism and the separation of powers*’ (1998) 14.

the judiciary authority. Both the president and the prime minister are answerable to parliament for their actions or inactions. They have to carry out their duties in accordance with the Constitution and other laws of the Federal Republic of Somalia.¹²¹⁰ This is an important attempt to address some of the biggest problems of the military regime, namely dictatorship, abuse of power by coup leaders, and excessive concentration and centralisation of powers in the president and in Mogadishu.

The Provisional Constitution furthermore protects all three spheres of government. Significantly, it stipulates that they must comply with the National Constitution, and that no government can assume more power than the Constitution allocates.¹²¹¹ Article 51(2) stipulates that every government shall respect and protect the limits of its power and the powers of other governments, while article 51(2) b requires all governments to consult each other, particularly in regard to policies and activities within their boundaries that could affect other governments.¹²¹² Citing examples of conference between FGS and FMSs on elections issues held in Dusamareb, Mahmoud Dahir rightly noted that:-

The president knew that if the Dhusamareb conference failed, the regional governments will ensure that the state governments would still function independently due to the federal system. Thus, Somali federal member states prevented dictatorial central government and dictatorship is a matter in the past (dead and buried). Somali people realised the benefit of federalism as a shield against the dictatorial central government.¹²¹³

From the above statement it is now clear that separation of power is indeed taking shape in Somalia, each layers of government continues to perform its constitutional mandate indepent of each other.

7.5.7.4 Judicial independence and rule of law

¹²¹⁰ Article 87(2).

¹²¹¹ Article 51(4).

¹²¹² Article 51(2) (b).

¹²¹³ Mahmoud, DM 'Has federalism in Somalia prevented the rise of dictatorship' available at www.hiiraan.com/op4/2020/sept/180041/has_federalism_in_somalia_prevented_the_rise_of_dictatorial_central_government.aspx 22 Sep. 20.

One of the ways in which the separation of powers was weakened is through the excessive powers of interference that the executive had over the judiciary in the military regime of President Barre. To avoid the recurrence of such abuse, the Somali Constitution provides for the independence of the judiciary from the executive and legislative branches of government in fulfilling its judicial functions.¹²¹⁴ The judiciary, as the overseer of the Constitution, is therefore a key element of the federation in the Somali federal system. Furthermore, members of the judiciary are limited by processes that are subject only to law.¹²¹⁵ In any federation, conflicts are evitable, particularly over which level of government has the power to act in a particular situation. No other branch of government, except for the judiciary, can be the final umpire in such disputes. Constitutional interpretation is the prerogative of the highest court of a country's judiciary. The primary role of the Federal Supreme Court is to be the guardian of the Constitution. The Court has the role of 'interpreting the constitution (federalism and human rights) within constantly changing contexts'.¹²¹⁶

The Constitution stipulates the establishment of three levels of courts: the Constitutional Court,¹²¹⁷ the federal-government-level courts and the courts at the FMS level.¹²¹⁸ The highest court at the federal-government level is the Federal High Court, while the highest court at the level of the FMS is the Federal Member State High Court.¹²¹⁹ The Constitutional Court has supreme powers to review acts of the Federal Parliament in case the latter fails to conform to the Constitution.¹²²⁰ Its competences are enumerated in the Constitution.¹²²¹ Therefore, if it is established, the Constitutional Court may prove to be a crucial tool in settling matters between

¹²¹⁴ Articles 105(1) and 106 stipulate that the judiciary is independent of the legislative and executive branches of government, whilst fulfilling its judicial functions. Members of the judiciary shall be subject only to the laws.

¹²¹⁵ Article 106(1)–106(3).

¹²¹⁶ Des Rosiers (2010).

¹²¹⁷ Article 109(b)–(c) enumerates the formation and powers of the Constitutional Court.

¹²¹⁸ Article 108(a)–(c).

¹²¹⁹ Article 108(a)–(c).

¹²²⁰ Articles 4(2) and 68(1).

¹²²¹ Article 109(c).

different levels of government.¹²²² Thus, the Constitutional Court will have a vital role in upholding the principle of devolved powers in Somalia. The judiciary in general, and the Constitutional Courts and Supreme Courts in particular, will play crucial roles in the preservation of federalism and constitutionalism in Somalia. Even so, the numbers and jurisdictions of the federal government and federal member state courts, still, not clear in the constitution. For instance, article 109 (3) requires a Federal Law that regulates the relationship and collaboration between Federal Government level courts, and Federal Member State level courts. This law is yet to be enacted. Both the constitutional court and the judicial service commission are also yet to be formed.

Addow and Wasuge observed that the newly emerged FMSs are creating their own courts including high (or supreme) courts, which always lead to confusion over the jurisdictions of the state and federal government level courts.¹²²³

7.6 Self-rule

7.6.1 Introduction

As discussed previously, the FMS is the second layer of government in Somalia. The Provisional Constitution stipulates that every level of government shall respect and protect the limits of its powers and the powers of other governments, implying that constituent units in Somalia will be granted autonomy without interference from the federal government.¹²²⁴ The aim of this section is therefore to appraise those institutions of self-rule enshrined in the Somali Provisional Federal Constitution that have been implemented so far.

¹²²² Article 4(2).

¹²²³ Addow, S & Wasuge, M 'Judiciary models for Somalia' available at [www.https://somalipublicagenda.org/judiciary-models-for-somalia/](https://somalipublicagenda.org/judiciary-models-for-somalia/) 22 Sep. 20

¹²²⁴ Ibid.

7.6.2 Federal Member States

The practices of various federal countries show that the component units and its governments are labelled in different ways, depending on the political traditions of each country. For instance, in Canada, India and South Africa, sub-units are referred to as ‘provinces’, while in the US, Australia and Nigeria these units are called ‘states’, and in Kenya, ‘counties’. In Germany, the component units are called ‘*Länder*’, while in Switzerland, they are ‘cantons.’ In Somalia, the component units are referred to as Federal Member States (FMSs).

So far, there are five component units that constitute the Somalia Federation. It is possible that this number will increase, as the Constitution allows for different regional groups within the existing regional states to establish their own states, provided that the procedure stipulated for this purpose is respected in the process. The other interesting point about FMSs in Somalia is that states vary in size, as is the case in most federal countries. However, the Constitution still maintains that ‘Member States of the Federation shall have equal rights and powers’. This shows early signs of symmetric federalism.¹²²⁵

7.6.3 Geographical configuration of the FMS

Since the formation of the federal government of Somalia in 2012, the country has embarked upon an ambitious agenda of stabilisation. It is gradually moving from a unitary system to a federalised constitutional system of democratic governance. Before the fall of the military regime, the Somalian government was a deconcentrated administration representing 18 regions. The Provisional Constitution recognises these regions as the basis of the FMS system, but requires two or more regions to voluntarily agree to form one FMS as long as they respect the administrative boundaries that existed before 1991.

¹²²⁵ Article 2 provides that all levels of government must comply with the national Constitution, without any government assuming more powers than the Constitution allocates. See also article 50(e).

The Constitution does not specify who within the regions possesses agency to effect a merger, nor does it address the procedure through which mergers should take place. This has resulted in confusion, hostility and, occasionally, violent contestations both between the emerging FMSs and the FGS as well as between the emerging FMSs themselves. The formation of the FMSs is to be determined by the House of People, based on the recommendations of the independent Boundaries and Federation Commission (BFC).¹²²⁶ Table 9.1 below shows the geographical configuration of the FMSs.

Table 7.2: Geographical configuration of Federal Member States in Somalia

FMS	Regional configuration	Geographical location	Comment/status
Jubaland	Lower Juba, Middle Juba and Gedo	Southern-most part of Somalia	FMS
Galmudug	Galgadud and Mudug	Central regions of Somalia	FMS
South-west	Bay, Bakool and lower Shebelle	South-west	FMS
Hirshabelle	Hiran and Middle Shabelle	South-central Somalia	FMS
Puntland	Garowe, Galkayo, Bossaso, Gardho	Eastern part of Somalia	FMS
Benaadir	Mogadishu	Central	Not yet an FMS
Somaliland	Borama, Berbera, Burao, Erigavo and Las - Canood	Northern part of Somalia	Declared a unilateral declaration of independence

7.6.4 Process of FMS creation – boundary demarcation and formation

Somalia's Constitution allows for the creation of FMSs, but applies stringent requirements that are extremely difficult for state builders to meet. For example, only two or more regions can form an FMS. While this is seemingly unproblematic, the fact has to be considered that each region is inhabited by several clans, the numbers of which are even greater when one includes two or more regions. Nevertheless, by means of political processes and, significantly, a grass-roots approach

¹²²⁶ The draft bill on the establishment of the Boundaries and Federation Commission was approved by the FGS Council of Ministers and then by the FGS Federal Parliament House of the People in November 2014.

occurring outside of constitutional processes, the formation of FMSs and FMS regions has been taking place, mostly through the use of local resources for reconciliation and negotiation.

The formation of autonomous regions has been going on since the mid- to late-1990s, with the most successful regions being Somaliland and Puntland (see Chapters 5). Both regions have continued to consolidate their political institutions. Similarly, in southern and central Somalia, the period from the mid-1990s until 2004/2005 saw fairly stable regions established by various militia groups in different parts of the country. Even so, as discussed below, there have been reported cases of violence in which the formation of FMSs was contested. Since the formation of the federal government in 2012, most of these regions have begun merging to form FMSs.

7.7 Assessment of the established FMS regions

The following section will briefly assess the formation of the established FMSs, the processes by which this occurred, the structure of the FMSs, and the challenges the latter have faced. It also briefly considers their socio-economic activities and relationship with the federal government.

7.7.1 Jubaland Federal Member State

7.7.1.1 Geographical location

Jubaland has a total area of 110,293 square kilometres. Its eastern border lies 40–60 kilometres east of the Juba River, stretching from Gedo to the Indian Ocean, while its western side flanks the North-Eastern Province of Kenya, which was carved out of Jubaland during the colonial period. As of 2005, it had a total population of 953,045 inhabitants. The territory consists of the Gedo, Lower Juba and Middle Juba Provinces.¹²²⁷ Its largest city is Kismayo, located on the coast near the mouth of the Juba River.

7.7.1.2 Clan composition

¹²²⁷ Bardera, Afmadow, Bu'aale, Luuq and Beled Haawo are the region's other principal cities.

The Darood clan (Ogaden and Merehan) forms the majority of the population of Jubaland. It dominates the Trans-Juba area between the Juba and Tana River valleys, while many other clans and clan groups, such as the Digil-Mirifle and minorities such as the Sheekal, Dabarre, Bantu, Bajun, Dir, Gaaljel, Awrmale and more recently the Haber Gedir, constitute a large portion of the total population. Although the Darood are in the majority, clans are highly polarised, as the sub-clans of Marehen, Absame and Harti have fought many times for control of this region. Ironically, each group claims to be the majority and the rightful owner of the main city, whereas only some are indigenous.¹²²⁸

7.7.1.3 The formation of Jubaland FMS

Efforts to establish a regional authority for Jubaland predate the formation of the FGS by several years. In May 2013, politicians from the Lower Juba, Middle Juba and Gedo regions held reconciliation and state-building conferences in the coastal city of Kismayo and unilaterally declared Jubaland as a new FMS. Delegates at the conference declared Ahmed Mohamed (Madoobe) as the president of Jubaland.¹²²⁹ However, a council of traditional elders from the Digil and Mirifle clans stated that they had not been adequately represented in the negotiations leading to the establishment of Jubaland and made their own proposal for a south-western FMS that would be made up of the six regions of Gedo, Middle and Lower Juba, Bay, Bakool and lower Shebelle.¹²³⁰ Consequently, the Transitional Federal Government rejected the formation of Jubaland, asserting that the process was unconstitutional because it was neither inclusive of all clans in the region nor transparent.¹²³¹ From Mogadishu's perspective, Jubaland is being imposed on the local inhabitants by their leaders, rather than emerging from a bottom-up process in which local administrations are formed before merging.

¹²²⁸ K Menkhaus (2012).

¹²²⁹ HIPS (2015).

¹²³⁰ Balthasar (2014).

¹²³¹ Skeppström and Nordlund (2014).

Consequently, there was violent conflict between supporters of the new administration and the opponents backed by the FGS. Menkhaus describes Jubaland as Somalia's epicentre of conflicts – a chronically contested area, at times half-emptied by armed conflict, at other times bloated with hundreds of thousands of internally displaced persons.¹²³² He argues that rival Somali clans in Jubaland have never been able to agree on how to share the area and have repeatedly fought over it.¹²³³ As a result of the prolonged armed conflict and mistrust between different communities and groups that have so often fought over the control of the town, these communities have become natural enemies,¹²³⁴ and minority clans remain marginalised. Suspicion increased when present-day Jubaland was named Azania in Kenya without public consultation and fair participation.¹²³⁵ Many clans saw Azania as a system dominated by one sub-clan, which cemented the feeling of a 'zero-sum game' among various communities in the region. Despite the support it received from Kenya, Azania failed to reconcile different clans and establish a capable system.

The failure of Azania and the idea of forming a new, more legitimate state in Jubaland triggered debate about how the new state would be formed in terms of clan and district-based representation. The thorny issue was whether delegates from districts that existed before 1991 should be invited to the state-formation process, or whether those districts established during the

¹²³² K Menkhaus (2012).

¹²³³ *Ibid.*

¹²³⁴ Many commentators have framed the Jubaland issue as 'qabilism' (clan-centered politics). For example, there is still some debate among clans about the representative nature of the Jubaland process. (The myriad clans that are involved include the Darod, Hawiye, Bantu, Dir and their associated sub-clans.) There is general consensus that Darod clans (especially the Ogaden sub-clan) are most influential in the initiative. In addition to the uproar that non-Darod clans may raise about this, it is important to note the past rivalries between Darod sub-clans themselves (e.g. Marehan and Ogaden.). This could be a significant source of conflict as Jubaland's administration is selected and begins to govern. Mubarak M and Musley (2014).

¹²³⁵ Kenya has played a crucial role in the establishment of Jubaland, as it wants to create a more stable 'buffer zone' between itself and Somalia. Skeppström and Nordlund maintain that Ethiopia has also been involved and is supportive of the initiative, provided that the leadership of the new region does not support the ONLF. In 2009, at the request of the Transitional Federal Government headed by Sheikh Sharif Sheikh Ahmed, the Government of Kenya had begun training an estimated 2,500 militia members, as well as civilian administrators, to wrest control of the Juba Valley from Al-Shabaab. The primary objective of this initiative, spearheaded by the TFG Minister of Defense, Mohamed Abdi Mohamed, was to form a regional administration to be known as 'Azania' that would cooperate in securing the long Kenyan-Somali border. Skeppström and Nordlund (2014).

transitional period should be included in the process. Due to these differences of opinions, the already-divided rival clans and sub-clans were split even further than before.

Regional interests have also fuelled Jubaland's conflict. Kenya wants a regime in Jubaland that can act in effect as a buffer zone to prevent violent elements like Al-Shabaab from entering its territory. Ethiopia, on the other hand, would like a similar buffer zone, but one that does not give leverage to elements sympathetic to rebels in eastern Ethiopia, namely the ONLF.

After five violent months, Ethiopia brokered a deal in August 2013 that saw the formation of the Interim Juba Administration (IJA),¹²³⁶ a midway arrangement that would put the IJA on a constitutional path to becoming a fully-fledged FMS within two years.¹²³⁷ The administration was officially inaugurated in January 2014. Ahmed Mohamed Islam 'Madobe' was elected president. As part of the deal, the control of the port and airport at Kismayo was to be transferred to the federal government within six months, while the Ras Kamboni militia was to be integrated into the Somali National Army (SNA).¹²³⁸ According to HIPS, nearly a year and half later, much of what was agreed on, including joint control over key revenue-generating sources (the seaport and airport), had not been implemented.¹²³⁹ President Ahmed Madobe was re-elected in August 2019. Madobe won 56 of the 74 votes cast; his closest challenger, Anab Mohamed, got 17 votes.¹²⁴⁰ Opposition leaders who were locked out of the process held a parallel one, electing Abdirashid Mohamed Hidig as president. However, the federal government rejected the outcome of both

¹²³⁶ Mubarak and Mosley argue that the messy and violent way in which the Jubaland state was first formed, then came into conflict with Mogadishu and was eventually pushed into a compromise with the federal government under Ethiopian mediation, has set an important precedent. They agree that this process underlines the fact that Mogadishu does not have the capacity to drive state formation and that a political compromise will be needed between the federal government and future member states as well. M Mubarak and J Mosley, 'On federalism and constitutionality in Somalia: difficulties of "post-transitional" institution building remain' *African Arguments* (2014).

¹²³⁷ HIPS (2015).

¹²³⁸ Skeppström and Nordlund (2014).

¹²³⁹ HIPS (2015).

¹²⁴⁰ Aljazeera, 'Somalia's Jubaland region re-elects Ahmed Mohamed as president' available at www.aljazeera.com/news/2019/08/somalia-jubaland-region-elects-ahmed-mohamed-president-190822091045118.html. Accessed 5 April 2020.

elections, saying that it does not recognise the results in Jubaland.¹²⁴¹ FGS imposed a short-lived blockade on Kismaayo, all flights to and from Kismaayo were diverted to Mogadishu. In Similar Period FGS arrested Abdirashid Janan, the security minister of Jubaland and a close ally of Madobe, while he was on transit at Mogadishu airport on allegations of human rights abuses. Furthermore, the political environment in Kismayo was further strained by tensions between Kenya and Ethiopia over the support by Kenyan military for President Madobe and perceived backing of FGS by the Ethiopian military. On 19 August 2019, Jubaland authorities forcefully prevented the landing of aircraft carrying Ethiopian representative at Kismayo airport, resulting in armed standoff between Kenyan and Ethiopia forces at the airport.¹²⁴²

In June 2019, FGS made a U-turn on its position on Jubaland, recognising President Madobe for the first time as the leader of the Jubaland.¹²⁴³ FGS maintained that he will be interim president for 2 years till fresh election is conducted, a move that was rejected by the Jubaland authorities.¹²⁴⁴ Both President Farmajo and Madobe held a closed door meeting, at the meeting brokered by the Galmudug President Qoor Qoor, Eventually both leaders were reconciled.¹²⁴⁵

7.7.1.4 *Structure of the state government*

The executive authority of Jubaland is vested in the president,¹²⁴⁶ who is also the head of state and government.¹²⁴⁷ The system of government adopted is presidential, and the cabinet consists of the

¹²⁴¹ Kiruga, M 'Jubaland election results mired by conflicting regional interests' (African report, 23 August 2019) available at www.theafricareport.com/16524/jubaland-election-results-mired-by-conflicting-regional-interests. Accessed 5 April 2020.

¹²⁴² HIPS (2019).

¹²⁴³ Garowe online, 'Somalia: FGS recognises Madobe as 'interim president' invites FMS leader to meeting' available at www.garoweonline.com/en/news/somalia/somalia-fgs-recognises-madobe-as-interim-president-invites-fms-leaders-to-meeting> Accessed 4th December 2019.

¹²⁴⁴ Middleeastonline, 'Jubaland rejects Somalia's recognition of its leader' available at <https://middle-east-online.com/en/jubaland-rejects-somalia%E2%80%99s-recognition-its-leader-madobe>. Accessed 4th December 2019.

¹²⁴⁵ Garowe online, 'Somalia: Farmajo reconciles with Madobe in Dhusamareb ahead of key talks' available at www.garoweonline.com/en/news/somalia/somalia-farmajo-reconciles-with-madobe-in-dhusamareb-ahead-of-key-talks accessed 1 August 2020.

¹²⁴⁶ President Ahmed 'Madobe' Mohamed Islam was elected by Jubaland Parliament on 15 August for a four-year term.

¹²⁴⁷ State Government of Jubaland, draft constitution 2013, article 26.

president, the vice-president(s) and 10 ministers.¹²⁴⁸ The cabinet is nominated by the president of Jubaland and approved by the Jubaland Parliament.¹²⁴⁹ The Constitution limits the presidential term to three years in the transitional period and four years thereafter, with a maximum of two terms only. Furthermore, should the president violate the regional constitution, he may be impeached.

Legislative authority¹²⁵⁰ is vested in the state parliament, while judicial authority is vested in the state judiciary. The state constitution also provides for a number of fundamental human rights, including freedom of expression,¹²⁵¹ children's rights,¹²⁵² women's rights¹²⁵³ and the rights to life and human dignity.¹²⁵⁴ Similarly, the Charter provides for the creation of independent bodies to protect the Constitution. These offices include the Auditor-General, the Attorney-General, the Accountant-General, the Director of Public Prosecutions, and the Jubaland Electoral Commission.¹²⁵⁵

Article 24 of Jubaland State's Interim Constitution stipulates that the Jubaland government will comprise the central government of Jubaland, the regional administrations and the district administrations.¹²⁵⁶ Significantly, and in recognition of the role of traditional authorities in Jubaland, the state government established and clarified the role of the Council of Elders. Article 32 provides that it shall constitute 30 traditional elders representing the resident clans. Their role will be the arbitration of communal disputes and advising government on religious and cultural affairs.¹²⁵⁷

¹²⁴⁸ Ibid, article 19.

¹²⁴⁹ Ibid, article 20.

¹²⁵⁰ On 8 May 2015, the first Jubaland regional assembly was inaugurated in Kismayo. The Parliament is the first regional assembly in Somalia since the establishment of the Somali Federal Government. The President of the Federal Republic of Somalia attended the historical ceremony.

¹²⁵¹ Article 40.

¹²⁵² Article 37.

¹²⁵³ Article 47.

¹²⁵⁴ Article 43.

¹²⁵⁵ Article 30(1).

¹²⁵⁶ Ibid, article 24.

¹²⁵⁷ Article 23(1)–(3).

7.7.2 Galmudug Federal Member State

7.7.2.1 *Geographical location and clan composition*

Galmudug is centrally located in Somalia, about 750 km from Mogadishu. The region is bordered on the east by the Indian Ocean, on the west by Ethiopia, on the north by Puntland and on the south by Hirshabelle. Galmudug's name is derived from a conflation of the names of the Galgaduud and Mudug regions. Galmudug consists of the region of Galgaduud and the southern half of the Mudug. (Northern Mudug is part of Puntland.) Although the Galmudug region is home to many clans, the Hawiye clan forms the majority, particularly the Sa'ad sub-clan of the Habar Gidir. The Hawiye clan dominates the Galmudug administration (the governing authority).

7.7.2.2 *The formation of Galmudug FMS*

The establishment of Galmudug began on 14 August 2006. When the Galgaduud and Mudug administrative regions joined to create their own state in 2006.¹²⁵⁸ The Islamic Courts Union initially seized control of the region and defeated the central warlords who had controlled both Galgaduud and Mudug (resulting in self-administration by these regions). This enabled the Sa'ad clan (a sub-clan of the Habir Gedir) to carve out its own mini-state. Mohamed Warsame Ali 'Kiimiko' was elected as president for a three-year term from 2009 to 2012, but was replaced by Mohamed Aalin after short period, followed by General Abdi Hassan Awale (Qaybdiid).¹²⁵⁹

The FGS began the process of forming the Galmudug Interim Administration in the first quarter of 2015, with inter-clan reconciliation meetings being held in the cities of Dhuusamareb and Adaado.¹²⁶⁰ Conflicts between different clans were resolved through inter-clan conferences, mostly supported by international partners such as the United Nations Development Programme

¹²⁵⁸ Saferworld, *Clans. Contentious and consensus: Federlism and inclusion in Galmudug* (2020).

¹²⁵⁹ Ibid.

¹²⁶⁰ Ibid.

(UNDP) and the Somalia Stability Fund (SSF). Conflict revolved around participation and inclusion in the Galmudug administration and the allocation of regional parliamentary seats.

On 4 July 2017, the presidential and vice-presidential elections for the Galmudug Interim Administration were held in Adaado. Abdikarim Hussein Guled, the former Minister of National Security, was elected president, and Mohamed Hashi Abdi, vice-president, through a secret ballot. In December 2017, a power-sharing deal was signed between the Galmudug administration and their arch rivals, the moderate Islamic group Ahlu Sunnah Waljama'a. The conflict was resolved through dialogue and reconciliation.¹²⁶¹ President Guled resigned in February 2017, citing health reasons. Ahmed Duale Gelle 'Haaf' was elected president on 3 May 2017.

Despite the broad allegiance between the federal government and ASWJ in their joint fight against Al-Shabaab, they have repeatedly competed for power and dominance. Mosely notes that the ASWJ considers itself marginalised within the federal framework. In the early years of the Galmudug administration, the ASWJ led to the military takeover of the Dhusamareb and environs and appointed Sheikh Mohamed Shakur as its president. With the Galmudug administration relocating to Adado, Galmudug remains effectively split between separate spheres of influence. In December 2017, an agreement was signed between the Galmudug administration and ASWJ to unite a state administration that had been divided since its formation in 2014–15.

In February 2020, Ahmed Abdi Kaariye 'Qoor-Qoor', an FGS-backed candidate, won the Galmudug presidential elections amid political chaos in the regions.¹²⁶² In the 89-member parliament, Qoor-Qoor, a former state minister for public works, garnered 66 votes against his closest rival, Ahmed Abdullahi Samatar, who received 9 votes. The AWSJ termed the process null and void, calling for a more inclusive approach. In responses, the ASWJ inaugurated its own 69-

¹²⁶¹ Xinhua News 'UN welcomes signing of power-sharing deal in Central Somalia' available at www.xinhuanet.com/english/2017-12/08/c_136811767.htm, accessed on 8 May 2018.

¹²⁶² Garowe Online, 'Somalia: FGS-backed candidate wins Galmudug election amid political chaos', available at www.garoweonline.com/en/news/somalia/somalia-galmudug-mps-vote-to-pick-new-president-amid-political-chaos accessed 4 April 2020.

member assembly, electing a parallel government. Similarly, former President Haaf also rejected the election of Qoor-Qoor.¹²⁶³ Both the AWSJ and President Haaf alleged that the election was marred by manipulation by the federal government. Consequently, fighting escalated between the Somali National Army and ASWJ militia in Dumasareb. At least 12 people were killed, and many injuries reported. The groups were overpowered by the army and eventually surrendered to the government.¹²⁶⁴ President Ahmed Abdi have reached out to both ASWJ and former President Haaf through traditional elders, resulting in peace agreement and co-existence with his rivals.

7.7.2.3 Structure of the government

Executive authority is shared between the president and chief minister. The president is the executive head of state, while the chief minister is the head of government. The cabinet comprises 22 ministers and deputy ministers, and the president, in collaboration with the chief minister, has the power to appoint and dismiss cabinet ministers. Legislative authority is vested in the state parliament, and judicial authority is vested in the state judiciary.

7.7.3 South-West State of Somalia

7.7.3.1 Geographical location and clan composition

The South-West State of Somalia comprises the Bay, Bakool and Lower Shabelle regions.¹²⁶⁵ The official capital is the coastal city of Barawe in Lower Shabelle. However, Baidoa in the Bay region is now the provisional capital, with the state government based there due to security concerns. The South-West State consists of six Somalian administrative regions: Bay, Bakool, Middle Juba, Lower Shabelle, Gedo and Lower Juba. The majority clans are the Digil and Mirifle, while other tribes such as the Hawiya and Darood are also found in the region.

¹²⁶³ Ibid.

¹²⁶⁴ Osman, A ‘ Somalia’s Sufi Muslim leaders surrender to government’ (VOA, February 2020) available at www.voanews.com/africa/somalias-sufi-muslim-leaders-surrender-government accessed 4 April 2020.

¹²⁶⁵ Federal Government of Somalia, National Development Plan (2017–2019) (2016).

7.7.3.2 *The formation of the South-West Federal Member State*

The process of forming the South-West was contentious, especially in regard to the issue of jurisdiction. Two groups emerged, with one group advocating the inclusion of all Digil-Mirifle inhabitants' regions in the South-West, notwithstanding that part of the Digil-Mirifle regions were already included in Jubaland's administration. This group, headed by the former speaker, Adan Madobe, claims that Bay, Bakool and Lower-Shebelle are part of the South-West. The second group advocates for the jurisdiction to cover only three regions, namely Bay, Bakool and Lower-Shebelle. The first group is referred to as the South-West Six (SW6) and the second group, the South-West Three (SW3).

Both groups elected regional presidents: SW3 elected Mohamed Hajj Abdinur, while SW6 elected Adan Madobe.¹²⁶⁶ Eventually, after several meetings, the two groups reached an agreement in mid-2014 to form a single interim administration. In November 2014, 370 delegates from these regions elected Sharif Hassan Sheikh Aden, an MP and former speaker of the Federal Parliament, as the new president of the South-West administration. The international community, which funded the Baidoa process, unanimously hailed the outcome as a major accomplishment and step towards the consolidation of the federation process.¹²⁶⁷

In November 2018, the South-West president, Sharrif Hassan, resigned before the regional presidential election scheduled for the end of the 2018, stepping down amid increased pressure from the federal government¹²⁶⁸ and handing over power to the regional parliament and to Abdulkadir Shariff Shekhuna, who held office on an acting basis until a new president was elected. On 19 December 2018, the South-West parliament elected Abdiaziz Hassan Mohamed

¹²⁶⁶ Bryden, M., and Thomas, T., '*Somalia's Troubled Transition: Vision 2016 Revisited*' (2015).

¹²⁶⁷ Balcad Textile Factory (not operating now) was upgraded and funded by West Germany and Somalitet facilities. It is considered among the best-equipped textile plants in Africa.

¹²⁶⁸ Garowe online, 'Somalia: Southwest leader resigns, drop out presidential race' available at www.garoweonline.com/en/news/somalia/somalia-southwest-leader-resigns-drops-out-presidential-race. Accessed on 20 December 2019.

Laftagareen as the new president.¹²⁶⁹ The election was marred by allegations of corruption as well as coercion by the federal government.¹²⁷⁰ FGS tilted the balance in his favour by arresting his popular Salafi opponent, Mukhtar Robow, the arrest of the former Al-Shabaab deputy leader, Mukhtar Robow, the top candidate for the presidency, was widely seen as federal government interference in regional elections.¹²⁷¹ Following the arrest of Robow, public protested in Baidoa, demanding his release, the federal government and south-west security forces responded to public protest with lethal forces, resulting in 15 civilian deaths.¹²⁷²

President Abdiiaziz is seen by many as a reasonable leader and he has been reaching out to opposition to usher in wider reconciliation efforts. However, the forceful way he was installed and his inability to release Mukhtar Robow from captivity, key demands from majority clans in South-West, has not helped his rapprochement strategies.

7.7.3.3 *Structure of the government*

The executive authority of the government is vested in the president, who is the head of state and government. The cabinet consists of the vice-president and cabinet ministers, while legislative authority is vested in the South-West Parliament, and judicial authority is vested in the state judiciary.

7.7.4 **Hirshabelle Federal Member State**

7.7.4.1 *Geographical location and clan composition*

¹²⁶⁹ VOA, 'Somali region gets new president after deadly election campaign' available www.voanews.com/africa/somali-region-gets-new-president-after-deadly-election-campaign Accessed on 4 April 2020.

¹²⁷⁰ '82 South-west state Members of Parliament were flown to Mogadishu to be given money, each one of them were given between \$20,000 to \$30,000 to support candidate backed by federal government'. See UNSC S/2019/858

¹²⁷¹ Sheikh, A and Omar, F ' Mogadishu-backed candidate wins test-case regional Somali election' available at www.reuters.com/article/us-somalia-politics/mogadishu-backed-candidate-wins-test-case-regional-somali-election-idUSKBN1O11QX . Accessed 4 April 2020.

¹²⁷² *Ibid.*

Hirshabelle is bordered by Galmudug to the north, the South-West State and Benaadir region to the south, Ethiopia to the west, and the Indian Ocean to the east. Hirshabelle consists of the Hiran and Middle Shabelle regions of Somalia; the Middle Shabelle regions consist of Jowhar, Mahadaay, Ruun Nirgood, War Sheikh and Adale. Hiran in turn consists of Beledweyen, Matabaan, Bula Bute, El-Ali, Halgan and Far-Liban¹²⁷³ The name ‘Hirshabelle’ is derived from a conflation of Hiran and Middle Shabelle.

7.7.4.2 *The formation of the Hirshabelle Federal Member State*

The formation of the state of Hirshabelle has faced several peculiar challenges emanating from both the Hiran and Middle Shabelle regions. Over the years, a number of conflicts have broken out between the clans and sub-clans. These are mostly about land, including boundary disputes and grazing rights, while there have also been cases of livestock encroachment and competition for resources, including water sources. Historically, the contrasting needs of the nomadic pastoralists and the farmers have been the cause of continuing conflicts.¹²⁷⁴ These conflicts sometimes escalate and become violent, leading to revenge killings. The conflicts have had severe consequences for local residents, including loss of life, displacement of people, loss of livelihoods, loss of property, poor economic prospects, hatred, animosity and trauma. The traditional elders have used the traditional *Xeer* system to resolve most of the conflicts in Middle Shabelle. Abass rightly notes:

The community elders who lead the traditional conflict management mechanisms are respected and seen as a symbol of unity by many. Religious leaders and Hirshabelle authorities are also perceived as legitimate actors in conflict resolution, mainly due to their knowledge about Islamic teachings on violent conflict and due to their leverage and enforcement capacities for

¹²⁷³ Three districts were recently added to the Hiraan regions, namely El-Ali, Halgan and Far-liban. ‘Garrow online’ available at www.garoweonline.com/index.php/en/news/somalia/somalia-hirshabelle-state-president-creates-three-new-districts, accessed on 19 July 2018.

¹²⁷⁴ The conflict between the Hawadle and Dir clans over farmland in Defow and Kabhaley claimed many lives and invaluable properties. Both clans claim ownership of arable and productive land along the Shabelle River. KS Abass, ‘*Conflict assessment report, Hirshabelle State of Somalia*’ (2017).

implementation, respectively. Youth, women, politicians and professionals also play a central role in conflict resolution in various capacities.¹²⁷⁵

Due to conflicts between clans, the formation of Hirshabelle has been faced with multiple obstacles. However, after intense negotiations between the representatives of the Hiran and Middle Shabelle regions, both regions agreed on formalities for sharing power and mechanisms of resolving land disputes; eventually, the Hirshabelle State of Somalia was formed. Clan elders, federal government representatives, AMISOM and other development partners brokered the negotiations. Ali Abdulahi Osoble was elected president. A few months later, he was replaced by President Mohamed Abdi Waare after the Hirshabelle Parliament passed a vote of no-confidence against President Ali Abdullahi Osoble.¹²⁷⁶

7.7.4.3 Structure of government

The executive authority of Hirshabelle is vested in the president, who is the head of state and government. The cabinet consists of the vice-president and cabinet ministers. Legislative authority is vested in the Hirshabelle Parliament, and judicial authority is vested in the yet-to-be established state judiciary.

7.8 Autonomous regions – Puntland and Somaliland

Somaliland and Puntland were discussed in the preceding chapters.¹²⁷⁷ Puntland was formed in 1998 in north-eastern Somalia, and the region is widely considered the first federal state. It has been a staunch advocate of a federal system of governance since its founding.¹²⁷⁸ According to Mubarak and Mosley, Puntland is currently the only existing state that nearly fulfils the constitutional requirements for statehood.¹²⁷⁹ As discussed in Chapter 5, Somaliland declared unilateral independence from Somalia shortly after the collapse of the central government in 1991.

¹²⁷⁵ Ibid.

¹²⁷⁶ ‘Somalia: Hirshabelle parliament elects new president in highly contested vote’ *Horn-observer* available at <http://hornobserver.com/articles/592/Somalia-Hirshabelle-Parliament-Elects-New-President>, accessed 19 July 18.

¹²⁷⁷ See details of Somaliland state-formation in Chapter 5 and Puntland state-formation in Chapter 6.

¹²⁷⁸ HIPS (2015).

¹²⁷⁹ Mubarak and Mosley (2014).

According to HIPS, victims of the military regime's brutal repression in Somaliland have legitimate grievances for their withdrawal.¹²⁸⁰ Even though no single country has yet recognised it, the region has achieved remarkable peace and stability, with some degree of democracy.¹²⁸¹

7.9 Functional areas of the FMS

The key element of self-rule is the transfer of powers and functions to the government of the sub-regional territorial unit.¹²⁸² The functions that are so transferred may depend on whether the local unit is meant to address only cultural issues or, additionally, various social, economic and developmental matters. As Henders states, the competences so transferred may include matters relating to 'economic development, environmental protection, and social policy'. These may include local planning, natural resources, economic development, housing, health and other social services. These governance areas are 'important to the ability of a community to protect its values and way of life'.¹²⁸³

FMSs derive their power from the Constitution and are subject to national policies and standards and the supervision of the national government. Accordingly, FMSs can use their powers to expand access to basic services and to develop previously neglected areas. This ensures that all FMSs exercise their functions and powers in accordance with the set overall objectives. The Provisional Constitution entrenches FMS powers by dividing powers between the national government and the FMSs.¹²⁸⁴ An elaborate list of the functional areas of FMS governments gives the regional government solid constitutional backing. The 'original' or 'primary' powers in the Constitution provide FMSs with the basis for addressing local preferences, while the national level will be mainly in charge of policy, national regulation and standard-setting.¹²⁸⁵

¹²⁸⁰ HIPS (2013).

¹²⁸¹ Farley (2010); IHASA (2013).

¹²⁸² Article 50(b).

¹²⁸³ Henders (2010) 12.

¹²⁸⁴ *Ibid*, article 50(b).

¹²⁸⁵ *Ibid*, article 54.

Functions of the FMSs are stipulated in the Provisional Constitution. Every level of government is envisaged as enjoying the confidence and support of people.¹²⁸⁶ The Provisional Constitution grants powers to the level of government where it is likely to be most effectively exercised.¹²⁸⁷ The existence of a relationship of mutual cooperation and support between the governments of the FMSs and the federal government is explicitly encouraged.¹²⁸⁸ The Provisional Constitution envisages a symmetrical federal system, with all the levels of government expected to comply with it, and no level of government assuming more powers than the Constitution allocates.¹²⁸⁹ This will enable all FMSs to exercise the same powers and functions as one another. This has the potential of enhancing access to services and development in areas that were previously neglected. Past military policies resulted in inequitable access to basic services such as health care, and a skewed distribution of national resources.

The FMSs' functional areas will most likely touch on most or all the sectors concerned with basic services and local development. These include health, housing, water and sanitation, FMS infrastructure and development, community participation, agriculture, trade and development regulation, and gas and electricity reticulation. The Provisional Constitution left these areas open for further discussion between the federal government and the FMSs.¹²⁹⁰ All these sectors are critical to local service delivery and development.¹²⁹¹ The symmetrical devolution of powers to all FMSs enables them to exercise the same powers and functions as one another. Even so, FMS powers are subject to national policies and standards and the supervision of the national government. This will ensure that all FMSs exercise their powers in accordance with the set overall

¹²⁸⁶ Article 50(a).

¹²⁸⁷ Article 51(b).

¹²⁸⁸ Article 51(1).

¹²⁸⁹ *Ibid*, article 51(4).

¹²⁹⁰ Article 52(1).

¹²⁹¹ World Bank (1988) 157.

objectives. Furthermore, important issues such as the redistribution and equitable sharing of national resources are yet to be determine.¹²⁹²

Since its formation, the federalism in Somalia has been characterised by confrontation, each level of government blaming each other rather than collaboration. Failure to reach consensus on a distribution of functions, powers and resources sharing has hampered progress on all other issues of national importance, including security, institutional building, completion of the provisional constitution and economic development.

As will be elaborated in chapter 8 the boundaries of power and function have not been explicitly demarcated functionally, as such cooperative relationships hardly exist among the Somali political actors. Negotiation among the FGS and FMSs held in Garowe on May 2019 failed to produce meaningful options that could mediate distribution of powers and resources between different levels of government.

7.10 Fiscal and financial powers of FMS

Henders argues that fiscal autonomy is critical to the political autonomy of an autonomous territorial unit.¹²⁹³ Fiscal autonomy, which requires adequate funds, is also likely to impact on the effectiveness of the FMS governments in developing and building their regions. In addition, it impacts upon peace, given that ethnic or clan conflicts are often caused or exacerbated by unjust resource distribution. Therefore, it is essential that there are financial resources over which FMS units have unhindered control, in order to ensure the financial autonomy of each member state region. Henders suggests that such territorial units must be able to ‘raise and keep locally generated tax revenue, set tax rates, and determine how revenue is spent’.¹²⁹⁴ Bird and Ebel also argue that

¹²⁹² Article 50(E).

¹²⁹³ Henders (2010) 47.

¹²⁹⁴ Ibid.

internal revenue may be complemented by intergovernmental transfers.¹²⁹⁵ They argue that a system of intergovernmental revenue transfer may help create a ‘sense of national solidarity’.

As stated above, in Somalia the responsibilities for raising revenue will be given to the level of government where they are likely to be most effectively exercised.¹²⁹⁶ Important issues such as the redistribution and equitable sharing of national resources are addressed through the effective monitoring of FMS units. The Provisional Constitution allows for much of the allocation of powers and resources to be determined later,¹²⁹⁷ which could additionally allow citizens to express their preferences directly. These mandated negotiations between the federal government and FMSs provide an opportunity for accommodation by allowing the FMSs to advocate for allocations of fiscal competency that suit their needs and capacities (discussed in Chapter 8).

However, as elaborated in chapter 8 the constitution does not specify which resources or taxation powers fall under which authority. The constitution does not clarify whether the taxation authority of each level of government is jointly determined at the legislative or at the administrative level. Somali is yet to establish national revenue authority or common tariffs on exports and imports. Federal tax collection is mostly confined in the capital city Mogadishu, and due to prolonged absence of a functioning state and severely limited public sectors services delivery, many citizens do not view paying taxes as a civic duty. Yet again, both level of government has yet to agree upon the distribution of taxation powers and share of revenue. These failures are greatly impacting on the services delivery, economic growth and development.

As noted, FMSs collect their own revenue; other major economic activities in the regions are shown in Table 7.4 below.

Table 7.4 Economic activities of the FMS

FMSs	Economic activities
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¹²⁹⁵ Bird and Ebel (2005) 8.

¹²⁹⁶ Article 50(f) of the Provisional Constitution prescribes that revenues will be collected and services delivered by the level of government able to do so most effectively. How these principles are to be operationalised has not yet been negotiated.

¹²⁹⁷ Articles 54, 51(d) and 52.

Puntland	Livestock, fisheries, remittances from the diaspora, and potential blue economy.
Jubaland	Livestock, fisheries, remittances from the diaspora, and potential blue economy.
Hirshabelle	Livestock, agriculture and commonly referred to as Breadbasket of Somalia, benefits from Shebelle river running the length of the State, long coastal lines and well established artisanal and fishing community. Through international partners, the federal government is reviving the clothing, sugar and cotton industry. The region also benefits from remittances from the diaspora.
Galmudug	Livestock, fisheries and potential exports of minerals.
South-west	An agriculturally rich area that receives remittances from the diaspora.

7.10.1 Sub-constitutionalism in FMSs

Many federal states have a two-tiered constitutional structure that establishes a superior state and a group of subordinate states that exercise overlapping control of a single population. The superior state (or what we will sometimes call the ‘superstate’) has a constitution (a ‘super-constitution’), while the subordinate states (‘sub-states’) have their own constitutions (sub-constitutions).¹²⁹⁸ Subnational constitutions are increasingly coming into existence in federal countries. Subnational constitutionalism is ‘the application of the principles of constitutionalism at the subnational level’.¹²⁹⁹

7.10.2 The constitutional space allotted to FMSs

All federal constitutional democracies have an overarching constitutional structure that captures the people’s choices regarding the appropriate allocation of powers between the various levels of

¹²⁹⁸ South Africa allows its provinces to adopt constitutions, subject to approval by the Constitutional Court, but so far only one province, the Western Cape, has successfully done so. See Constitution of the Western Cape, available at www.capegateway.gov.za/Text/2003/wcape_constitution_english.pdf, accessed on 3 May 2018.

¹²⁹⁹ The term ‘subnational constitutionalism’ refers to constitutionalism at the state level. It is often used in preference to the term ‘state constitutionalism’ because it refers to the levels of constitutional practice for definition of constitutionalism. See also Gardner (2007: 3).

government.¹³⁰⁰ Subnational constitutions operate within this legally defined ‘space’, which is circumscribed by the national constitution.¹³⁰¹ The national constitution determines exactly what ‘range of discretion ... is available to the component units in a federal system in designing their own constitutional arrangements’.¹³⁰² Subnational constitutions are therefore second-order institutions in that their scope of substantive content and the realm of permissible constitutional choices available to subnational communities are legally constrained by the national constitution.¹³⁰³ In this sense, the content of subnational constitutions is contingent upon the rules of the particular federal regime within which they reside.

Thus, the constitutional space allotted to subnational units regarding fundamental content takes various forms. Some federal regimes, for example, allow subnational units to establish legislative and executive branches but prohibit subnational units from creating their own judiciary.¹³⁰⁴ Many federal regimes impose specific structural and procedural parameters within which subnational units must operate when designing their institutions.¹³⁰⁵ Federal regimes may also establish default structural provisions for all subnational governments, but must allow

¹³⁰⁰ L Koen, ‘Constitutionalism and the Many Faces of Federalism’ (1990) 38 (205)2 *AM. J. COMP. L.* 205-207. ‘As a system of divided powers, federalism proceeds from the very essence of constitutionalism, which is limited government operating under the rule of law.’ Koen has identified two kinds of federal systems: integrative federalism and devolutionary federalism. Integrative federalism refers to a constitutional order that strives for unity in diversity among previously independent or confederally-related component entities. The goal of establishing an effective central government which directly governs the people inside its sphere of powers is pursued in respect of the powers of the component entities, at least to the extent that the use by the latter of these powers does not revert to divisiveness.

¹³⁰¹ Robert F Williams and G Alan Tarr, ‘Subnational Constitutional Space: A View From the States, Provinces, Regions, Länder and Cantons’ in G Alan Tarr et al. (eds) *Federalism, subnational constitutions, and minority rights* 3 ed (2004) 3–25 (describing the substantive legal ‘space’ afforded to subnational constitutions in different federal systems).

¹³⁰² *Ibid* at 5.

¹³⁰³ See Watts (2008) at 954: ‘[I]ssues of the scope of jurisdiction of subnational governments and their interrelationship with the national or federal government have always been defined in the national or federal constitution.’

¹³⁰⁴ *Ibid*.

¹³⁰⁵ Brazil is a good example. Its national constitution provides many particulars regarding legislative and executive structure and procedure. See, for example, Constituição Federal (CF), article 27: ‘The term of the State Representatives is four years, and they are subject to the provisions of this Constitution regarding the electoral system, inviolability, immunities, compensation, loss of office, leave of absence, impairments, and enlisting into the Armed Forces.’; CF, article 28: ‘The election of the State Governor and Vice Governor, for a term of office of four years, is held ninety days before the end of their predecessors’ term of office, and they take office on January 1st of the subsequent year, observing, otherwise, the provisions of Article 77.’

subnational units to adopt their own constitutions that deviate from those default provisions.¹³⁰⁶ In Somalia, FMSs are allowed to have their own sub-constitutions and to design their legislative, executive and judicial bodies of government.¹³⁰⁷ Consequent to that, most FMSs have draft sub-constitutions; however, the details of how they have been developed are not clear at the time of writing. Even so, both the Constitution of the Federal Republic of Somalia and those of the FMSs are drafts and need to be harmonised.¹³⁰⁸

7.10.3 Recognition and protection of fundamental human rights and freedoms

The most direct and obvious method of protecting rights in subnational constitutions is through the express specification of these rights in a charter or declaration. In Germany, for example, the Constitution of Bavaria expressly protects the rights of human dignity, personal freedom, private property, conscience, speech and press, among others.¹³⁰⁹ The Constitution of North Rhine-Westphalia provides express protection for the rights of religious associations and the right to work.¹³¹⁰ The constitutions of the Swiss cantons of Geneva and Lucerne both guarantee rights of equality, property, religion and free speech.¹³¹¹

In Somalia, all five FMSs have made provisions for fundamental human rights,¹³¹² as shown in Table 9.3. Interestingly, these rights are duplicated in the rights entrenched in the Provisional Federal Constitution.¹³¹³ Duplication of rights at the national and subnational levels

¹³⁰⁶ South Africa represents the only active example of this arrangement. Its Constitution provides ‘full particulars’ regarding all necessary provincial government institutions. I M Ratenbach and J Malherbe, *Constitutional Law* 244 n. 22 (4th ed 2004). See Certification of the Constitution of the Western Cape 1997 (9) BCLR 1167 (CC) at para. 15: ‘[The national constitution] provides a complete blueprint for the regulation of government within provinces which provides adequately for the establishment and functioning of provincial legislatures and executives.’ The provinces may nevertheless adopt their own constitutions that deviate, to a limited degree, from the national constitution’s default design.

¹³⁰⁷ Article 120.

¹³⁰⁸ Article 121.

¹³⁰⁹ Constitution of the Free State of Bavaria (Germany), articles 98–118.

¹³¹⁰ Constitution of the State of North Rhine-Westphalia (Germany), articles 19, 24.

¹³¹¹ Constitutions of the Republic Lucerne and Canton of Geneva (Switzerland), articles 2–11; Constitution of the Canton of Lucerne, articles 2–9.

¹³¹² Jubabland, Puntland, Hirshabelle, South-West, Galmudug.

¹³¹³ Somali Federal Republic Provisional Constitution, articles 10–41.

has occurred in many federations, for example in the US, where it occurs with some frequency. The best explanation seems to be that subnational units intend thereby to assert a kind of simultaneous jurisdiction over the protection of the rights in question. Subnational units in Somalia, in other words, do not simply cede to the federal government responsibility for protecting the duplicated right, for it is always possible that the federal government may fail to protect the right with sufficient vigour. If the subnational unit possesses independent authority to protect the same right, then it may be able to fill any void left by a failure of national power or national will.¹³¹⁴

7.10.4 Judicial independence and the rule of law

As previously indicated, the judiciary is defined by the Provisional Constitution of Somalia, which stipulates that the national court structure is organised across three levels: the Constitutional Court, federal-government-level courts, and FMS-level courts. Most FMS-level courts had not been established at the time of writing this thesis. Only the autonomous regions of Puntland and Somaliland have established court systems of their own that remain separate from the FGS system. Most FMSs depend on informal structures (Sharia law and *Xeer*) that continue to play a crucial role. In all the FMSs, arbitration by clan elders often has greater legitimacy than the formal courts.¹³¹⁵

7.10.5 Separation of powers and limitations of state government

In Somalia, FMSs are allowed to have their sub-constitutions and to design their legislative and executive bodies of government.¹³¹⁶ The structure of sub-state executives is discussed above under the various FMSs. All regional executive authority is vested in the relevant state executive; legislative authority is vested with each state parliament; and judicial authority is vested in each state judiciary. Almost all FMSs have adopted their own sub-constitutions, even though most are

¹³¹⁴ J A Gardner, 'State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions' (2003) 1003.

¹³¹⁵ Ministry of Justice, *Somalia Joint Rule of Law Programme* (2015); Human Rights Watch, *Somalia: Events of 2016* (2017).

¹³¹⁶ Article 120.

still drafts. Table 9.3 below presents an overview of the sub-constitutionalism in Jubaland, Galmudug, and Puntland.

Table 7.5: Sub-constitutionalism in Somalia's FMSs

Sub-constitutionalism	Jubaland	Puntland	Galmudug
Fundamental Human Rights	Article 36-46 ¹³¹⁷	Article 12-33 ¹³¹⁸	Article 8, 10, 13 & 18 ¹³¹⁹
Separation of powers	Article 11, 12-18, 19 & 34 ¹³²⁰	Article 58 & 59 ¹³²¹	Article 28, 29, 30 & 47
Limitation of state government	Article 26 & 23 ¹³²²	Article 58(2) ¹³²³	Article 48 & 50
Democracy, accountability & transparency	Article 30, ¹³²⁴ 40 & 41 ¹³²⁵	Article 10, 13 & 14 ¹³²⁶	Article 49
Independent judiciary and rule of law	Article 33(2)a ¹³²⁷	Article 89-102 ¹³²⁸	Article 55
Mediation & conflict resolution	Article 32(2)(b) ¹³²⁹	Article 108(4)-(5) ¹³³⁰	

As noted above, the duplication of rights at federal and FMS levels might well provide evidence of subnational constitutionalism. Where a supreme national constitution already provides express

¹³¹⁷ State Government of Jubaland, Interim Charter, 2013. Provisions under articles 36-46 include the rights to life, rights of children, rights of women, rights to life and safety, freedom of expression and opinion.

¹³¹⁸ The Constitution of Puntland State of Somalia, 2009. Articles 12-33 provide for a number of rights which include: article 12 – rights to equality; article 14 – right to life; article 15 – rights of ownership of property.

¹³¹⁹ Dastuurka KMG EE Dowlad Gobaleedika, Galmudug Somalia. The rights provided include the right to life, right health, and rights to education and freedom of association.

¹³²⁰ Ibid. State Government of Jubaland. Executive authority is vested in the state executives; article 19 states that legislative authority is vested in the state parliament; article 12 states that judicial authority is vested in the state judiciary. See also article 34.

¹³²¹ The Constitution of Puntland, in article 57, stipulates that executive authority is vested in the executive, legislative authority in the legislature and judicial authority in the judiciary. Article 58 further provides that each state organ shall be independent in the exercise of its functions and powers and not subordinate to the other organs, except in the specific cases that this Constitution explicitly establishes.

¹³²² Ibid. The State Government of Jubaland Constitution stipulates the terms of the office of the executives and the procedures of impeachment should the executives violate the state constitution.

¹³²³ The Constitution of Puntland provides that the delegation of functions and responsibilities from one state organ to another is prohibited.

¹³²⁴ Ibid. Article 30 makes provisions for the independence of the state, which will enhance accountability. Such institutions include the Auditor-General, the Attorney-General, the Accountant-General, Director of Public Prosecutions, and electoral commission.

¹³²⁵ Ibid. The interim constitution makes provision for the freedom of expression in article 40; it also provides for the right to representation.

¹³²⁶ The Constitution of Puntland State of Somalia further provides for freedom of expression – article 14; freedom of movement – article 1; and the rights to demonstration and association – article 24.

¹³²⁷ Ibid. Article 33(2)(a) stipulates that the judiciary shall be independent from the legislative and executive; additionally, the judges of higher courts are given security of tenure.

¹³²⁸ Provides for independence of judiciary.

¹³²⁹ Ibid. Article 32(2)(b) states that the role of traditional authorities includes the arbitration of communal disputes.

¹³³⁰ Mediation and reconciliation by the traditional elders are recognised and encouraged.

protection for some kinds of rights, protection of the same right at a subnational level guarantees those rights, or at least increases the likelihood that they will be upheld within the FMS-level institutions.

7.11 Concluding remarks

This chapter described the structure of the federal system in Somalia. Somalia has two layers of government: the federal government and the FMS. In the federal government, executive authority is vested in both the president as the head of state and the prime minister as the head of government. Legislative authority is vested in the two houses of parliament: the Upper House of the Federal Parliament and the House of People (Lower House). Judicial authority is vested in the country's judiciary. Similar identifiable features of separation of power exist at the FMS level.

The chapter identifies the institutions of shared rule and self-rule which are provided for by the Provisional Constitution and being implemented in Somalia. In regard to shared rule, the chapter shows that Somalia has a bicameral legislature, that is, the Upper House of the Federal Parliament and the House of People. The chapter also highlighted the process of their formation, the composition of their members and their functions, the plight of minorities, and their accommodation in the federal institutions.

The examination of self-rule institutions in Somalia revealed that Somalia has five FMSs, namely, Hirshabelle, Galmudug, Jubaland, Puntland, and South-West. The events leading to their formation were discussed, as were constitutionalism and sub-constitutionalism, as indicated in the Provisional Constitution and the FMSs sub-constitutions.

CHAPTER 8: THE CONSTITUTIONAL FRAMEWORK OF CONFLICT RESOLUTION

8.1 Introduction

The preceding chapter provided insight into shared rule and self-rule, discussed how they are being implemented in Somalia. Chapter 2 of this thesis identified several federal principles that can strengthen, or contribute to, peace and conflict resolution. These principles include the division of powers and functions, shared rule and self-rule, intergovernmental relations, mechanisms of dispute resolution, the protection of minorities, protection of sub-units, distribution of powers and resources, and fiscal federalism. Similarly, some of the challenges in implementing federalism in Somalia, identified in the preceding chapters, relate to divisions of powers and functions, conflict management, the protection of minorities, and border disputes. These chapters appraise key institutional features of federalism as provided for in Somali's Provisional Constitution and critically appraise challenges in its implementation.

8.2 Conflict management in the Somali federal system

As identified in Chapter 2, federalism is one of several institutional devices that can be successfully applied to conflict resolution. Disputes between different levels of state, as well as between federal units, are to be expected in any federal system. These disputes can be triggered by a wide range of issues, such as questions over land, boundaries and resource ownership. For these reasons, conflict management mechanisms are essential in every federal government.

The ability of federations to prevent and manage conflict is widely recognised. Although federations have no built-in guarantee to escape intergovernmental conflict, they have shown in many instances that they are capable of adjusting to and being flexible in conflict-prone situations. Key federal principles identified in Chapter 2 for enhancing conflict management in federal systems include the provision of shared rule and self-rule, divisions of powers and resources, intergovernmental relations, fiscal autonomy, two layers of government, protection of sub-units, mechanisms for conflict resolution, and the protection of fundamental human rights. The next

section examines some of these principles as provided for in Somalia's Provisional Constitution, identifies gaps, assesses their implementation, and suggests design features that can strengthen federalism in Somalia.

8.3 Division of powers and functions

As discussed in Chapter 2, federalism and the separation of powers both imply constitutional limits on state power, be it through the functional or territorial division of governmental roles and offices.¹³³¹ The separation of powers makes it nearly impossible for one faction to speak unequivocally – or, one might say, univocally – on behalf of ‘we, the People’.¹³³² Likewise, the division of powers between the centre and the subnational units creates offices with competing territorial claims to speak on behalf of states.¹³³³ The constitutional autonomy of the subnational units is guaranteed by the existence of legislative bodies and a system of courts.¹³³⁴

As noted in Chapter 2, the division of power and functions has a significant impact on federal institutions. The Federal Republic of Somalia is composed of two levels of government: the federal government and FMS.¹³³⁵ The founding principles of the Provisional Constitution explicitly state that the Federal Republic of Somalia is founded upon the fundamental principles of power-sharing in a federal system.¹³³⁶

Central to negotiations and compromise in any federation is the division of power between the two levels of government.¹³³⁷ Though the division of power is regarded as the defining feature

¹³³¹ The distinction between functional and territorial division of powers is based on the theory of Stein Rokkan. See F Peter (ed) *State Formation, Nation-Building, and Mass Politics in Europe: The Theory of Stein Rokkan* (1999) 5–7.

¹³³² B A ‘Ackerman, ‘Neo-federalism?’ in J Elster and R Slagstad (eds) *Constitutionalism and Democracy* (1993) 170.

¹³³³ The doctrine of separation of powers is summarised by MJ C Vile: ‘It is essential for the establishment and maintenance of liberty that the government be divided into three branches or departments, the legislature, the executive, and the judiciary. To each of these three branches there is a corresponding, identifiable function of government, legislative, executive, or judicial. Each branch of government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch.’ MJ C Vile, *Constitutionalism and the Separation of Powers* (1998) 14.

¹³³⁴ See R L Watts, ‘Comparative conclusions’ In A. Majeed, R L Watts and D M Brown (eds) *Distribution of powers and responsibilities in federal countries* (2006b).

¹³³⁵ Article 48.

¹³³⁶ Article 3(3).

¹³³⁷ D Elazar, *Federalism and the Way to Peace* (1994) 167.

of federalism, its form, scope and nature varies from one federation to another in reflection of a number of historical, social, economic, cultural and political factors.

In Somalia, the division of power and function between the federal government and FMSs is an important area in which the state can give practical expression to self-rule. This relates both to the area of competence and scope of power granted to constituent units. As mentioned, at the national level, executive authority is vested in the country's executive; legislative authority is vested in the legislature; and judicial authority is vested in the judiciary. Similarly, there is a corresponding function of government – legislative, executive and judicial – at the FMS level.¹³³⁸

The division of power between the federal government and member state government is outlined in articles 50(b),¹³³⁹ 52¹³⁴⁰ and 54¹³⁴¹ of the Provisional Federal Constitution. The powers of the federal government are explicitly provided for in article 54 of the Constitution. The list of federal competencies reveals that areas that usually fall within the ambit of the central government in most federations do so as well in the case of Somalia. Examples include foreign affairs, national defence, citizenship, immigration, and monetary policy.¹³⁴² The Constitution further stipulates that adequate powers shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units.¹³⁴³

As a result, government units with various powers and functions are in the process of being established in different federal member states.¹³⁴⁴ Should Somalia comply with the subsidiarity principle, each government function will be performed by the lowest capable level of government,

¹³³⁸ Elaborated upon in Chapter 7.

¹³³⁹ Article 50(b) stipulates that power is given to the level of government where it is likely to be most effectively exercised.

¹³⁴⁰ Article 52 stipulates that the federal government and FMS governments shall meet regularly to discuss issues that affect water sources, agriculture, animal husbandry, pasture and forestry. Other issues include health, education and the prevention of erosion and the protection of the environment.

¹³⁴¹ Article 54 stipulates that allocation of powers and resources shall be negotiated and agreed upon by the federal government and FMS.

¹³⁴² Article 54.

¹³⁴³ Article 50(b).

¹³⁴⁴ The Wadajir Framework, launched in 2016, contains the guiding principles of the local governance framework in Somalia. It seeks to support reconciliation, civic dialogue and the establishment of local governance structures.

while maintaining sufficient coherence within the state and society structures. The Provisional Constitution left open for further discussion the responsibilities and management of the following areas: water, agriculture, pastures and forestry, health and education.¹³⁴⁵

Regarding the role of local governments in Somalia's constitutional dispensation, the Wadajir Framework is being developed on the basis that each government function should be performed by the lowest level of government capable of performing that function effectively. Decentralised governance arrangements and service delivery are pivotal in building trust between citizens and the federal, state and local governments.

8.3.1 Assessment of the implementation of the division of power and competency

The most pressing issue related to the devolution of power in Somalia involves the division of power and resources. The Provisional Constitution is founded upon the fundamental principles of power-sharing in a federal system.¹³⁴⁶ It envisages that the allocation of resources and power in a federal system shall be negotiated and agreed upon by the federal government and the FMSs; however, in the absence of a follow-up policy or federal law, the Provisional Constitution does not indicate how powers and functions are to be shared equally. The failure of the federal government to address some of these critical issues of distribution of powers and function has strained the relationship between the two levels of government; consequently, FMSs suspended the relationships with the federal government in several occasions.¹³⁴⁷

The Provisional Constitution envisages a symmetric federal system in which all regions share power and resource equally,¹³⁴⁸ yet a symmetric relationship between the federal government and FMSs that already functionally exists (Puntland stands alone) is clearly at issue. At the moment, the Provisional Constitution does not directly address this issue but provides that the

¹³⁴⁵ Article 52(1) of the SFC.

¹³⁴⁶ Article 3.3.

¹³⁴⁷ O Mahmoo, 'Somalia's Zero –Sum politics will see no winners' *www.dailymaverick.co.za/article/2018-10-23-somalias-zero-sum-politics-will-see-no-winners/* 1 December 18.

¹³⁴⁸ Article 50(d) stipulates that '[e]very part of the Federal Republic of Somalia shall enjoy similar levels of services and a similar support from the Federal Government'.

‘allocation of resources and powers in the Federal Republic of Somalia shall be negotiated and agreed upon, by the federal government and the FMS in accordance with the Constitution’. This stands at odds with the absolutist declaration of the Puntland Constitution, which states that ‘Puntland state resources belong to the Puntland people’.¹³⁴⁹

Furthermore, the FMSs’ relationships with foreign countries have been a huge source of contention in Somalia. An example is the Gulf crisis,¹³⁵⁰ in which there was open disagreement between the federal government and the FMS. In this crisis, the federal government took a neutral stance due to its good relations with both Saudi Arabia and the Qatar. However, Puntland, the South-West State and Galmudug publicly broke away from the position of neutrality declared by the federal government, resulting in the latter pressurising the regional states to change their position and support it.¹³⁵¹

The impeachment and subsequent removal of the Hirshabelle’s President Ali Abdullahi Osoble¹³⁵² and Galmudug’s President Ahmed Gelle were attributed to their support of Saudi Arabia; however, President Gelle was later reinstated.¹³⁵³ The federal government indicated that the FMSs were taking bilateral decisions on Somalia’s foreign relations, a matter which fell within the ambit of the federal government;¹³⁵⁴ on the other hand, the FMS regions alleged that the federal

¹³⁴⁹ The Constitution of Puntland State of Somalia, in article 54, stipulates that ‘Puntland natural resources belong to the people of Puntland and may be benefitted from only in accordance with law’.

¹³⁵⁰ In June 2017, Saudi Arabia, the United Arab Emirates, Bahrain and Egypt announced a diplomatic break with Qatar. They cut air, sea and land links and ordered Qatari officials and nationals stationed in their countries to return home. The move is a reflection of long-running frustration with Qataris, whom the Saudis and Emiratis claim are supporting terrorist groups as well as being too cordial with Iran, their regional arch-rival. A complicated, uncertain state of affairs was playing out, with far-reaching stakes – Qatar is home to a crucial base for the US Central Command. Consequently, many African countries pledged their support either for Qatar or Saudi Arabia. See Barakat, S ‘A gulf crisis, how did we get here?’ www.aljazeera.com/indepth/opinion/2017/06/gulf-crisis-170611063706500.html. Accessed 20 December 2017.

¹³⁵¹ O Mahmood, ‘How the Gulf crisis is destabilising Somalia’ <https://issafrica.org/iss-today/how-the-gulf-crisis-is-destabilising-somalia> accessed 4 December 2017.

¹³⁵² Ibid.

¹³⁵³ Ismail A, ‘Ousted Somali state president reinstated, declares state of emergency’ available at www.africanews.com/2017/10/03/ousted-somali-state-president-reinstated-declares-state-of-emergency/, accessed on 5 May 2018.

¹³⁵⁴ Somalia’s Provisional Constitution, in article 54, stipulates that foreign affairs are the responsibility of the federal government.

government took decisions on key national issues without including them.¹³⁵⁵ These divergent positions over the Gulf crisis exacerbated tensions in the Somali federal system.¹³⁵⁶

What is more, both Puntland and Somaliland have signed deals with the Dubai state-owned port operator, DP World, to manage and construct a port. Somalia's foreign minister asked DP World to reconsider its contract with these breakaway regions.¹³⁵⁷ Diplomatic tension spilled into the open in March 2017 after DP World gave a 19 per cent stake in the Berbera (Somaliland) port to Ethiopia. In reaction, Somalia's lawmakers adopted a resolution accusing DP World of having violated the sovereignty of Somalia. Subsequently, Somalia banned DP World from operating in its territory, saying that the contract the company signed with Somaliland and Ethiopia was invalid.¹³⁵⁸

The final shape of federalism and the relationships between the Federal Republic and FMSs are still undetermined. Perhaps it is premature to expect a fully resolved answer to the challenges of power-sharing and resource allocation at this time, considering that the National Constitution has not yet been finalised and that the Federal Somali Republic is still in its infancy. However, the urgency of this challenge cannot be understated as the FMSs gain credence in their respective territories. The need for clearly defined roles and responsibilities in Somalia is apparent now more than ever. Often, the parties work together when suits them. This allows for manipulation underpinned by a lack of trust, with each level of government accusing the other for violating provisional constitution.

¹³⁵⁵ Somalia's Provisional Constitution, in article 53, stipulates that the federal government should consult the FMSs 'on negotiations relating to foreign aid, trade, treaties, or other major issues related to international agreements'.

¹³⁵⁶ O Mahmood, 'Pressure to cut ties with Qatar highlights deep tensions that threaten the fragile state building process' available at <https://issafrica.org/iss-today/how-the-gulf-crisis-is-destabilising-somalia>, accessed on 19 July 2018.

¹³⁵⁷ D P Abdi Sheikh, 'World should rethink port deals in Somalia: Foreign Ministers' available at www.reuters.com/article/us-somalia-emirates/dp-world-should-rethink-port-deals-in-somalia-foreign-minister-idUSKBN1HR2OY, accessed on 19 July 2018.

¹³⁵⁸ Reuters, 'Somalia bans Dubai Ports operator DP World, Saying the Contract is null and void' www.reuters.com/article/us-somalia-ports/somalia-bans-dubai-ports-operator-dp-world-says-contract-with-somaliland-null-idUSKCN1GP10E accessed 4 June 2018.

8.3.2 Design features that can enhance peace

As mentioned, the division of powers between the federal government and the constituent units is one important area where the state can give practical expression to self-rule. The distribution of power determines the decision-making space of the different tiers of government: it is at the core of self-rule, as it will determine in which fields the federal units have a genuine right to self-rule and can therefore define and implement their own policies.¹³⁵⁹

An important issue in relation to the distribution of powers and competencies in a federal system relates to the area of competencies that are reserved for constituent units so as to respond to the challenges of clan or ethnic diversity. Often discussed in a federation is the issue of whether the system should provide equal powers to all subnational units or allow those with ethnic claims to enjoy more powers than others. Should federalism be symmetrical or asymmetrical? These are some of the questions that both levels of Somalia's government and their constitutional review experts are attempting to answer.

8.3.3 Competencies should be clearly allocated

As in many other types of federations, the debate about 'who does what' is pertinent in federations that are constructed to build unity and accommodate ethnic diversity. An important question is, however, whether the specific purpose of multilevel federations informs the distribution of power and responsibilities between the federal state and the constituent units.

The World Bank urges caution in the decentralisation design,¹³⁶⁰ the most important aspect of which seems to be the allocation of functions and responsibilities. Functions should be allocated optimally. The World Bank lists functions that should be performed by the centre and those that should be decentralised. Functions and competencies whose benefits are national in scope should be assigned to the federal government, that is, national defence, foreign affairs, and functions

¹³⁵⁹ Iff and Topperwien (2017).

¹³⁶⁰ World Bank (1999) 107.

related to economic stabilisation and macroeconomic management such as fiscal policy; functions with variable local preferences should be decentralised.¹³⁶¹ The costs of economic stabilisation and redistribution should also remain with the centre.¹³⁶² The World Bank identifies functions such as ‘basic health and education, street lighting and cleaning, water, sewerage and power, public markets and refuse collection, major transport networks and land development for business and residential purposes’ as ones commonly performed by states or local governments.¹³⁶³

Citing the example of South Africa, the World Bank advises that clarity in allocation of roles is important. Vaguely defined joint functions may lead to neglect of essential services, as there is no clear actor, and, in most cases, state governments ignore such functions in the hope that the national government will take care of them.¹³⁶⁴ The World Bank adds that ‘[w]ithout clarity and an appropriate regulatory framework, there can be no accountability’.¹³⁶⁵ An effective design is thus one in which functions are well defined within a regulatory framework that enhances clarity and cohesiveness.¹³⁶⁶ In principle, assigning powers exclusively to one level of government bolsters its autonomy by giving it the right to define and implement its own policies in the specified areas of competency. It also provides clarity as to which level of government is accountable and responsible to citizens for the said functions.¹³⁶⁷

The experience of a few multilevel federations might shed light on the matter. In most federations, the level of detail with respect to the division of powers between the federal government and states varies. For instance, Germany, South Africa, Austria and Malaysia may be viewed as extreme forms of shared powers because in these federal countries the power to legislate in certain policy areas is assigned to the federal level, while the administration of the federal

¹³⁶¹ Ibid.

¹³⁶² Ibid.

¹³⁶³ World Bank World Development Report 1988 (1988) 157.

¹³⁶⁴ Ibid.

¹³⁶⁵ Ibid.

¹³⁶⁶ Ibid.

¹³⁶⁷ Watts (1996).

legislation (that is, the power to implement and execute it) is constitutionally assigned to state governments.¹³⁶⁸

In Canada, the Constitution Act of 1982 allows provinces to guard their autonomy in areas that are of particular significance to them. This is in terms of an ‘opt-out procedure’ according to which provinces can avoid the effect of constitutional amendments proposed by the central government on matters relating to education or other cultural matters.¹³⁶⁹ This has allowed Quebec and other provinces to develop some measure of autonomy in cultural matters.¹³⁷⁰ An important principle underlying the distribution of powers in Switzerland is that the cantons (i.e. the constituent units) must have the power to make and execute decisions ‘that are relevant to their cultural development based on their cultural heritage’.¹³⁷¹ Areas such as language, culture and education fall under the jurisdiction of cantonal governments.¹³⁷²

The foregoing discussion suggests that there is no single best assignment of competencies; however, the utmost clarity in the assignment of functional responsibilities to the different levels of government is critical if clean lines of accountability are to be established.

8.3.4 Symmetry and asymmetry

One of the issues often raised in the context of multilevel states is whether the state should adopt symmetrical or asymmetrical federalism. In symmetrical federalism, all regions are treated equally. No special power, be it based on historical claim or the peculiar culture and needs of a particular community, is provided to a constituent unit within the federation. In asymmetrical federalism, by contrast, one or more of the constituent units is vested with special or greater self-

¹³⁶⁸ R Watts, ‘*Comparing Federal Systems in 1990s*’ (1996).

¹³⁶⁹ S Tierney, ‘*Constitutional law and national pluralism*’ (2004) 194.

¹³⁷⁰ Recently an agreement has been reached between the central government of Canada and Quebec to grant the latter a ‘semi- formal presence’ at UNESCO, the UN agency that deals with matters of culture and education (‘PM makes UNESCO deal with Quebec’ May 04-2006).

¹³⁷¹ T Fleiner, ‘Switzerland: Constitution of the Federal State and the Cantons’ In Basta-Fleiner, L and Fleiner T (eds) *Federalism and multi-ethnic states: The case of Switzerland* (2000) Geneva.

¹³⁷² *Ibid.*

governing powers than the others.¹³⁷³ An example of asymmetrical federalism, albeit of a limited kind, is Indian federalism, which makes special provision for Kashmir, Nagaland and Meghalaya.¹³⁷⁴ Many states prefer to extend the same level of autonomy to all the constituent units without engaging in any differential treatment. Rather than responding to a particular nationalist group and limiting the extension of a measure of autonomy to that same group, many states have, in ‘a coffee to all’ fashion, opted to extend the same treatment to all constituent units of the state.

As discussed previously, Somalia is homogeneous in many respects, such in terms of religion (almost all Somalis are Sunni-Muslim), language (everyone speaks the Somali language) and ethnicity (everyone is Somali) and closely related geographical and physical features; moreover, the majority of people are pastoralists, and close to similar economic activities occur in all regions. However, the two autonomous regions of Somaliland and Puntland might be given more autonomy than other regions (the regions are discussed in detail in Chapter 6), in view of the fact that their formation pre-dates the current federal system and both have established governance and rule of law in their jurisdictions. Indeed, as discussed in Chapter 7, both regions were given more representatives in the Upper House of parliament. Puntland wants to be given more autonomy, whilst Somaliland declared unilateral independence. The issue of Somaliland is very sensitive: it is a time-bomb that can lead to war if it is not adequately addressed. Somaliland is thriving today and enjoys a strong measure of stability. It has established a strong government based on the rule of law, and if it agrees to be part of Somalia, it will perhaps be given more autonomy than other regions.

8.4 Fiscal autonomy and sharing of resources

As noted in Chapter 2, fiscal autonomy relates to the issue of decentralising fiscal decision-making powers to the subnational governments. It has to do with the application of constitutional rules in

¹³⁷³ See Chapter 2’s discussion of asymmetric and symmetric federalism.

¹³⁷⁴ Majeed (2005).

the processes of allocation, distribution, control, management and sharing of state resources; above all, it is concerned with fiscal equity and financial independence among the federating units.

Fiscal federalism refers to the allocation of tax powers and expenditure responsibilities between different levels of government.¹³⁷⁵ According to Musgrave¹³⁷⁶ and Oates,¹³⁷⁷ fiscal federalism is the logical division of public sector functions and finances between multiple layers of government. They add that all involved should share the finances and functions of government in a manner that it is acceptable. Olowonini¹³⁷⁸ views fiscal federalism as a set of fiscal activities, relations and interactions, rights and demands by and among the various governments in a federation. In turn, fiscal decentralisation is the process by which the principles of fiscal federalism are put into practice.¹³⁷⁹ For any federation to be sustainable, there must be fiscal decentralisation and financial autonomy.

There has been an increasing interest in fiscal decentralisation in recent years due to its potential benefits. Fiscal decentralisation occurs when subnational governments are given the power by the constitution or particular laws to tax and carry out spending activities within clearly established legal criteria.¹³⁸⁰ International organisations such as the World Bank, the African Development Bank, the Asian Development Bank, the Organization for Economic Cooperation and Development, and the Inter-American Development bank have been supporting countries to decentralise their economies as part of a broader strategy for enhancing public sector efficiency.¹³⁸¹ Decentralisation has become the center-piece of national discourse in many developing and

¹³⁷⁵ O Ewatan, 'Fiscal federalism in Nigeria: Theory and Practice' (2012) 1 (3) *International Journal of Development and Sustainability* 1075-1087. WE Oates, 'Fiscal Federalism' (1972). V Tanzi 'Fiscal federalism and decentralisation: A review of some efficiency and macroeconomic aspects' In Bruno M and Pleskovic B *Annual World Bank Conference on Development Economics* (1995).

¹³⁷⁶ RA Musgrave, 'The theory of public finance' (1959).

¹³⁷⁷ Oates (1972).

¹³⁷⁸ GD Olowonini, 'Federalism and vertical intergovernmental financial imbalance in Nigeria' (1999) Nigeria.

¹³⁷⁹ Ewetan (2012).

¹³⁸⁰ Ibid.

¹³⁸¹ F Amagoh , A Amin, 'An examination of the impacts of fiscal decentralisation on economic growth' (2012) 3(6) *International Journal of Business Administration* 72-81.

transitioning countries that now see it as a means of fast-tracking the balanced development of their economies.

Fiscal federalism demands that each level of government have adequate resources to perform its functions without appealing to the other level of government for financial assistance.¹³⁸² According to Wheare:

If state authorities, for example, find that the services allotted them are too expensive for them to perform, and if they call upon the federal authority for grants and subsidies to assist them, they are no longer coordinate with the federal government but subordinate to it. Financial subordination makes an end of federalism in fact, no matter how carefully the legal forms may be preserved. It follows therefore that both state and federal authorities in a federation must be given the power in the constitution each to have access and to control its own sufficient financial resources. Each must have the power to tax and to borrow for the financing of its own services by itself.¹³⁸³

For any federation to be sustained, there must be fiscal decentralization and financial autonomy. Each level of government, therefore, should be free to take decisions and allocate resources according to its own priorities in its own area of jurisdiction. In addition, the federating units should be able to act independently on matters within their own jurisdiction.¹³⁸⁴ The division of revenue powers among the various tiers of government is one of the pillars of a federal arrangement. An important function of taxation powers is the generation of revenues for the execution of expenditure responsibilities, while it also plays a vital role in macroeconomic regulation.¹³⁸⁵

Fiscal autonomy enables devolved units to match local preferences with available resources and thereby improve local service delivery and development.¹³⁸⁶ In situations of internal conflict, fiscal autonomy and control over local resources may facilitate the economic inclusion of subnational

¹³⁸² Wheare KC (1985) 231.

¹³⁸³ Ibid.

¹³⁸⁴ Ewetan (2012).

¹³⁸⁵ R L Watts, *'Comparing federal systems'* (2008).

¹³⁸⁶ World Bank World Development Report 1999/2000: Entering the 21st Century (1999) 117.

groups, the lack of which is a common ground for conflict.¹³⁸⁷ Effective fiscal and financial powers also provide an important basis for limiting central power; weak or absent fiscal powers, on the other hand, expose devolved units to the risk of political subordination and control by the centre.¹³⁸⁸ The ability of subnational governments to raise their own revenue in order to fund their functions represents the highest form of autonomy. Indeed, devolved units should, ideally, be in a position to raise their own revenue in order to support all their functions.¹³⁸⁹ Owning local revenue strengthens the autonomy of subnational units.¹³⁹⁰ It is also argued that paying local taxes creates the impetus for local communities to demand better services, which can in turn improve efficiency and accountability.¹³⁹¹

The Somali Provisional Constitution stipulates that the ‘allocation of resources and powers in the Federal Republic of Somalia shall be negotiated and agreed upon by the Federal Government and Federal Member States’; article 122 prescribes similarly that ‘the principle of public finance will be discussed between Federal Government and Federal Member States in accordance to the Constitution’.¹³⁹² Furthermore, the Constitution tasks the Federal Parliament to enact legislation that provides a framework for financial management.¹³⁹³ Article 50(e) calls for a fair distribution of resources, while article 50(f) indicates that the responsibilities for the raising of revenue shall be given to the level of government where they are likely to be exercised most effectively.

8.4.1 Assessment of fiscal autonomy in Somalia

Fiscal federalism should be able to guarantee fiscal autonomy by providing an allocation regime that is fair, just and acceptable.¹³⁹⁴ There cannot be a single revenue-allocation formula for

¹³⁸⁷ P Lewis , ‘Boundaries and bargains: Managing Nigeria’s fractious Society’ in Herbst et al. (eds) ‘*On the Fault Line: Managing the Tensions and Divisions within Societies*’(2012) 19-20.

¹³⁸⁸ C Saunders, ‘Legislative, executive and judicial institutions: A synthesis’ in Le Roy K et al. (eds) ‘*Legislative, Executive and Judicial Governance in Federal Countries*’ (2006) 347.

¹³⁸⁹ Ibid.

¹³⁹⁰ World Bank (1999) 117.

¹³⁹¹ Ibid.

¹³⁹² Article 122.

¹³⁹³ Article 124.

¹³⁹⁴ A Tukur, ‘Fiscal federalism and the taxonomy of revenue allocation: Mechanisms, conflicts and coordination’ A Presentation at the Nigerian Governors’ Forum Retreat (2007), Abuja International Conference Centre.

determining what is fair, just and acceptable for every country. Hence, the issue of a revenue-allocation formula remains contentious in most federations. It is even more contentious in Somalia, as the Provisional Constitution left the regulation of many areas (fiscal and financial) open for further negotiations.¹³⁹⁵

Somalia's economy is largely informal: the revenue base is narrow, and mechanisms for revenue collection are weak and fragmented.¹³⁹⁶ Somalia continues to rely heavily on external assistance, while effective sales tax and value-added tax (VAT) systems are not yet in place.¹³⁹⁷ The federal government is collecting taxes only in Mogadishu, whilst the FMSs are collecting taxes of their own in their jurisdiction on the basis of state-level tax acts passed by their respective legislatures.¹³⁹⁸ Thus, uncertainty exists about the allocation of revenue-raising, tax-collection and management and spending powers.¹³⁹⁹ The Provisional Constitution prescribes that revenues will be collected and services delivered by the level of government that is able to do so most effectively.¹⁴⁰⁰ How these principles should be operationalised has not yet been settled. However, the discussion is still ongoing between the federal government and the FMSs on the allocation of national resources, the assignment of tax bases, and the degree to which FMSs are allowed to control these revenue sources.

8.4.2 Design features that can strengthen federalism

A key question in the minds of both the federal government and the FMSs is whether revenue generation should be centralised or decentralised. For convenience, let us assume that all revenues are generated from taxes. There are distinct options in this regard, namely, to collect all taxes

¹³⁹⁵ Article 122, Principle of Public Finance: '[T]he principles of public finance will be discussed between the Federal government and the federal member states in accordance with the constitution.'

¹³⁹⁶ Mohamud, AA and Isak, NN 'Tax reforms of the federal government of Somalia' (2019) 9 (2) *Public Policy and Administration Research* 46-52.

¹³⁹⁷ Isak, NN 'Challenges of domestic revenue mobilisation in Somalia' (2018) VI (9) *International Journal of Economics, Commerce and Management* 172-181.

¹³⁹⁸ *Ibid.*

¹³⁹⁹ Article 50(b) stipulates that responsibilities for raising revenue shall be given to the level of government where they can be exercised most effectively.

¹⁴⁰⁰ Article 50(f).

centrally, to allow subnational governments to collect the taxes, or to assign taxing powers to each tier of government.¹⁴⁰¹

The central collection of taxes tends to be consistent with the pursuit of the distribution and stabilisation functions of government, as well as with the provision of national public goods, all of which are assigned to the federal government. This system is likely to generate economies of scale in tax administration and prevent revenue loss due to the mobility of taxpayers from one locality to another if such taxes are collected locally. This system could be desirable when weight is attached to tax uniformity across all FMSs. On the other hand, a decentralised system of tax collection would be likely to make spending decisions at the grass-roots level more compatible with available resources. It could therefore promote accountability and responsibility as well as the efficient provision of local public goods. This system can also encourage fiscal autonomy and tax competition among localities.

Article 50(e) stipulates that resources should be distributed in an equitable and inclusive manner.¹⁴⁰² Consequently, as with the allocation of government functions to the various tiers of government, revenue or tax collection should be shared between all tiers of government. Put differently, decentralisation of functions should be matched by a corresponding decentralisation of revenue collection.

The literature on fiscal federalism suggests that expenditure assignment should precede tax assignment.¹⁴⁰³ This is because tax assignment is generally guided by the expenditure requirement of different levels of government, which cannot be worked out in advance of expenditure responsibilities. An absence of tax assignment would result in dependence on the federal government by lower levels of government. It is recognised, however, that the two assignments

¹⁴⁰¹ Tanzi (1995).

¹⁴⁰² Article 50(e) states that there shall be a fair distribution of resources. Article 50(d) further provides that every part of the Federal Republic of Somalia shall enjoy similar levels of services and similar support from the federal government.

¹⁴⁰³ Shah, A (2007).

need not correspond exactly. Intergovernmental transfers could be used to make up the difference.¹⁴⁰⁴ A tax assignment considers the levels of government that should be taxed what and how, thereby providing various levels of government with revenue they can control. A tax assignment has four main attributes, namely, the power to legislate and set rates, fiscal authority over tax bases, the administration of tax, and the right to the revenue collected.¹⁴⁰⁵ It is hardly the case that all of these aspects are treated the same way, in terms of the degree of decentralisation.

Article 50(e) stipulates that resources should be distributed in an equitable and inclusive manner. Therefore, it is important to ask, given the collection system, which sources of funds should be shared and how the sharing should be done. The choice is largely between tax-base-sharing and revenue-sharing. Let us first consider the issue of tax-sharing. Which tax bases should be shared with state governments? A good tax should have qualities such as efficiency, equity, revenue adequacy, and low administration costs, in addition to which it should be able to promote economic stability.¹⁴⁰⁶ However, at the grass-roots level, where attention is focused on the provision of local goods, efficiency, revenue adequacy and administration are very important.

Competition for resources and unequal access to limited resources served to prolong the conflict in Somalia. Unequal access to resources is also likely to trigger conflicts and increase the movement of people across regions, as insecurity has already prompted migration to urban areas. Addressing inequality will require a significant redistribution of revenues among FMSs. This redistribution could be achieved through sharing arrangements agreed upon by the states, or through transfers from the federal to state governments. If transfers are the preferred option, the FGS will need additional revenue, either by quickly mobilising additional revenue bases or by transferring revenue bases from states to the centre.

¹⁴⁰⁴ B E Aigbokhan, 'Fiscal federalism and economic growth in Nigeria' In: Fiscal Federalism and Nigeria's Economic Development. Proceedings of the Annual Conference of the Nigerian Economic Society (1999) 333-352.

¹⁴⁰⁵ Ibid.

¹⁴⁰⁶ World Bank (2006). See also World Bank, *Somalia Economic Update: Mobilising domestic revenue to rebuild Somalia* (2017).

In Canada, for example, the central government makes unconditional transfers to address the horizontal imbalance between rich and poorer provinces; the Constitution Act of 1982 has further entrenched this commitment to the principle of equalisation payments and to promoting equal opportunities.¹⁴⁰⁷ The federal government in Switzerland engages in financial equalisation by redistributing tax revenues on the basis of the financial strength of the cantons.¹⁴⁰⁸ In countries such as Belgium, Canada, Spain and Switzerland, equalisation schemes are based on an agreed formula, while in India and Nigeria, they are based on periodic recommendations made by permanent or temporary, and usually independent, commissions.¹⁴⁰⁹

In Brazil, the federal fiscal system has become highly decentralised under its constitution. The states are assigned a broad-based, high-yield value-added tax with power to set the VAT rates as well as collect and administer this tax; federal VAT, meanwhile, has been limited to industrialised goods. Statutory transfers from the centre have been increased at the same time, while federal excises on fuel, electricity, telecommunications and transport have been eliminated. Consequently, as in India (and indeed like other large federations such as Australia, Canada, Germany and the US), approximately one-third of total revenue is raised by the states, which finances 54.6 per cent of their expenditures. Transfers account for only 31.8 per cent of state governments' expenditures. In other words, constitutional provisions on tax power and revenue-sharing are advantageous to subnational (state and local) governments. It is also important to note that in Brazil, local governments have become important players in fiscal federalism since 1988.¹⁴¹⁰

Fiscal and monetary reform is critical if Somalia's federal system is to succeed. The federal government should develop a strong fiscal federalism framework, harmonise tax collection between itself and the FMSs, and build and expand its administrative capacity.

¹⁴⁰⁷ Section 36 of the Constitution Act, 1982.

¹⁴⁰⁸ Schmitt (2005) 372.

¹⁴⁰⁹ Kincaid (2005) 426.

¹⁴¹⁰ Adebayo (2001).

8.5 Intergovernmental relations

Intergovernmental relations (IGR) are integral to every federal system, regardless of differences in history, geography, constitutional framework or legal culture. Substantial interaction and interdependence between orders of governments are increasingly unavoidable.¹⁴¹¹ Federal partners (or competitors) share information, determine who does or should do what in cases of shared competences, and clarify their respective roles. They extend services to their constituencies, create joint institutions, conclude formal agreements, and battle over funding. Yet despite their ubiquitous character and the impact they have on the lived reality of any federation, IGRs remain opaque to the public, scholars and even sometimes to public authorities. It has become a truism that the spheres of government in all federations work together in various ways no matter how powers are divided between them and whatever the logic of their institutional design.¹⁴¹²

The Provisional Constitution envisages that every government should strive for a cooperative relationship with the other governments, whether at the same level or at another level of government.¹⁴¹³ It states furthermore that the law passed by the Federal Parliament shall regulate:

- the establishment of institutions and guidelines that shall facilitate interaction between the various levels of government; and
- the establishment of guidelines that will facilitate the resolutions of disputes between the various levels of government without resorting to courts.¹⁴¹⁴

To date, the abovementioned institutions and mechanisms required to build and operate a durable federalism in Somalia are yet to be created. Designing institutions and processes through which the fiscal architecture of a government can evolve may be just as important as designing the

¹⁴¹¹ J P Meekison, 'Introduction' in J Meekison (ed) *Intergovernmental relationship in federal countries: a series of essays on the practices of federal government* (2000).

¹⁴¹² Ibid.

¹⁴¹³ Article 51(1).

¹⁴¹⁴ Article 51(5)(a)–(b).

architecture itself. The Provisional Constitution provides for regular meetings across different levels of government, including meetings on issues that affect water, agriculture, health and education.¹⁴¹⁵ Similarly, it envisages that FMSs may enter into cooperative agreements with other federal states or the federal government¹⁴¹⁶

Article 50 of the Provisional Constitution lays out seven principles that form the foundation of Somalia's federal system.¹⁴¹⁷ These principles envision cooperative federalism, equity in access to services and resources, and efficiency in revenue collection and service delivery.¹⁴¹⁸ Article 51(2) provides that every government shall respect and protect the limits of its powers and powers of other governments, and shall:

- have effective brotherly relationships with other levels of government in order to promote the unity of the citizenry.
- inform governments of other levels of policies and activities it implements within its boundaries, which may have an impact on the areas of other levels; and
- have policies that facilitate the planning and implementation of joint projects.¹⁴¹⁹

Article 51(2) is similar to the concept of *bunderstreuer* in German's basic law.

Article 51(3) further provides that in order to ensure the existence and development of cooperative federal relations, an annual conference of the executive heads of the federal government and the FMS governments should be convened so as to discuss and agree on important issues such as enhancing national unity, security, peace, socio-economic development, wealth and information-sharing.¹⁴²⁰

¹⁴¹⁵ Article 52.

¹⁴¹⁶ Article 50(c) calls for 'the existence and sustainability of a relationship of mutual cooperation and support between the government of the Federal Member States, and between the governments of the Federal Member States, and Federal Government, in the Spirit of national unity'.

¹⁴¹⁷ Article 50(a)-(g)

¹⁴¹⁸ Article 50.

¹⁴¹⁹ Article 51(2).

¹⁴²⁰ Article 51(3).

8.5.1 An assessment of IGR

In 2017, consultative dialogue was initiated on the formation of intergovernmental forums. Representatives of both the federal government and FMSs attended the conference. The participants discussed the terms of reference of the IGR form and broadly agreed upon the goals and objectives of the yet-to-be-formed IGR forum. The proposed formation of the IGR is in line with the Vision 2016 framework, which acknowledges the establishment of the Interstate Commission (ISC) as a principal mechanism for dialogue and negotiation between the federal government and FMSs.¹⁴²¹

Consequently, in late 2017, FMSs regional presidents formed the Council of Interstate Cooperation (CIC)¹⁴²² in pursuit of article 111(f) of the Provisional Constitution; the focus of the CIC will be to strengthen cooperation among the FMSs, to improve the relationship between them and the federal government, and to combat Al-Shabaab. In a follow-up meeting held in September 2018, FMSs presidents lamented the lack of implementation of significant agreement between federal government and the FMSs on power-sharing, resource distribution, elections. Some FMSs leaders demanded accountability and requested that resources and weapons be given to them to fight Al-Shabaab.¹⁴²³ The former UN Secretary-General Special Representative to Somalia, Michael Keating, in addressing the CIC gathering, urged leaders to strengthen cooperation between their governments and the federal authorities, noting that doing so could create stable conditions beneficial to all Somalis.¹⁴²⁴

The relationship between the federal government and FMSs has not been smooth, as they have accused each other of interference and insubordination. However, since the establishment of

¹⁴²¹ UNDP Somalia ‘Support to emerging Federal State (StEFS) projects’ available at www.so.undp.org/content/dam/somalia/docs/key-documents/Newsletter_UNDP_Somalia_StEFS_Q4_2016%20Final.pdf, accessed on 5 June 2017.

¹⁴²² The formation of CIC is discussed in Chapter 8.

¹⁴²³ Hornnews24, ‘Somalia: Meeting by council of Interstate cooperation opens in Kismayo’ available at www.hornnews24.com/meeting-by-council-of-interstate-cooperation-opens-in-kismayo/. Accessed 3 December 2018.

¹⁴²⁴ Reliefweb, with stability in Somalia everybody wins – UN envoy, available from <https://reliefweb.int/report/somalia/stability-somalia-everybody-wins-un-envoy>, accessed on 5 September 2018.

the CIC, the relationship amongst FMS regions has improved markedly. The council has met a number of times since its inception to discuss common problems. In meetings in 2017 and 2018, it accused the federal government of not being committed to fulfilling its promises to the federal system (this issue is examined later under dispute-resolution mechanisms and the protection of sub-units).

8.5.2 Design features to enhance IGR

In many federations, intergovernmental activity is envisaged from the outset and provisions made for it in the national constitution. In such cases, intergovernmental forums and procedures are likely to be compatible with the institutional design and may even be integral to it. In Somalia, the formation of FMSs is a positive sign, but it needs to be accompanied by the development of robust intergovernmental relations. Durable mechanisms for intergovernmental cooperation and coordination are vital to sustaining the state-building process.

8.6 Mechanisms of dispute resolution

Disputes between different levels of state, as well as between federal units, are to be expected in any federal system. As mentioned, these can be triggered by a range of issues, such as questions over land, boundaries and resource ownership. For these reasons, dispute-resolution mechanisms are essential. The ability of federations to prevent and manage conflict is widely recognised. Article 50(g) envisions the resolution of disputes through dialogue and reconciliation. The Provisional Constitution provides a number of measures for resolving conflicts, including shared rule and self-rule, special mediation committees, an intergovernmental council, judicial review by courts, and referenda. In addition, the Provisional Constitution mandates the Constitutional Court to adjudicate disputes between organs of the federal governments concerning their respective constitutional powers.¹⁴²⁵

¹⁴²⁵ Article 109 of the Provisional Constitution provides that the Constitutional Courts have exclusive powers 'to resolve any dispute between the Federal Government and the Federal member State governments, or among the Federal Member State governments'.

8.6.1 Assessment of mechanisms of dispute resolution

Article 50 of the Provisional Constitution sets out the principles of federalism. In particular, subsection (g) notes that one of those principles is the ‘resolution of disputes through dialogue and reconciliation’; article 111(f) goes into more detail about how this would be achieved in practice. An interstate commission will be established and have the powers ‘as the federal government deems necessary’ to, among other things, ‘resolve any administrative, political or jurisdictional disputes between the federal government and one or more governments of the federal member states or between the government of the federal member state.’¹⁴²⁶ This institutionalisation of the mediation process in the Constitution is an important step in creating opportunities to prevent conflict between the federal government and FMSs or between FMSs, albeit that it is not clear how this commission will take shape.

In Somalia, a culture of impunity surrounds violations of human rights and criminal acts, largely because perpetrators believe there are no real consequences for their deeds. The absence of a functioning judicial system, the very cornerstone of the rule of law, is highly problematic, bearing in mind the deep mistrust between different levels of government in Somalia. Steytler and De Visser wonder if the absence of a functioning Supreme Court makes Somalia’s quest for a peaceful transition via federalism a form of wishful thinking.¹⁴²⁷

There is also concern about the rightful boundaries of the FMSs. Currently, the Provisional Constitution does not provide for a dispute resolution mechanism to deal with conflicting claims to jurisdiction between prospective FMSs. Indeed, the demarcation of these administrations continues to be a source of disagreement among the rival constituencies that claim authority over particular territories. Between 1991 and 2017, boundary disputes in Somalia resulted in many

¹⁴²⁶ article 111(f) (2)(b) of the Provisional Constitution

¹⁴²⁷ Steytler and De Visser (2015).

deaths, injuries and growing tensions.¹⁴²⁸ Border fighting will have a profound impact on the establishment of a federal system in Somalia and make self-rule increasingly difficult.

The boundary conflicts between Puntland and Galmudug, on the one hand, and Puntland and Somaliland, on the other, are illustrative of the ongoing disputes between FMSs and the challenges of dividing the jurisdiction of governments. Puntland and Somaliland have been fighting over boundaries for many years; both claim ownership of Sool, Sanaag and Cayn. Puntland's claims are based on kinship ties with regions having dominant Darood clans, while Somaliland bases its claims on the original boundaries of the former British Somaliland Protectorate. More deaths resulting from the conflict between these regions have recently been reported.¹⁴²⁹ Similar conflicts have been going on between Galmudug and Puntland. Each of them controls half of Gaalkacyo; Puntland administers the northern part of the city, while Galmudug controls the southern. Several people were killed and thousands fled during recent fighting before an uneasy truce was reached.¹⁴³⁰

8.6.2 Design features of dispute resolution

A central challenge for the establishment of any kind of sustainable governance structure in Somalia is the need for a strong and capable judiciary; building strong, independent judicial institutions, with in-built dispute resolution mechanisms, is a necessary precondition for the devolution of power and the creation of a federal system. After the collapse of the military regime in Somalia, traditional forms of dispute resolution flourished. Since the Provisional Constitution provides for mediation and negotiation, it means that informal mechanisms of dispute resolution can also be invoked (the role of the traditional governance system is discussed in the final chapter).

¹⁴²⁸ See Chapter 4 on the genesis of Somali conflicts.

¹⁴²⁹ A Hassan, 'Dozens killed in clashes between two Somali regions in land disputes' available at www.reuters.com/article/us-somalia-conflict/dozens-killed-in-clashes-between-two-somali-regions-in-land-dispute-idUSKCN1I00T9, accessed on 10 July 2018.

¹⁴³⁰ Somalia: 5 key takeaways on the Galkayou conflicts and Galmudug crises' *Messenger Africa* available at <https://messengerafrika.com/2017/01/19/somalia-5-key-takeaways-on-the-gaalkacyo-conflict-and-the-crisis-in-galmadug/>, accessed on 10 July 2018.

Friction between the two layers of government stands to scuttle the gains made over the years. There is no doubt that, if not handled well, these disputes will spiral out of control and jeopardise the efforts that have been made to have Somalia reclaim its place amongst the community of nations. It is hence important that both sides work hand in hand for the benefit of Somalia's present and future generations by resolving their differences through dialogue.

8.7 Protection of sub-units and the principle of equity

The Provisional Constitution protects the territorial and institutional integrity of the FMSs and the institutions of states against unilateral amendment or interference by the federal government. This protection refers to the security guarantees offered by the Constitution to the FMSs¹⁴³¹ regarding their boundaries, powers, functions, and/or government institutions. The Constitution also stipulates that a constitutionally prescribed process that takes the state or population's interests into account cannot be removed, altered or interfered with. Similarly, the Constitution allows a state and/or population an opportunity to express its views on a proposed alteration of its regional boundaries. Article 142(2) stipulates that existing FMSs must be consulted in the decision-making process regarding the federal system, and with regard to security arrangements.¹⁴³² Hence, the Provisional Constitution offers FMSs strong constitutional protection; since any change in their legal status or powers requires FMSs' consent, their autonomy is therefore protected.

8.7.1 Assessment

The FMS regions have continued accusing the federal government of interference and frustrating their efforts of state-building. The first falling-out, as noted, stemmed from the Gulf crisis and DP World's development of Somalia's ports. Mogadishu's handling of both the Berbera Port deal and Gulf crisis adversely affected its relationship with the FMSs. Another source of disagreement is that, since he took office, President Farmajo and his government are said to have

¹⁴³¹ Articles 51(4) and 50(a) and (d).

¹⁴³² Article 142(2).

paid little attention to the grievances of the FMSs but instead deployed their cronies in the states and made life difficult for leaders of their administrations. With elections coming up in most of the FMSs, the leaders of the states are facing stiff competition from candidates said to be sponsored by the federal government. Recently, South-West's President Sharrif Hassan resigned from office due to frustration with the federal government.¹⁴³³ The South-West was the test-case, in the sense that it was the first of Somalia's FMS regions to hold a presidential election after the election of President Farmajo. The candidate most likely to win, Sheikh Muktar Robow, was beaten and arrested by Ethiopian peacekeeping forces with the blessing of Mogadishu.¹⁴³⁴ Consequently, the federal government backed the presidential candidate Abdul-Aziz Mohamed Laftagaren, won the election.¹⁴³⁵

Similar interference by the federal government was reported in Galmudug, where FG backed Ahmed Abdi Kaariye, won the presidential elections.¹⁴³⁶ In Galmudug, elections were marred by allegations of manipulation, intimidation and vote-buying by the federal government. This challenges brought about desire to form a breakaway administration by both former president Ahmed Duale 'Haaf' and local Sufi militia Ahlu Sunna wal Jama'a (ASWI).¹⁴³⁷ A few weeks later, clashes erupted between the Somali National Army (SNA) and ASWI militia in Dusamareb, leaving 12 dead.¹⁴³⁸ Political rifts between the rival factions within Galmudug remain deep. These relate to a number of contentious issues including inadequate state's clan balance, a crucial factor in Somalia's system of indirect democracy.

¹⁴³³ Dalsan Radion, 'Somalia: Sharrif resigns as South West leader, drop out of race,' <https://allafrica.com/stories/201811080190.html> accessed 1 January 2019.

¹⁴³⁴ BBC, 'Somalia violence, deadly Baidoa clashes over Robow arrest', www.bbc.com/news/world-africa-46566484 accessed 19 December 2018.

¹⁴³⁵ Garowe Online, 'Somalia: Former Minister elected as new South West President' www.garoweonline.com/en/news/somalia/somalia-former-minister-elected-as-new-southwest-state-president accessed 2 January 2019.

¹⁴³⁶ Garowe online, 'Somalia: FGS-backed candidate wins Galmudug election amid political chaos' available at www.garoweonline.com/en/news/somalia/somalia-galmadug-mps-vote-to-pick-new-president-amid-political-chaos. Accessed 4 April 2020.

¹⁴³⁷ Ibid.

¹⁴³⁸ Abdi Shekh, 'Clashes break out in Somalia, slowing fight against al Qaeda-link insurgents' (Reuters www.reuters.com/article/us-somalia-security/clashes-break-out-in-somalia-slowing-fight-against-al-qaeda-linked-insurgents-idUSKCN20MIQU accessed 4 April 2020.

The relationship between the federal government and Jubaland has also been rocky. The federal government never supported the re-election of Jubaland's President Ahmed Madobe. As such, there were tensions between FG and the Jubaland administration during the elections in August 2019. Clashes between SNA and Jubaland forces were reported earlier in March 2020.¹⁴³⁹ The relationship between the federal government and Puntland has not been smooth either. Puntland has suspended its relationship with the federal government several times. In 2013 it accused FG of refusing to share power and foreign aid with regions as required by the country's federal structure, in the process suspending all cooperation and relations with the federal government.¹⁴⁴⁰ Likewise, in 2018 Puntland, together with other FMSs, suspended its relationship with the federal government, accusing it of failing to address the country's security needs and meet its obligations to the states.¹⁴⁴¹ In Puntland's recent elections, officials were concerned that the federal government would interfere in their election processes.¹⁴⁴²

8.7.2 Design features for enhancing peace

State and federal governments have the right to their independence. To exercise the power given them by the constitution, each level of government should have the resources and capacity to establish and manage its own governmental organs. Consequently, in a federation, there are two sets of government which have their own legislative and executive organs, and which exercise their authority independently. Any law and action taken by the government outside its jurisdiction would be inconsistent with the division of power and thus declared *ultra vires* by the independent supreme court of the federation. Independence among FMSs requires the rejection of any use of

¹⁴³⁹ SNA troops engaged in fierce combat with Jubaland's security forces barely months after the SNA had deployed 700 soldiers in the Gedo region. Civilians were forced to seek refuge in neighbouring Kenya. See Reliefweb, 'Somalia: flush update No.2 on displacement in Gedo region, Jubaland' available at <https://reliefweb.int/report/somalia/somalia-flash-update-no2-displacement-gedo-region-jubaland-12032020-enso>. Accessed 4 April 2020.

¹⁴⁴⁰ Reuters, 'Somalia's Puntland breaks off relations with central government' (world news August 5, 2013.) available at www.reuters.com/article/us-somalia-politics-puntland-idUSBRE9740UZ20130805. Accessed 2 December 2018.

¹⁴⁴¹ Hassan, MO 'Somali regional states suspend ties with the federal government' Available at www.voanews.com/africa/somali-regional-states-suspend-ties-federal-government accessed 4 December 2020.

¹⁴⁴² Goobjoog News, 'Puntland Administration ban Federal Government officials in the regions ahead of election' <https://goobjoog.com/english/puntland-administration-ban-federal-govt-officials-in-the-region/> 1 January 2019.

threats and coercion by one government against another, given that this undermines the independence of the other government. As Wheare argues, the use of any kind of threat and political coercion should be denied in a federal system.¹⁴⁴³ The worst form of coercion that a federal government can exercise is the expulsion of a member state from the federation, while the worst threat a state government can make is that of secession.

The independence of each level of government also requires financial and administrative capacity. Financial independence is as important as legislative and executive powers. Thus, among the rights that arise out of the principle of equality in a federal system is that both federal and state governments have the financial and administrative power and ability to establish and manage their own legislative and executive organs.

8.8 Protection of minorities

It is commonly recognised that federalism protects minorities against the domination of the majority. One of the main reasons that constitutional drafters in countries such as Ethiopia, Nigeria and South Africa accepted federal elements in their constitutions was that the constitutional decentralisation of powers would enhance democracy and accommodate the rich diversity of the nations.¹⁴⁴⁴ The attractiveness of federalism to diverse societies arises from the deficiencies that have been exposed in traditional, majoritarian and unitary systems, which so often fail to respond adequately to the needs of minority groups. The attractiveness of federalism to these countries (Ethiopia, Nigeria) lies in its ability to protect minorities and create institutions capable of generating genuine consensus among diverse cultural groups.¹⁴⁴⁵

Article 1(1) of the Provisional Constitution stipulates that ‘Somalia is a federal, sovereign and democratic republic founded on the inclusive representation of the people, a multiparty system and

¹⁴⁴³ K C Wheare, ‘*Federal Government*’ (1946) 86-7

¹⁴⁴⁵ R Watt (1968) 87.

social justices'.¹⁴⁴⁶ Article 11, the equality clause, envisions Somalia as without any form of discrimination, and states that:

- i. All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before law.
- ii. Discrimination is deemed to occur if the effect of an action impairs or restricts a person's rights, even if the actor did not intend this effect.
- iii. The state must not discriminate against any person based on age, race, colour, tribe, ethnicity, culture, dialect, birth, disability, religion, political opinion, occupation, or wealth.
- iv. All state programmes, such as laws, or political and administrative actions, that are designed to achieve full equality for individuals or groups who are disadvantaged, or who have suffered from discrimination in the past, shall be deemed not discriminatory.

Article 31(3) stipulates that a state shall promote the cultural practices and local dialects of minorities. The equality clause aside, the rights of minorities, and indeed the rights every Somali, are included in the Constitution under fundamental rights. Among them are the rights of every Somali, regardless of clan, race or religion, to human dignity,¹⁴⁴⁷ life,¹⁴⁴⁸ freedom of association,¹⁴⁴⁹ freedom of expression and opinions,¹⁴⁵⁰ political participation,¹⁴⁵¹ and freedom of trade, occupation and profession.¹⁴⁵² Article 46(2) envisions that 'the public representation system shall be open and shall give everyone the opportunity to participate ...'.

¹⁴⁴⁶ Article 1(1).

¹⁴⁴⁷ Article 10.

¹⁴⁴⁸ Article 13.

¹⁴⁴⁹ Article 16.

¹⁴⁵⁰ Article 18.

¹⁴⁵¹ Article 22.

¹⁴⁵² Article 23.

8.8.1 Assessment

Somalia has a number of ethnic minorities and occupational groups (as discussed in Chapter 3), many of which experience discrimination and violation of their fundamental human rights. Historically, the traditional clan structure excludes minorities from political participation and limits their access to opportunities and to the traditional governance system. Furthermore, minorities are often subject to discrimination in employment, judicial proceedings and access to public services.¹⁴⁵³ More often than not, minority groups and their military forces are weaker than the majority clans, even in places where they outnumber the majority clans.¹⁴⁵⁴

As discussed in Chapter 3, since late 1997, a 4.5 power-sharing model has been used in order to find a solution to armed conflicts and to accommodate minorities in the governance system. The first transitional government was based on a 4.5 power-sharing ratio (four major clans¹⁴⁵⁵ get 0.5 for alliance of minorities). This formula was meant to reconcile rival clans and to promote inclusive governance. It was used again in 2004 when the Transitional Federal Government was established, in the 2009 Transitional Federal Government, as well as in 2012 when the Federal Government of Somalia was established. The initial intention was to use 4.5 approach only once and then to prepare the country for general election, however. That still seems to be a distant dream. Scholars are divided on the importance of 4.5 power-sharing in Somalia.¹⁴⁵⁶ Some believe that the institutionalisation of clans has given minority clans an opportunity to be in government,¹⁴⁵⁷ while others are of the view that the 4.5 formula has strengthened clan identity, which in turn has weakened and destabilised the government.¹⁴⁵⁸

¹⁴⁵³ US Department of State 'Country Reports on Human Rights Practices for 2012 – Somalia' (2013) available at www.refworld.org/docid/517e6dd61c.html, accessed on 20 May 2017.

¹⁴⁵⁴ Minority Rights Group International, 'No redress: Somalia's forgotten minorities' (2010) available at www.minorityrights.org/?lid=10370, accessed on 10 June 2017.

¹⁴⁵⁵ For instance, as will be discussed in Chapter 7, four big clans – the Darood, the Dir, the Hawiyya, and the Digil-Mirifle – are all allocated the same seats in parliaments, while .5 is allocated to an alliance of minorities.

¹⁴⁵⁶ Menkhaus (2010).

¹⁴⁵⁷ Scholars such as Mukhtar noted that '[the] 4.5 system is an important accomplishment in that its based on relative size, power and territorial rights'. See Mukhtar, MH (2007) 123-130.

¹⁴⁵⁸ A Ainet (2014).

Samatar views that a clan based approach will balkanise citizenship and community.¹⁴⁵⁹ He adds that such an approach is driven by rent-seeking (corruption) rather than needs to provide services to the citizen.¹⁴⁶⁰ True to Samatar's view. Individual appointed to hold government positions see themselves as representatives of their respective clan's interests instead of working in the national interest, furthermore, government institutions are staffed according to the clan quotes and people are selected only by virtue of belonging to a certain clan and not on merit, as a result corruption and a lack of accountability is encouraged. The solidification of clan roles in governance has led to a stagnation of Somali politics in which all aspects of governance are viewed through the lens of the clan.¹⁴⁶¹

8.8.2 Design features that can protect minorities

Following the adaptation of the Provisional Constitution, the recognition of and advocacy for minority rights are slowly improving, and political participation by minorities in government has been accepted in principle. The 2012 Provisional Constitution does not mention the 4.5 power-sharing model, which signals a move away from clan-based governance to a system of one-person, one-vote, thereby giving individuals themselves the power to vote rather than having clan representatives. Somalia needs to put a mechanism in place for free and fair elections: a country cannot be democratic until its citizens have the opportunity to choose their representatives through elections that are free and fair.

8.9 Elections and the electoral system

Elections play a critical role in political transitions by advancing democratisation and creating a political space for everyone. The biggest challenge is the question of the type of electoral system that will be adopted in Somalia, considering the fragility of the country due to the continues elites power struggle, boundary disputes, continues conflicts, and Al-Shabaab threat.

¹⁴⁵⁹ Samatar, AI (2007).

¹⁴⁶⁰ Ibid.

¹⁴⁶¹ Ibid.

Article 47 of the Provisional Constitution declares that ‘the regulations concerning political parties, their registration, and the elections at the federal-government level shall be defined in special laws enacted by the House of the People of the Federal Parliament of Somalia’. To give effect to an electoral system in Somalia, President Mohamed Abdullahi signed the Election Bill into law in May 2019¹⁴⁶² after the Upper House of Parliament had approved the bill and the Lower House passed it in December 2018. Under the new system, Somalis will vote for parties, with parliamentary seats allocated according to the final tallies; MPs will elect the president and prime minister, with the latter having to come from the majority party in parliament.

8.9.1 Assessment

After Somalia descended into a protracted war, no central authority existed until August 2000 when the first Transitional National Government (TNG) was formed using the 4.5 model for the allocation of seats. Similarly TFG, FGS all adopted indirect election using 4.5 power sharing model. In 2016, when it became clear that conditions were not in place to allow for one-person, one-vote elections, the federal government again adopted indirect selection mechanisms for the 275 members of the House of the People (Lower House) and the 54-member Upper House. Seats in the Lower House were distributed based on the 4.5 clan power-sharing formula. In consultation with the heads of sub-sub clans, 135 traditional elders representing clans across Somalia appointed 14,025 delegates to serve in the 51-member electoral colleges that would elect the 275 members of the Lower House.¹⁴⁶³ Electoral College delegates voted in the state capitals of the existing FMSs, except for Somaliland, whose delegates voted in Mogadishu. In sum, due to continued fragility and insecurity, the federal government adopted an informal voting system in which selected elders voted for parliamentarians, and the parliamentarians in turn voted for presidential

¹⁴⁶² Hassan, MO ‘Somali President Signs historical election bills into law’ (VOA, February 21, 2020) available at www.voanews.com/africa/somali-president-signs-historic-election-bill-law . Accessed 6 April 2020.

¹⁴⁶³ See Al-Jazeera, ‘Explaining the Somali election processes available at www.aljazeera.com/indepth/interactive/2017/02/explaining-somali-election-process-170207102621524.html accessed 4 January 2019.

candidates through an Electoral College system in both the 2012 and 2016 elections.¹⁴⁶⁴ The country was due to go to the polls late 2020 for parliamentary and for presidential election in 2021, however, a combination of factors including COVID-19 pandemic, increased attacks from Al-Shabab, severe locust infestions and political crises (between federal government and federal member states) promoted the delay. Yet again, the FG and FMSs after lengthy discussions and consultations agreed to an indirect electoral formula to conduct the upcoming national election.¹⁴⁶⁵

Elections may serve to consolidate peace and legitimise the federal government in the eyes of the community, enhancing its political stand in the fight against Al-Shabaab. However, no endeavor to legitimise the federal government will hold water unless it includes the entire population. A system that promotes unfairness and social injustice does not contribute to the formation of an inclusive and democratic society that coexists and harmonises peacefully. 4.5 formula reinforces the institutionalization of clan identity and politics, which many believe undermines the competence of Somali state institutions, allows corruption to spread easily and systematically unjusts. Likewise, indirect elections reinforces existing fault lines, driving conflicts instead of resolving it and hindering the formation of a united Somalia.

8.9.2 Design features that can enhance peace

Lifting the lid on the 4.5 clan power-sharing model will require careful analysis of the implications of different electoral models for the distribution of representation and how this stands to affect political stability. Electoral models must be found that can facilitate cross-regional and cross-clan unity as well as support the inclusion of youth and women. It is necessary for Somalia and international stakeholders to allay fears that a substantial change in power distribution would negatively affect particular clans to the extent that they become spoilers.

¹⁴⁶⁴ Saferworld, 'Electrol crossroads dilemmas of future democratisation in Somalia' (2017) available at www.saferworld.org.uk/downloads/pubdocs/electoral-crossroads-somalia.pdf accessed 10 January 2019.

¹⁴⁶⁵ Hussein, Z 'Somalia heads for indirect election for the sixth time' available at https://www.hiiraan.com/op4/2020/sept/180009/somalia_heads_for_indirect_elections_for_the_sixth_time.aspx accessed 22 Sep. 20.

Lijphart¹⁴⁶⁶ identifies two forms of democracy: majoritarian and consensus. In terms of electoral systems, he links single-member districts (SMDs) or plurality systems with majoritarian democracies, and proportional representation (PR) with consensus democracies.¹⁴⁶⁷ With regard to minority representation, Lijphart draws a fundamental distinction between the two: SMD systems will always represent the majority and leave the minority largely unrepresented, while PR systems are designed to translate votes to seats proportionally and thus provide representation for all groups.¹⁴⁶⁸

PR¹⁴⁶⁹ is highly recommended for divided societies. This is particularly true for divided societies in the aftermath of armed conflict. Here, PR is considered a key element in post-conflict power-sharing, which in turn contributes to successful peace-building.¹⁴⁷⁰ PR, especially in combination with large electoral districts, as the argument goes, is the best, if not the only, electoral system that ensures descriptive representation, which refers to a composition of parliament that accurately reflects the demographic characteristics of the society. Scholars such as Blais agree that multi-member systems (PR, by extrapolation) are fairer in terms of minority representation due to the distribution of votes and attempts by parties to appeal to all voters.¹⁴⁷¹

In contrast, Moser¹⁴⁷² argues that there is very little empirical evidence that supports this assertion; therefore, PR systems are not necessarily more effective in these terms. As such, consideration needs to be given to the real-life situation of electoral systems in various national contexts, and to the multiple associated factors that influence the link between these systems and

¹⁴⁶⁶ Lijphart, 'Patterns of Democracy' (2012).

¹⁴⁶⁷ Ibid.

¹⁴⁶⁸ Ibid.

¹⁴⁶⁹ A Lijphart, 'Constitutional design for divided societies' (2004) 15 (2) *Journal of Democracy* 96-109. P Norris, 'Driving democracy: do power-sharing institutions work?' (2008). A Reynolds, 'Electoral system and the protection and participation of minorities' (2006). F S Cohen, 'Proportional versus majoritarian ethnic conflict management in democracies' (1997) 35 (5) *Comparative Political Studies* 607-630.

¹⁴⁷⁰ Reynolds (1997).

¹⁴⁷¹ A Blais, 'The Debate over Electoral Systems' (1991) 12 (3) *International Political Science Review* 239-260

¹⁴⁷² Ibid.

representation of ethnic minorities.¹⁴⁷³ The Somali Federal Government and electoral commission need to carefully consider an election model that is democratic and inclusive, such that everyone is represented.

8.10 Shared rule and self-rule

Somalia's government structure (as discussed Chapter 7) provides for both shared rule and self-rule. The progress in implementation and the development of shared rule and self-rule are discussed in Chapter 7. Both shared rule and self-rule could play a major role in the peaceful resolution of conflict in Somalia.

8.11 Concluding remarks

The chapter highlighted key institutional features of conflict management in Somalia's Constitution. These include the division of power and functions, fiscal federalism, intergovernmental relationship, mechanisms of dispute-resolution, the protection of minorities, the protection of sub-units, and shared rule and self-rule. The chapter also examined the shortcomings in each of these principles and made suggestions about design features that can strengthen the Somali federation and promote peace in the country. In addition, the chapter identified a number of gaps in the Provisional Constitution and possible solutions to fill them.

¹⁴⁷³ J Raabe, 'Principles of representation throughout the world: Constitutional provisions and electoral systems' (2015) 36 (5) *International Political Science Review* 578-592.

CHAPTER 9: CONCLUSION AND RECOMMENDATIONS

9.1 Introduction

As mentioned in Chapters 1 and 4, crises in Somalia revolve around a number of issues, including competition over resources, access to water and grazing land, land disputes, power struggles, proxy wars, terrorism, boundary disputes and colonial legacies. A federal system was prescribed as a possible solution to these conflicts. The objectives of federalism in Somalia include the fair distribution of resources,¹⁴⁷⁴ resolution of disputes through dialogue and reconciliation,¹⁴⁷⁵ and building national unity. Federalism also seeks to serve as an institutional mechanism for bringing about peace and conflict resolution; to enhance shared rule and self-rule, which would allow Somalis to exercise their political will through multiple levels of government instead of having only the recourse of the central authority; and to protect minorities and marginalised communities. This thesis, therefore, examined whether the federal system that has been adopted and is being implemented has the institutional features that could contribute towards conflict management and peace in Somalia.

With a view to answering these questions, the thesis was structured as follows. The first chapter provided an overall background to the study, and explained what it set out to investigate and how it intended to achieve the set goals. Chapter 2 explored and identified essential federal institutional features that can manage conflict and contribute to peace. These features include the availability of a supreme constitution, two levels of government, shared rule and self-rule, a mechanism of conflict regulation, a judicial umpire and the separation of powers, to mention but a few. Chapters 3 and 4 highlighted Somalia's historical, social and cultural background, its experience under pre-colonial, colonial and independent governments, and the rise and fall of military regimes. Chapter 5 discuss the origin, debates and acceptability of federal system in Somalia, Chapter 6 highlighted perspectives of Somaliland and Puntland, chapter discussed how

¹⁴⁷⁴ Article 50(e).

¹⁴⁷⁵ Article 50 (g).

state building took place in these autonomous regions in Somalia. Chapter 8 discussed the institutional features of conflict management (identified in Chapter 2) in the context of Somalia, appraised implementation of these institutions and suggested design features that can strengthen the Somali federal system. Chapter 7 appraised shared-rule and self-rule, and discussed how key critical institutions of shared rule and self-rule have been developed and implemented in Somalia.

As elaborated on in Chapter 2, federalism is both a societal and an institutional phenomenon. As an institutional phenomenon, it denotes a constitutional configuration of the political system. This formal division of political power between the centre and sub-state units is one part of the picture. Federalism thus presupposes a division of sovereignty, a constitutionally protected status for the devolved units (usually states in their own right with parliaments, governments and a distinct political process whose rights can only be revoked by constitutional amendment), a constitutional procedure to solve conflicts between the central and the decentralised levels, and an organ at the central level which gives the decentralised units a voice on national policy decisions affecting their rights. As a societal phenomenon, one could have a federal society where societal differences like ethnicity, language and class tend to be territorially based, or a non-federal society where differences are nationwide and not territorially concentrated.¹⁴⁷⁶ The thesis went further in appraising key aspects of Somali society that are suited to modern federalism.

This concluding chapter has three objectives. First, it restates the major findings of this study. Secondly, it identifies the Somali societal traits that correspond with federal institutional features. Thirdly, it assesses the challenges that impede the realisation of the federal system in Somalia. Finally, it makes recommendations for the way forward.

¹⁴⁷⁶ Livingston rightly claims that the essence of federalism is not only about constitutional or institutional structures but societies themselves. He argues that the essential characteristics of federalism are not about the division of power or the resulting institutional framework, but are linked to society itself. W Livingston, '*Federalism and Constitutional Change*' (1956).

9.2 Essential institutional features that may contribute to peace in Somalia

9.2.1 Two layers of government

Dicey rightly states that a federal system exists where there is a layer of state institutions between a state's centre and its localities, and where this layer of institutions feature its own leaders and elected bodies who share decision-making power with the centre.¹⁴⁷⁷ Habisso claims that federalism is a reasonable design for political systems and has strong potential to ensure stability and security. This design allows the securing of social unity and political stability in deeply divided societies by facilitating both unity and diversity and maintaining 'dual identities' within a single country.¹⁴⁷⁸

The establishment of two layers of government in Somalia (that of the federal government and the FMS) is the first, correct step in creating peace and harmony. So far, five FMS governments have been established. Scholars such as Watts, Sawyer and Lijphart state that the two orders of government are among the essential features of federalism and that countries with two layers of government can rightly claim to be federations.¹⁴⁷⁹ Both governments are equal and independent of each other within their exclusive spheres of jurisdiction. The federal government in Somalia has sovereignty or supremacy within the parameters set by the Constitution. It also means that the federal government is only 'quasi-sovereign' in a position which is similar to that of the state governments. In terms of federal relationships, the federal government and federal member states are equally 'sovereign' because they have exclusive jurisdiction only within their spheres.

9.2.2 Division of powers and functions

As mentioned in Chapters 2, 7 and 8, the division of power and functions has a significant impact on federal institutions. The founding principles of the Somali Provisional Constitution explicitly

¹⁴⁷⁷ Dicey, V (1926).

¹⁴⁷⁸ T Habisso, 'Multi-ethnic (Multinational) Federalism in Plural Societies: Does It Make a Difference?' (2010) available at www.tigraionline.com/articles/article11002.html, accessed on 4 July 2018.

¹⁴⁷⁹ G P, Sawyer (1969); Watts, R (1990); A Lijphart (2002).

state that the Federal Republic of Somalia is founded upon the fundamental principles of power-sharing in a federal system.¹⁴⁸⁰ The powers of the federal government are explicitly provided for in the Provisional Constitution; the list of federal competencies reveals that areas that usually fall within the ambit of the national government in most federations do so in Somalia too – these include foreign affairs, national defence, citizenship, immigration and monetary policy.¹⁴⁸¹ As regards the rest of the power and functions, the Provisional Constitution envisages that their allocation shall be negotiated by the federal government and FMS governments.¹⁴⁸² In the absence of follow-up legislation or a federal policy, the Provisional Constitution does give answers as to how powers and functions should be shared or allocated in Somalia's federal system. This omission has strained the relationship between federal government and FMSs.

A lack of clear, coherent guidelines for implementing these principles has contributed to a stalemate in achieving peaceful co-existence between the federal government and FMSs. An example is the Gulf crisis, where there was open disagreement between them over jurisdiction in regard to foreign affairs. In the crisis, the federal government took a neutral stance due to its good relationship with Saudi Arabia and Qatar, while the FMSs, which include Puntland, South-West and Galmudug, publicly broke away from the position of neutrality declared by the federal government. The latter held that under article 54, foreign affairs falls within the ambit of the federal government. For their part, FMS argued their case under article 53, which stipulates that the federal government shall consult the FMSs on the negotiations relating to foreign aid, trade, treaties, or other major issues related to international agreements. The FMSs believed that the federal government had failed to consult them. These divergent positions over the Gulf crisis exacerbated tensions in the Somali federal system.¹⁴⁸³

¹⁴⁸⁰ Article 3(3).

¹⁴⁸¹ Article 54.

¹⁴⁸² *Ibid.*

¹⁴⁸³ Discussed in Chapter 7.

The division of powers and functions between the federal government and FMSs is an important area where states can give practical expression to self-rule. The distribution of powers will determine in what fields the federal units have a genuine right to self-rule and can therefore define and implement their policies. Therefore, clarity in the assignment of responsibilities to different levels of government is critical if clean lines of accountability are to be established. Considering that many conflicts in Somalia can be traced back to the struggle for autonomy and power, a suitable distribution of responsibilities has the potential to contribute significantly to sustainable conflict resolution.

9.2.3 Distribution of resources and fiscal autonomy

Competition over resources and unequal access to limited resources have prolonged the conflict in Somalia. The distribution of resources between the Somali Federal Government and FMSs cannot be understood as definitive in the light of what one reads in the Provisional Constitution. The text underlines that resource allocation must be decided fairly and with equity. Similarly, it stipulates that the allocation of resources and powers in the Federal Republic shall be agreed upon by the federal government and FMS. In the same vein, article 122 provides that 'the principle of public finances will be discussed between the federal government and federal member state government in accordance to Constitution'. Article 50(f) indicates that responsibilities for raising revenue shall be given to the level of government where they are likely to be exercised most effectively. How all these critical principles of the constitution will be implemented has not yet been decided. In most federations, issues of revenue allocation are contentious, but this is even more so the case in Somalia, where the Provisional Constitution has left the regulation of many of these areas (resources, fiscal and financial) open for further negotiations.

A major source of contention is the responsible authority to grant concessions on the exploration of natural resources, and to grant or sign a deal on the development of the Somali ports. Some regions have signed their own deals with oil production companies without obtaining

consent from the federal government. Mubarak and Mosley note that a difference of opinion led to a conflict between the federal government and Puntland over the authority to award concessions for oil exploration in Puntland.¹⁴⁸⁴ Whilst Puntland maintains that it has authority over its natural resources, the federal government maintains that it has sole authority to award concessions for oil exploration.¹⁴⁸⁵ This led to intense confrontation between the Puntland administration and the federal government. Furthermore, both Puntland and Somaliland have signed deals with the Dubai state-owned port operator, DP World, which is constructing a port without the involvement of the federal government. The latter sees this as a challenge to its authority and has accused DP World of violating the sovereignty of Somalia.¹⁴⁸⁶

The distribution of resources among the various tiers of government is one of the pillars of a federal arrangement. The ability of subnational governments to raise their own revenue in order to fund their functions represents the highest form of autonomy. Indeed, devolved units should be in a position to raise their own revenue in order to support all their functions. Elaigwu notes that

the relatively equitable distribution of scarce but allocatable resources among tiers and arms of government and groups (both vertically and horizontally) is one of the most crucial challenges in any country. Far from being merely technical, it is also normative, and finding an appropriate formula has always been a highly emotive matter.¹⁴⁸⁷

Both tiers of government should resolve these critical issues of resource-sharing and revenue-generation and -distribution as soon as possible; interesting lessons can be drawn from other countries on how these issues have been resolved. Many federal and multilevel countries create independent units that deal with issues of resources and revenue; for example, in Kenya, the Commission on Revenue Allocation (CRA) is created for the purpose of distribution of revenue. The CRA under article 203 of the Kenya Constitution 2012 is to determine the formula for sharing

¹⁴⁸⁴ Mubarak and Mosley (2014).

¹⁴⁸⁵ Ibid.

¹⁴⁸⁶ Elaborated on in Chapter 7.

¹⁴⁸⁷ I Elaigwu, *Federalism: The Nigerian experiences* (1996) at 38.

national funds.¹⁴⁸⁸ Article 203(1) states that ‘the following criteria shall be taken into account in determining the equitable shares provided under article 202 ... economic disparities among the counties and the need to remedy them shall play a key role in sharing revenue’.¹⁴⁸⁹ The Commission’s task, along other things, is to determine how revenues will be shared equally while addressing how historical injustices caused to marginalised communities will be corrected.¹⁴⁹⁰

Fiscal arrangement and financial relations between different levels of government are essential for the very existence of any multilevel state. Therefore, mechanisms should be put in place to address this defect in Somalia’s constitutional dispensation.

9.2.4 Protection of sub-units

The Provisional Constitution protects the territorial and institutional integrity of the FMSs and the institutions of states against unilateral amendment or interference by the federal government .This protection refers to security and guarantees offered by the Constitution to the FMSs¹⁴⁹¹ regarding their boundaries, powers, functions, and/or government institutions. The Constitution also stipulates that a constitutionally prescribed process that takes the state or population’s interests into account cannot be removed, altered or interfered with. Similarly, the Constitution allows a state and/or population an opportunity to express its views on a proposed alteration. Hence, the Provisional Constitution offers FMSs strong constitutional protection; any change in the legal status or powers requires the FMSs’ consent, and thus their autonomy, is protected.

Despite strong constitutional protection, the FMS regions have continued to accuse the federal government of interference and frustrating their efforts at state-building; they also blame President Farmajo and his government for paying little attention to their grievances. The first fall

¹⁴⁸⁸ Constitution of Kenya 2010, article 203.

¹⁴⁸⁹ Ibid. article 203(1).

¹⁴⁹⁰ Kenya has passed the County Allocation of Revenue Act of 2013 to provide for a framework on the equitable allocation of revenue raised nationally in accordance with the sharing formula developed by the Commission on Revenue Allocation.

¹⁴⁹¹ Articles 51(4) and 50(a) and (d).

outs, as discussed above, were on the issues of division of powers and functions. These instances include divided loyalties between the two tiers of government on the Gulf crisis, the Mogadishu handling of Berbera and Puntland ports, Election and its processes, critical issues of the distribution of resources and sharing of revenues, and finally the issues of insecurity that continue to affect the efforts of the FMSs and the nation at large. Also fuelling the conflicts are the political power plays such as interference of the FG in the election of Galmudug, South West and Jubaland. The federal government continues to use force, intimidation and coercion to respond to the demands of the FMSs, just recently the SNA engagement in Gedo-Jubaland and Galmudug is seen as direct interference in state affairs by the FG, involvement of external actors such Ethiopia and Kenya in such internal conflict has dented the image of FG. On the other FG accused FMS of undermining the smooth running of the government functions and federal system, alleging that FMSs continue to interfere in the exclusive areas that fall under the function of FG, President Farmajo accused some FMSs of signing bilateral agreement with foreign countries without express permission or involvement of FG.¹⁴⁹² Farmajo states that FMSs problems with FG is pre-existing problem that has been there before he come into office, he noted most FMSs see themselves as independent entities.¹⁴⁹³ The hostilities between the two spheres of government has costed many lives.

The political stalemate between the two levels of government has crippled the country's potential to address matters of national interest, such as development, democratisation, completion of the constitutions and security. The stalemate comes at a critical time when Somalia is attempting to recover from decades-old conflicts. The friction between the federal government and FMSs stands to scuttle the gains made over the years. There is no doubt that if not handled well, these conflicts will spiral out of control and jeopardise the efforts being made to re-establish Somalia. The use of any kind of threat and coercion by one level of government affects the

¹⁴⁹² Mohamed, AO 'President Farmaajo's Addis Ababa Interview (Part 3) Relations with the Federal Member State' (Wardeer News, May 25 2020).

¹⁴⁹³ Ibid.

independence of the other government. This is in line with Wheare's opinion that the use of any kind of threat and political coercion should be denied in a federal system.¹⁴⁹⁴ Article 51(4) explicitly stipulates that 'all levels of government must comply with the national Constitution, without any government assuming more powers than the Constitution allocates'. Somalia needs to have mechanisms of dispute resolution between the two levels of government; such mechanisms, as will be discussed under the recommendation section, include constitutional safeguards. The federal government and FMSs have the right to manage and maintain their independence and to exercise the powers given to them by the Constitution. Any action taken by any level of government outside its jurisdiction would be inconsistent with the division of powers and functions and be declared *ultra vires* by the independent supreme or constitutional court of the federation.

9.2.5 Mechanisms of dispute resolution

Disputes between different levels of government, as well as between federal units, are to be expected in any federal system. Dispute resolution mechanisms are thus essential. Article 50(g) of the Provisional Constitution envisions the resolution of disputes through dialogue and reconciliation. The Constitution provides a number of measures for resolving disputes, including the involvement of the inter-governmental-council, review by courts, and shared rule and self-rule.

The biggest disputes between the FG and FMSs revolves around the completion of the provisional constitution, federalism, election laws, democracy, security, rule of law and resource sharing. There are also growing concerns about the rightful boundaries of the FMSs. As yet, the Provisional Constitution has not included a dispute resolution mechanism to deal with conflicting claims to jurisdiction between FMSs. Between 1991 and 2017, boundary disputes resulted in many deaths. Abow maintains that clan-based federalism instigates conflict over clan boundaries.¹⁴⁹⁵ He

¹⁴⁹⁴ Wheare, KC (1946).

¹⁴⁹⁵ Abow (2007).

argues that for centuries, Somali pastoralists used to move around with their livestock looking for better grazing land without the restraint of regional or clan boundaries.¹⁴⁹⁶

Article 51 (5) envisages that the law passed by the Federal Parliament shall regulate:

- a) the establishment of institutions and guidelines that shall facilitate interaction between various levels of government; and
- b) the establishment of guidelines that will facilitate the resolution of disputes between the various levels of government without resorting to the courts.

To date, these institutions have not been established by the federal parliament; considering the growing disputes between the federal government and the FMSs, the need for their establishment is important. The inclusion of dispute resolution mechanisms is critical in Somalia as state rebuilding is taking shape. Somalis can invoke Somali traditional customary law (*Xeer*) and Sharia law in resolving disputes, as discussed in previous chapters and shown below. Traditional customary law remains one of the significant avenues for resolving disputes in Somalia.

9.2.6 Protection of minorities

The attractiveness of federalism to diverse societies arises from the deficiencies that have been exposed in traditional, majoritarian and unitary systems, which so often fail to recognise and respond adequately to the needs of minority groups. The attractiveness of a federation to these countries (Ethiopia, Nigeria) can be found in the core strength of a federal system: its ability to protect minorities and create institutions capable of generating genuine consensus among diverse cultural groups.¹⁴⁹⁷

Somalia has a number of ethnic minorities and occupational groups, many of whom experience discrimination and the violation of their fundamental human rights. Historically, the traditional clan structure excluded minorities from political participation and limited their access

¹⁴⁹⁶ Ibid.

¹⁴⁹⁷ R Watt (1968) 87.

to opportunities and traditional justice (*Xeer*). Furthermore, minorities are often subject to discrimination in employment, judicial proceedings and access to public services.¹⁴⁹⁸ More often than not, minority groups resources or militaries are weaker than that of the majority clans, even in places where they outnumber the majority clans.¹⁴⁹⁹ Following the adaptation of the Provisional Constitution, the recognition of minority rights is improving and political participation by minorities in government has been accepted in principle. Article 11 of the Provisional Constitution envisions a Somalia where everyone is equal regardless of clan, class and religion.¹⁵⁰⁰ Fundamental human rights in the Constitution provide a wide range of rights to every Somali. This is indeed the first bold step in the protection of minorities in Somalia. This will hopefully move Somali away from biased 4.5 power sharing formula.

The 4.5 has been used since 2000 and all subsequent parliaments, cabinets and other government posts have been shared accordingly. As noted by Eno 4.5 model has institutionalised clannism and centrifugal politics that entrenched conflicts of identity and kinships.¹⁵⁰¹ Elsewhere, Eno and Eno argue that ‘the divisive nature of the 4.5 formula is perceived to be inharmonious to the tenets of equality and mutual co-existence among the diverse communities in the country.’¹⁵⁰² Samatar shares similar views, He argues that building the governance system of the country using a clan-based approach is to balkanise citizenship and community,¹⁵⁰³ He noted that ‘such compartmentalised political order is driven by rent-seeking (corruption) rather than providing and efficient service to the citizens, such an approach will therefore not lead to any political stability

¹⁴⁹⁸ US Department of State ‘Country Reports on Human Rights Practices for 2012 – Somalia’ (2013) available at www.refworld.org/docid/517e6dd61c.html, accessed on 20 May 2014.

¹⁴⁹⁹ Minority Rights Group International ‘No redress: Somalia’s forgotten minorities’ (2010) available at www.minorityrights.org/?lid=10370, accessed on 10 June 2014.

¹⁵⁰⁰ Article 11.

¹⁵⁰¹ Eno, M ‘Identify crisis and ethnic marginalisation in Somalia: The case of the Bantu Jarer community’ (2009) 1 (1) *The Academic Journal of St Clements University*.

¹⁵⁰² Eno, M & Eno, O (2011) 138.

¹⁵⁰³ Samatar, AI ‘Somalia: Warlordism, Ethiopian Invasion, Dictatorship and US’s Role’ (Sudan Tribune, February 14, 2007) available at < <https://www.sudantribune.com/Somalia-Warlordism-Ethiopian,20261> > accessed on 4th July 2019.

and economic development.¹⁵⁰⁴ Therefore, the use of the clan-power-sharing formula has failed and continue to fail in creating inclusive and functioning government in Somalia.

9.2.7 Shared rule and self-rule

As discussed in Chapter 2, federations rest on the two constitutionally protected pillars of shared rule and self-rule. Shared rule refers to the common power-sharing mechanism that characterises federations. For example, a bicameral legislation, a national parliament in which the states are represented, and a formal or informal power-sharing mechanism that may exist at the national level within the executive and sometimes, within judiciaries. On the other hand, self-rule refers to the autonomy of the national and state governments to make and implement decisions within the limits set by their constitution; the right of states to enact their own constitutions and design their own institutions; and the right of states to participate in the conduct of intergovernmental relations. Both self-rule and shared rule are enshrined in the Somali Constitution.

Shared rule is conceptualised in institutional terms: the constitutional rights that FMSs and parliaments have to participate in, give consent to, or share in the decisions about issues affecting the country as a whole. Formally, Somalia has two houses of parliament: the Upper House and the House of People (HoP). Their formation, duties and functions are outlined in Chapter 7. Informally, During President Hassan Sheikh time FMSs are also represented in a National Leaders Forum (NLF); this forum comprises both national and regional leadership and become a de facto decision-making forum in Somalia. Both formal and informal avenues gave the FMS units opportunities to engage with national leadership on issues that affect their constituents and the nation at large. The NLF provided solutions and way forward to some of the contentious issues, President Farmajo didn't utilise NLF and so it eventually died.

As discussed in Chapter 7, different sectors of Somalia, including minorities (previously marginalised clans) and women, are represented in the two houses of parliament. This improved

¹⁵⁰⁴ Ibid.

representativeness of parliament strengthens its ability to reach out to all sectors of society. If each parliamentarian ensures that the legislature responds to the needs of her or his community, parliament can help stop communal discord from erupting into violent conflict.

Self-rule, as mentioned in Chapter 7, emphasises the degree of political self-government enjoyed by the constituent units within a multilevel state, and focuses on autonomy to govern a political community. The second layer of government is gradually taking shape in Somalia. So far, five FMSs have been established – Puntland, Hirshabelle, Galmudug, South-West State and Jubaland. Their areas of competence (functional areas) are not exhaustively elaborated in the Provisional Constitution. Self-rule as enshrined in the Provisional Constitution is a significant development for Somalia; FMSs will be given an opportunity to share their resources and power with the federal government, to determine the policies most relevant to their regions, to have a say in the national government's affairs, and to run their own affairs, thereby improving the well-being of their constituents. Additionally, provisions are being made regarding intergovernmental relationships and the mechanisms of conflict resolution. Yet to be completed is the mechanism for sharing resources and a fiscal federalism. Once these are agreed upon, potential conflicts and full-scale war could be prevented. FMSs have also been allotted a space in which to create their sub-constitutions and to design government structures that suit their needs and aspirations. Other issues relevant to self-rule such as the division of power and functions, fiscal autonomy, protection of sub-units and the mechanisms of dispute-resolution are discussed above.

9.3 Constitutionalism as implied in the Provisional Constitution

Constitutionalism as defined previously is understood as a legal and political process that operates on the principle of popular sovereignty, the separation of powers, the rule of law, democracy, respect for human rights and limitations on government. One may ask how constitutionalism plays out in the Provisional Constitution. The latter entrenches it, as is evident in the imposition of limits on each arm of government, provisions for democracy, the protection of human rights, and provisions for the rule of law and judicial reviews. Constitutionalism in Somalia is not only about

protecting human rights and related issues, but also concerns the rights of the federal government and the FMSs. The next section briefly highlights constitutionalism as provided for in the Provisional Constitution and its significance for building peace in Somalia.

9.3.1 Provisions for fundamental human rights

The Provisional Constitution provides for a number of fundamental human rights, including the rights to life,¹⁵⁰⁵ human dignity,¹⁵⁰⁶ equality,¹⁵⁰⁷ freedom of association,¹⁵⁰⁸ freedom of religion, freedom of expression and opinion,¹⁵⁰⁹ freedom of assembly, demonstration, protest and petition,¹⁵¹⁰ freedom of movement and residence,¹⁵¹¹ political participation,¹⁵¹² children rights,¹⁵¹³ right to education¹⁵¹⁴ as well as socio-economic¹⁵¹⁵ and environmental rights.¹⁵¹⁶ It also provides for a right to access¹⁵¹⁷ information and the right to just administrative action.¹⁵¹⁸ Provisions for fundamental human rights in Somalia's constitutional dispensation are very important and will pave the way for peaceful coexistence and peaceful demands for rights. In his 2003 Millennium Report, former UN Secretary-General Kofi Annan noted that the best way to prevent conflict is to promote political arrangements in which all groups are fairly represented and combine them with human rights, minority rights and broad-based development.¹⁵¹⁹

Further linkage between human rights and peace is also articulated in the preambles of the three major instruments of the International Bill of Human Rights, namely the Universal

¹⁵⁰⁵ Article 13.

¹⁵⁰⁶ Article 10.

¹⁵⁰⁷ Article 11.

¹⁵⁰⁸ Article 16.

¹⁵⁰⁹ Article 18.

¹⁵¹⁰ Article 20.

¹⁵¹¹ Article 21.

¹⁵¹² Article 22.

¹⁵¹³ Article 29.

¹⁵¹⁴ Article 30.

¹⁵¹⁵ Article 27.

¹⁵¹⁶ Article 25.

¹⁵¹⁷ Article 33.

¹⁵¹⁸ Article 32.

¹⁵¹⁹ UN Press Release 'We the people: The Role of the United Nations in the 21st Century' on the Millennium Report to be presented to the UN General Assembly by Secretary-General, Kofi Annan. GA/9704 of 3 April 2000.

Declaration of Human Rights (UDHR),¹⁵²⁰ the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁵²¹ and the International Covenant on Civil and Political Rights (ICCPR).¹⁵²² The preambles of the ICESCR and ICCPR recognise the linkage between the families of rights, on the one hand, and the maintenance of peace and security, on the other, by acknowledging ‘the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world’,¹⁵²³ and further that

[t]he ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.¹⁵²⁴

Thus, in providing for a number of these rights, the Provisional Constitution is opening up a democratic space, encouraging accountability, the rule of law and the inclusion of previously marginalised minorities and women in Somalia’s constitutional dispensation. This will eventually strengthen the federal system that is currently taking shape in Somalia.

9.3.2 Judicial independence and rule of law

McGarry and O’Leary claim that a ‘federation automatically implies a codified and written constitution and normally is accompanied at the federal level by a supreme court’ to enforce it.¹⁵²⁵

The Supreme Court in a federal system is tasked with regulating and fine-tuning the federal relationship by umpiring differences between the governmental tiers. The role of the judiciary in

¹⁵²⁰ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. T.S A/810, 71 (1948). The Declaration was adopted by the United Nations General Assembly (UNGA) Resolution 217A (III) on 10 December 1948. See in particular, preamble paragraphs 1–3.

¹⁵²¹ International Covenant on Economic, Social and Cultural Rights U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3. The Covenant was adopted by UNGA Resolution 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) 49, and entered into force on 3 January 1976.

¹⁵²² International Covenant on Civil and Political Rights, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. The Covenant was adopted by UNGA Resolution 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) 52 and entered into force on 23 March 1976.

¹⁵²³ See ICESCR and ICCPR.

¹⁵²⁴ *Ibid.*

¹⁵²⁵ J McGarry and O Brendan, ‘Federalism as a Method of Ethnic Conflict Regulation’ in Sid Noel (ed) ‘*From Power-sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*’ (2005).

resolving conflicts between the federal and state or provincial governments is vital to the development of a federal system. Building strong, independent legal institutions with in-built dispute resolution mechanisms is a necessary precondition for the devolution of power or the creation of distinct federal units.

In Somalia, the judiciary is envisaged to oversee, protect and enforce the Constitution, the allocation of powers to the respective levels of government and the legality of decision-making. The judiciary is therefore the ultimate interpreter of the Constitution, and it determines how the provisions of the Constitution impact on decisions and actions by any level of government. The Constitution is the supreme law of Somalia, and any law that is in conflict with the Constitution can be nullified by the highest court. The judiciary, as the overseer of the Constitution, is therefore a key element of Somalia's federation.

In Somalia, federalism requires a judicial body to determine disputes about the demarcation of powers and boundaries between the federal government and the FMSs. It hoped that, as the guardian of the Constitution, the judiciary will ensure that the federal balance is not transgressed. Nonetheless, all this seems to be wishful thinking. Somalia's judiciary is weak and, in most areas, non-existent, with fragmented courts. This makes it difficult for the judiciary to make any meaningful contribution to conflict resolution in Somalia. However, once it is established and its impartiality guaranteed, it can then hold the nation together.

Steytler and De Visser argue that building federal institutions and judicial systems have to occur at the same time.¹⁵²⁶ They noted that the commitment to the rule of law starts earlier, and the words on paper agreements must reflect the integrity of the parties and their commitment to the Foedus, the federal compact.¹⁵²⁷ Therefore, it's important if judicial systems in Somalia is built along the federal institutions. Maintaining independent courts with impartial judges of high

¹⁵²⁶ Steytler, N and De Visser, 'Fragile federation' and the dynamics of devolution' in F Palermo and E Alber, *Federalism as decision-making changes in structures, procedures and policies* (2015).

¹⁵²⁷ *ibid.*

integrity is important and could enhance checks and balances between the central and state governments. Such an initiative would address ethnic (clan) conflicts, disputes between the federal government and the FMSs, as well as social injustice issues that aggravate tensions in Somalia, and ensure that the federal government and the FMSs will be within their limits so that none encroaches upon the jurisdiction of the other.

9.3.3 Democracy, inclusivity and accountability

A federation is closely associated with democratisation that brings decision-making closer to state and local communities in order to develop leadership, expand the basis of democratic participation, increase the accountability and transparency of government, better protect minority and individual rights, and facilitate power-sharing. Federalism is one of the key issues in debates about democratisation, individual rights protection and minority community guarantees around the world.¹⁵²⁸ In Somalia, the Provisional Constitution makes provision for democracy, inclusivity and the establishment of an accountable government.¹⁵²⁹ A crucial point to note is that any power-sharing arrangement in Somalia must empower minorities and reduce their fears in the face of the natural power of the majorities. This is especially so when a country has suffered from violent conflict as severely as Somalia has.

The Provisional Constitution also provides for the creation of a number of institutions designed to protect, promote and safeguard the Constitution. These are, *inter alia*, Constitutional Courts, Human Rights Commissions, the Office of the Ombudsman, the Judicial Services Commission, the National Independent Electoral Commission and the Boundary and Federal Commission. Their duties and functions are enumerated in the Constitution. These national institutions are to be designed to ensure that the government will be held accountable for the way

¹⁵²⁸ Kincaid (2005)7.

¹⁵²⁹ Article 1(1).

in which it exercises its powers. The rationale for having them is the belief that accountable government ensures that the ethos of constitutionalism thrives.

9.3.4 Separation of powers and limitations of government

Federalism and the separation of powers both imply a constitutional limit on state powers through the functional or the territorial division of governmental roles and offices. Likewise, the division of powers between the center and the subnational units creates offices with competing territorial claims to speak on behalf of the other. The constitutional autonomy of the subnational units is guaranteed by the existence of legislative bodies and a system of courts.

The Constitution gives the concept of the separation of powers a dual aspect; state power is separated and dispersed both vertically and horizontally. Vertically, the state power is divided, separated and dispersed to infuse the two levels of government, namely the federal government and the FMSs.¹⁵³⁰ It is expected that these two levels of government, which are distinct and inter-dependent, will conduct their mutual relations on the basis of consultation and cooperation. However, the Constitution has to put in place safeguards to resolve conflicts between the two levels of government. Horizontally, state power at the national-government level has been divided, separated and dispersed to the three main arms of government, namely the executive, legislature and the judiciary. Each arm of government has its own distinct functions and is not allowed to encroach on the functions of the other arm of government.

In order to avert oppression and tyranny, state functions have to be distributed across state institutions, where each institution has a separate role. Where one body or institution makes laws and at the same time, enforces and implements the laws and finally adjudicates on the same laws, it would in effect enjoy excessive and tyrannical powers. The Somalis suffered under a unitarily centralised government. As a result of the oppression by central governments, resources were not distributed equally, and only particular clans around the presidency benefitted from the

¹⁵³⁰ Article 48(1)(a)(b).

government, particularly during the military regime. The move away from a unitary centralised government is seen as a significant move by Somalis, particularly by the previously marginalised community.

Elazar notes that ‘a federal system is generally democratic, which requires the polity to maintain appropriate checks and balances, so that every institution is checked and balanced by other institutions which are constitutionally authoritative and practically sufficiently autonomous to sustain themselves politically and socially’.¹⁵³¹ The separation of powers in Somalia also provides a system of checks and balances between the branches of government; for instance, by overseeing the role of the legislative, judicial reviews and institutions that were to be established to safeguard the Constitution, for instance, the Human Rights Commission, the Truth and Reconciliation Commission and the boundary and independent electoral commissions.

9.4 Somali societal aspects that can strengthen federalism

9.4.1 Introduction

As elaborated on in Chapter 3, Somalis are homogeneous in many respects, but also divided into either pastoralists or agriculturists. Agriculturists occupy mainly the fertile areas between the Shabelle and Juba Rivers and speak their own dialect (Af-maymay).¹⁵³² They commonly belong to the Digil-Mirifle clans.¹⁵³³ Pastoralists are the majority, includes the Dir, Darood and Hawiya clans,¹⁵³⁴ and speak a northern dialect (Af-mahaatir).¹⁵³⁵ The histories (including the colonial experience) of the north and the south differ.¹⁵³⁶

¹⁵³¹ D Elazar, ‘*Federalism: An overview*’ (1995) at 13-14.

¹⁵³² Mukhatar (1989).

¹⁵³³ Leonard DK and Samatar, MS ‘What does the Somali experience teach us about the social contract and the state?’ (2011) *Development and Change* 560-590, Emlil and Barise (2006).

¹⁵³⁴ Lewis (1993).

¹⁵³⁵ There has always been a division between the northern nomadic clans and the southern agro-pastoral clans of Somalia. DB Putman and MC Noor ‘The Somalis: Their History and Culture’ (1999) 25 *The Cultural Orientation Project - Center of Applied Linguistics* (2003) 1–35. See also Mukhatar (1989).

¹⁵³⁶ Besteman, C (1995)s

Clan is very important aspects of Somali identity, within clans systems are *tol iyo xeer* (kinship and social contract).¹⁵³⁷ dia-paying groups is the most important corporate group and consist of people who share the most important responsibilities such as the payment of blood money. The families within the group have a collective responsibility for settling acts committed by, or against their members. Leonard and Samatar argue that dia-paying groups provides collective insurance against torts, for it makes payments for violent deaths, injuries, etc. if payments are not made or accepted, then vengeance will be taken against any member of the offender's dia-paying group.¹⁵³⁸ The clan structures, which dominates the socio-political analysis on Somalia, has presumably emerged originally out of the necessities dictated by the environment, rather than from the alleged blood affiliation of its members.¹⁵³⁹ Mansur rightly noted that in a historical context of environmental scarcity like Somalia, individuals have sought survival through cooperation as well as solidarity networks.¹⁵⁴⁰

Clan systems have been flexible and adaptable at various times throughout Somali society. They have played strong role in social, economic and political interactions, and have acted both as a cause of social cohesions and (paradoxically) political conflicts. Yet clan identity is not basis for conflicts, but rather its deliberate manipulation by elites and predatory warlords that create and exacerbates divisions.¹⁵⁴¹ Clans have been penetrated by the patronage of warlords and businessmen, thus harming their integrity and effectiveness, particularly on political issues, as such their authorities has been eroded by being co-opted into partisan political formation, as discussed in chapter 5 many respondent view that clan elders, especially since the established of federalism, were manipulated and bought by wealthy individuals and elites through corruption. Beneath clan politics and widespread corruption lies a society that has been capable of establishing system of reciprocity and cooperation in the past, managing coexistence between its wide-ranging

¹⁵³⁷ Elaborated in chapter 3

¹⁵³⁸ Leonard and Samatar (2011). 567.

¹⁵³⁹ Kusow (1995).

¹⁵⁴⁰ Mansur (1995)

¹⁵⁴¹ Menkhaus, (2009)

occupation segments, which include nomad, pastoralism, coastal fishing, and sedentary farming.¹⁵⁴²

Samatar observed that the most important lesson to be drawn from the Somali tragedy is ‘the recognition that Somali society has been torn apart because blood ties without the *Xeer* have been manipulated by the elite in order to gain or retain access to unearned resources.’¹⁵⁴³ Elsewhere, Samatar argue that, among the ‘causes of the Somali calamity,’ are ‘state leaders’ failure to nurture shared cultural and social commonalities.’¹⁵⁴⁴ In the same way, Samatar,¹⁵⁴⁵ Kapteinjns and Farah¹⁵⁴⁶ note that clans have abandoned norms and central elements (such as *Xeer* and Islam) which previously provided moral codes for regulating conflict. As elaborated in chapter 3, the shared cultural and social commonalities include kinship, traditional governances’ systems (*Shirr*, *Xeer*, and *sharia*). These institutions have played a big role in social cohesion, conflict resolution and reconciliation.

As such the stability in Somalia is contingent on a federal system that recognises and incorporates time-tested Somali cultural values such as sharia and *xeer*, decentralised decision-making, reconciliation-focused dispute resolution, and cultural norms, all these practices that are inherently federal in character. The next section will highlight some of these traditional norms that could strengthen the federal system.

9.4.2 The traditional governance system

As discussed in Chapter 3, the traditional governance system has enabled Somali society to cope with the consequences of state collapse. Somali customary law – *Xeer* – defines the framework in which issues are managed. Although weakened by colonial, post-colonial and military regimes, it remains respected and its practice has continued to the present day, where it provides the basis for

¹⁵⁴² Ahad (2014)54.

¹⁵⁴³ Samatar, AI (1992) 640.

¹⁵⁴⁴ Samatar, AI (2001) 642.

¹⁵⁴⁵ Samatar (2000, 2019)

¹⁵⁴⁶ Kapteinjns and Farah (2012).

conflict settlement, protection and collective solidarity. In the aftermath of state collapse, Somalis fell back on the authority of clan elders, *Xeer*, and Sharia law.

9.4.2.1 *Conflict resolution, reconciliation and rule of law*

As elaborated on in Chapter 3, traditional institutions in Somalia resolve conflict through negotiation; many aspects of the *Xeer* involve communal justice, which is an integral part of the principle of fundamental justice. *Xeer* and Sharia law are used in conflict resolution addressing legal issues relating to resource competition (either over water or pasture), family affairs, criminal offences and compensation (*diya*) payments.¹⁵⁴⁷ The difference between Sharia law and customary law lies in the point that, in the former, the perpetrator is held responsible personally, whereas in the latter there is collective lineage-responsibility for the crime. The notion of collective responsibility often leads to acts of revenge directed against a clan. Unlike clan divisiveness sharia emphasises equality, justice and *amana*.¹⁵⁴⁸ Sharia prohibit corruption, stealing and transgression. It emphasis that all men are equal and create a more readily accepted model of governance in Somalia society for dispute and conflict resolution.¹⁵⁴⁹ Sharia while serving as a basis of trust it also provides a more uniting identity that transcends the divisiveness of clan in Somali society. In this regard, Leonard and Samatar noted that ‘Islam enters as the only other forces in Somali society that can cause warloads and patrons to honour their commitments, look to the long run, and serve some kind of general interest.’¹⁵⁵⁰ Islam is therefore seen as antidote to the clan’s divisive nature, which strengthens national bonds of belonging to a common Somali society and faith.¹⁵⁵¹

Both sharia and traditional governance institutions (elders and *shiiir*) constitute important governance modalities in Somalia, which have enabled the society not only to survive but also to cope with the consequences of state collapse and its absence since 1991. Therefore, becoming *de*

¹⁵⁴⁷ Le Sage (2005).

¹⁵⁴⁸ Hansen (2017)

¹⁵⁴⁹ Ibid.

¹⁵⁵⁰ Leonard DK , Samatar MS (2011) 574.

¹⁵⁵¹ Samatar, AI (1988, 1992).

facto basis for governance. All actors including different clans, business and political actors have used the decentralised governance frames embedded in the institutions of clan and religion to facilitate hybrid societal and political orders.¹⁵⁵²

Traditional institutions maintain a minimum level of stability, rule of law, and justice.¹⁵⁵³ *Xeer* recognises, guarantees and enforces the protection of collective and individual rights to life, liberty and property, and prohibits unjust killings or bodily harm, theft and insults.¹⁵⁵⁴ *Xeer* has also served as a socio-political framework to bridge political differences between clans and actors. This is reflected in the fact it is a core element in the process leading to the creation of FMSs and regional administrations, which often encompass several clans. For business purposes, *Xeer* has been used to establish the trust needed to institute a business, covers the needs from small business interactions to the delivery of goods and services.¹⁵⁵⁵ Contracts are enforced through the clan-based system and by the authority of elders and *Xeer* to deliver information and services and to trace individuals through the clan-based network.

In all FMSs the *Xeer* has been and continue to be utilised in conflict resolution and governance, employing Somali traditional institutions to resolve conflicts and drive state-building processes.¹⁵⁵⁶ In Puntland and Somaliland the traditional actors provided wide range of vital services such as security, regulatory framework, economic development and protection of business transactions and infrastructural development. Furthermore, they have laid foundation for emerging institutionalisation and state-building in Somalia. Clan elders in both Puntland in 1994 and Somaliland in 1998 successfully used mediatory role to bridge conflicting party's differences and successfully building regional state without international involvement.¹⁵⁵⁷ Not only state-building

¹⁵⁵² Menkhaus (2007)

¹⁵⁵³ Ibid.

¹⁵⁵⁴ Lewis (1961) 240.

¹⁵⁵⁵ For instance, the Hawala-based banking systems initially used the institutions of clan and religion and evolved by adopting technology to expand its network and services.

¹⁵⁵⁶ Elaborated on in Chapter 6.

¹⁵⁵⁷ Elaborated in chapter 6, see also Samatar, MS ' Puntland and Somaliland: Similarities and differences in the rebuilding of a self-governance system from the ashes' (2010) UK..S

process, *xeer* has also been used in maintain rule of law for instance, in Puntland traditional and religious leaders are engaged in persuading young sea pirates to abandon their criminal activities.¹⁵⁵⁸ Besteman and Cassanlli note that Puntland has made steady progress in this endeavour, as many youngsters have abandoned pirate activities and reverted to economic activities such as fishing and entrepreneurship.¹⁵⁵⁹

Just recently traditional elders mediated and reconciled Puntland President Deni and Vice-President Ahmed Karash. President Deni accused his Vice-president of insubordination, on his part Karash accused President Deni of lack of consultations, bullying, belittling his mandate of office.¹⁵⁶⁰ In Galmudug Ahmed Kariye ‘Qoorqoor’ co-opted his governance with his arch-rivals. Qoorqoor through reconciliation sailed through dynamic political context.¹⁵⁶¹ In South-West President engaged with his opposition. Similar, Jubaland President reached out and reconciled with his rival and opposition through mediation and reconciliation.¹⁵⁶² All the above FMSs utilised traditional reconciliation approach.

Somaliland has gone further by including the traditional institutions into the structure of government, the role of clan elders (*Guurti*) has been institutionalised in the Upper House of Parliament: *Guurti* members cooperate with the local clan elders in containing, settling, preventing and resolving inter-group conflicts.¹⁵⁶³

¹⁵⁵⁸ Besteman and Cassannali (2000)

¹⁵⁵⁹ Ibid, p 42.

¹⁵⁶⁰ Puntland Mirror @ Puntlandmirror. Twitter.

¹⁵⁶¹ The roots of Galmudug crises are complex, it revolves around mistrust among the clans corrupt political elites fuelling the conflicts, long conflicts between former President Haaf and Ahlu Sunnah Wal Jama’a (ASWJ) for instance the move of the regional parliament from Adado to Dhusamareb. Conflict between FG and ASWJ and recent election disputes where both Haaf and ASWJ formed their own independent states. After winning the election President Qoor Qoor reached out to both ASWJ and former president Haaf, through traditional elders, this has given regions extended period of stability. For more reading of Galmudug see Sheikh, Galvanek & Grim, ‘ Conflict Assessment, Galmudug State, an analysis of local perspectives’ (2019) available at < https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Papers/2019_Report_Somalia_Galmudug_EN.pdf> accessed 21 Jun. 20.

¹⁵⁶² Garowe online, ‘ Somalia opposition lauds Jubaland president for striking historical deal with his rival’ (Garowe online, April 25, 2020) available at < <https://www.garoweonline.com/en/news/somalia/somalias-opposition-lauds-jubaland-president-for-striking-historical-deal-in-with-his-rivals>> accessed 21 June 20.

¹⁵⁶³ Rebecca, R (2014).

Traditional conflict resolution is in line with article 50 of the Provisional Constitution. Article 50(g) explicitly envisages the resolution of conflict through dialogue and reconciliation. Article 111(f) goes into more detail regarding how this would be achieved in practice: an interstate commission will be established and will have powers as the federal government deems it necessary to, among other things, resolve any administrative, political or jurisdictional disputes between the federal government and FMSs and one or more governments of the FMS.¹⁵⁶⁴ This institutionalisation of the mediation process in the constitution is an important step in creating opportunities to prevent violent conflict between FMSs or between them and the federal government. Although it is not clear how this commission would take shape, it would be ideal if it incorporated traditional methods and structures of conflict resolution. This would be a valuable peace infrastructure that is recognisable and legitimate to many Somali people.

9.4.2.2 *Democratic principles of participation*

The *Xeer* functions by means of ad hoc lineage-groups councils – *shiiir* and *guurtis* – that are called on to resolve conflicts. Participation in *guurti* meetings is flexible and the composition of membership is adapted to the specific kind of conflict at hand, as well as to the clan or lineage level of the parties involved.¹⁵⁶⁵ *Xeer* hearings are held in public, usually under a tree in the village. The type of conflict – be it political, economic or inter-family – determines the composition of the council. Therefore, participation in *shiiir* by the council of elders is based on democratic principles and participation.

The principle of accountability is a central to the *Xeer*: the fact that *shiiir* deliberations are open to the public increases accountability and builds confidence in the system.¹⁵⁶⁶ Additionally, litigants speak local languages and the traditional institutions of governance are accessible, readily

¹⁵⁶⁴ Article 111(f)(2)(b).

¹⁵⁶⁵ Lewis (1961) at 240-265.

¹⁵⁶⁶ See the detailed study on the importance of *Xeer* by Gundel (2006) and Jama (2007).

understood and participatory. Traditional norms are aimed at preserving social cohesion, harmony and collective values.

These traditional practices correspond with several provisions in the Provisional Constitution. Article 18(1) stipulates that every person has the right to have and express his or her opinion and to receive and impart such opinion, information and ideas in any way. Article 34(2) stipulates that every person has the right to a fair public hearing by an independent and impartial court or tribunal, to be held within a reasonable time. Article 33(3) states that every person has the right to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner.

9.4.2.3 *Decentralised TGS*

As discussed in Chapter 3, the traditional Somali societal structure is highly decentralised.¹⁵⁶⁷ In contrast to European notions of the state, it does not have any permanent bodies or even permanent leaders. It is a tribal democracy where elders gather on an ad hoc basis and decide by consensus.¹⁵⁶⁸ The decision-making process is highly democratic but not electoral, as male elders represent related families or alliances of families and clans. Clan elders assemble in ad hoc councils in order to make decisions that affect the clan. Any male in a clan could be an elder, and everyone has an equal right to speak and vote in the council. The votes are generally of equal value, although elders who are wealthier, older and more experienced or eloquent usually have a greater advantage.¹⁵⁶⁹ These democratic cultural practices could play a key role in enhancing federalism in Somalia.

¹⁵⁶⁷ The role and place of traditional leaders are context specific. In the absence of a central government, they govern in a true expression of decentralisation, making final decisions over a wide range of matters.

¹⁵⁶⁸ Lewis (1993).

¹⁵⁶⁹ M Renders *Consider Somaliland; State-building with Traditional Leaders and Institutions* (2012).

9.5 Challenges to federalism and constitutionalism in Somalia

9.5.1 Endemic corruption

Somalia ranks among the world's most corrupt countries. It is consistently singled out as a serious problem. In international rankings on corruption, Somalia has remained stubbornly at the bottom of the pile over the last several years.¹⁵⁷⁰ Widespread corruption has marred every aspect of Somali society and affected all government institutions at both federal and FMS levels.¹⁵⁷¹ Corrupt officials adjust to the climate of lawlessness, selling government equipment and services and tolerating illegal activities in return for bribes.¹⁵⁷² These vulnerabilities have allowed Al-Shabaab to plant moles in the security apparatus to extricate intelligence. Corruption in Somalia is threatening the fragile peace and undermining the institutions and values of democracy.¹⁵⁷³ Consequently, it is impeding state-building and progress in establishing the rule of law.

9.5.2 Lack of security

Security in Somalia has continued to deteriorate. The biggest security risk remains the extremist groups, particularly Al-Shabaab.¹⁵⁷⁴ Between 2012 and 2013, the number of people killed in terrorist activities increased by 32 per cent, accounting for nearly 3 per cent of the world's deaths due to terrorism. In 14 October 2017, a massive truck bombing killed more than 400 people in Mogadishu. The illicit flow of arms into the country also plays a role in destabilising security. Al-Shabaab campaigns, comprising hit-and-run attacks, improvised explosive devices (IEDs), and bombings and assassinations, have killed many innocent people in Somalia and across the Horn of Africa, particularly in Kenya and Uganda. The country's enforcement agencies are weak and there

¹⁵⁷⁰ In 2013, Transparency International ranked Somalia on the Corruption Perceptions Index as the most corrupt state globally, a position the country has held for the last seven years. Transparency International, www.transparency.org/news/feature/corruption_perceptions_index_2016 accessed 3 May 2017.

¹⁵⁷¹ I Harun, 'The impact of endemic corruption on constitutionalism and peace-building in Somalia' 5th Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA). (2017) Stellenbosch 19-22 September 2017. Cape Town.

¹⁵⁷² Ibid.

¹⁵⁷³ UN Monitoring Group on Somalia and Eritrea, 2012 www.marsecreview.com/wp-content/uploads/2012/09/UN_REPORT_2012.pdf accessed 3 November 2018.

¹⁵⁷⁴ SJ Hansen, '*Al Shabaab in Somalia: The History and Ideology of a Militant Islamist Group*,' 2005-2012 (2013).

are no effective mechanisms for holding criminals and corrupt leaders accountable. Recently, the one-person, one-vote practice was postponed because of insecurity. Consequently, insecurity is affecting the state-building process.¹⁵⁷⁵

9.5.3 Financial resources

There can be no meaningful reconstruction of Somalia into a viable federal state without the development of an economic system. Such a system must be able to sustain a financial flow that can support the structure of the FMSs, support a vibrant private sector and provide essential goods to all Somalis.¹⁵⁷⁶ Maintaining multiple levels of government is expensive.¹⁵⁷⁷ More public institutions mean higher costs of offices, staff salaries and allowances. Meeting these costs places a heavy burden on the treasury of a less economically developed country, and it will be even more difficult for a fragile country like Somalia. The federal government continues to depend on foreign aid and livestock production, with more than 60 per cent of the population deriving a livelihood from pastoral livestock production.

Somalia's fragile economic base remains a constraint on the government's ability to generate the revenue needed to construct a stable economy. The government lacks the ability to collect taxes or provide essential basic services effectively. Although some duties and taxes are collected, little or no fiscal policy exists. The Somali fiscal report of 2016 stated that, as of June 2016, tax revenue of about 45.5 million USD had been collected, an amount falling significantly short of the original forecast of 107,771,120 USD.¹⁵⁷⁸ Since the fall of the military government, most government expenditures are financed through international aid. For instance, Somalia recently received about 1 billion USD in Official Development Assistance (ODA), including both

¹⁵⁷⁵ M Andrew, 'Are corruption and tribalism dooming Somalia's wars on Al-Shabaab', *Terrorism (2017) Monitor*.

¹⁵⁷⁶ Chris Spillane 'Somalia Asks Barclays to Review Closing Money-Transfer Account' *Bloomberg news* available at www.bloomberg.com/news/2013-09-23/somaliaasks-barclays-to-review-closing-money-transfer-account.html, accessed on 23 September 2013.

¹⁵⁷⁷ R Boadway, 'The imperative of fiscal sharing transfers' (2001) 53 (167) *International Social Science Journal* 103–110.

¹⁵⁷⁸ Federal Government of Somalia, 'Summary of Government Revenue and Expenditure as of June, 2016' <http://mof.gov.so/wpcontent/uploads/2016/07/FiscalSummaryReport-June-2016.pdf> accessed 4 December 2016.

humanitarian and developmental assistance. In the past, aid was mostly humanitarian in nature, but under the New Deal, an increasing proportion of ODA is being directed towards longer-term development.¹⁵⁷⁹ Consequently, the lack of sufficient financial resources will hinder the establishment of federalism in Somalia and make self-rule a pipe-dream.

9.5.4 Fragile and non-existent government institutions and administrations

As a result of many years of conflict, many government institutions in Somalia are fragile or non-existent. The current situation is characterised by pressing threats to the government, a lack of capacity at all levels of government to maintain the rule of law, and insufficient enforcement and investigative capacity. Since the fall of the military government, Somalis have no effective institutional and administrative structures in place, with weak and non-existent enforcement agencies. To date, most government institutions and infrastructure (including police stations and prisons) are either depleted or non-existent. Equally, government personnel, including police officers, judges and prison officers, have either left the country and are living in exile, or are accused of taking part in past human rights violations. The federal government, due to financial and security concerns, has not been able to establish nationwide institutions. A fragile and weak government will slow down the pace of the establishment of a federal system in Somalia and make it extremely difficult for self-rule to take shape. As mentioned in Chapter 1, successful nation-building and cohesive national sentiment can only be built within the framework of stable institutions.

9.5.5 Lack of federal ideals in Somalia

Ronald Watts observed that in post-conflict countries where federal arrangements are used to secure a peace dividend, the absence of the necessary 'federal conditions' makes its achievement very remote: 'The lack of trust, willingness to compromise, and respect for constitutionality, has

¹⁵⁷⁹ World Bank Group, 'Aid Flows in Somalia: Analysis of Aid Flow Data' <http://new-deal.so/wp-content/uploads/2016/07/AidFlows-in-Somalia-FINAL-WebVersion.pdf> accessed 1 July 2017.

made it difficult to obtain accommodation or to operate a federal institution effectively.¹⁵⁸⁰ Watts then asks ‘whether a federal political culture can be created as a result of establishing a federation’, or whether it is a prerequisite.¹⁵⁸¹

As mentioned in Chapter 4, Somalis are divided on the viability of federalism and many see federalism as an outside project imposed on them to divide Somalia. Proponents of federalism in Somalia argue that a ‘robust civic education’ must take place in order to inform the population about the benefits of federalism.¹⁵⁸² Undercutting this argument, however, is the unfortunate vagueness about the form of federalism envisaged for Somalia’s future, and, in particular, how this form of federalism is meant to be implemented.

Ulusso notes that ‘what is uniquely alarming about these new federal states is the inherent desire of their governing entities to maintain clan hegemony, prestige, and domination over others, as well as an absence of grassroots consultation ...’¹⁵⁸³ Elsewhere, Ulusso notes that the current structure is much like clan-based federalism. He believes that clan leaders hide clan labels in public discourse while practising clan politics under the veil of location.¹⁵⁸⁴ Similarly, Adow holds that Somalia’s style of federalism prevents the formation of national unity in that it set-ups segregate minority clans within its territories.¹⁵⁸⁵ This uncertainty is to be expected: the Constitution is yet to be finalised, and many FMSs are yet to be fully constituted. However, this uncertainty casts a long shadow over the state-building process in Somalia, as the arguments for tangible, lived benefits of federalism have yet to be realised.

Burgess rightly says that ‘[f]ederalism deals with fundamental moral questions as well as with amoral matter of fact issues’.¹⁵⁸⁶ He argues that the moral basis of federalism derives from

¹⁵⁸⁰ R Watts (2015) 27.

¹⁵⁸¹ *Ibid.*

¹⁵⁸² See Chapter 4 on the viability of a federal system in Somalia.

¹⁵⁸³ Ulusso (2014b).

¹⁵⁸⁴ Ulusso (2012).

¹⁵⁸⁵ Adow (2007).

¹⁵⁸⁶ M Burgess, ‘Comparative Federalism –theory and Practice’ (2006).

certain inherent virtues, such as respect, tolerance, dignity, and mutual recognition that leads to a particular form of human association, namely the federal state and the federation. Somali traditional cultures, as discussed above, have most of these values of respect, tolerance, dignity and mutual recognition. Federalism can work in Somalia, if as Ismail writes, the Somali political and intellectual elites have the will and capacity to make it work.¹⁵⁸⁷

9.5.6 External interference

The involvement of regional and international actors in Somalia remains a challenge.¹⁵⁸⁸ These state actors have their own interests in Somalia, a fact which has influenced the state-building process negatively. External states have the tendency to support one or some groups or factions in order to promote their specific interests. This has frustrated the attempt to create an all-embracing national government in Somalia.¹⁵⁸⁹ Due to the mistrust and suspicion between clans and sub-clans, the possibility of creating a national government through the support of one clan against another is not viable. However, regional and international actors, especially Ethiopia and the US, continue to favour one group or clan over others in order to promote their own interests.¹⁵⁹⁰

Somalia and Ethiopia had a destructive relationship since the independence of Somalia in 1960, when they fought one minor war in 1964 and a major war from 1977–78 over the Somali-inhabited Ogaden region of Ethiopia, as discussed in Chapter 4. Ethiopia is worried that a strong and hostile government in Somalia would promote the agenda of ‘a greater Somalia’, thereby encouraging the incorporation of Ogaden (now region 5 of Ethiopia) into Somalia.¹⁵⁹¹ Ethiopia is also concerned with security threats that emanate from the flow of arms and refugees, armed

¹⁵⁸⁷ AI Ismail, ‘Federal Structure for Somalia: An Upas Tree or Panacea?’ (2000) xviii *Horn of Africa*.

¹⁵⁸⁸ International actors include the US, European Union, United Kingdom, Turkey, Saudi Arabia, Qatar, United Arab Emirates and development partners (international actors have been funding and supporting federal governments); regional actors include Ethiopia, Eritrea, Kenya, Djibouti, Egypt, Uganda and Burundi (most of these African countries have contributed their forces to AMISOM). Also involved in Somalia are the UN, IGAD, AU and a number of humanitarian organisations. This section deals only with US and Ethiopian involvement.

¹⁵⁸⁹ Menkhaus (2008).

¹⁵⁹⁰ For comprehensive reports on role of external actors in Somalia, see B Moller, ‘*The Somali conflicts, the role of external actors*’ (2009) 3 *DIIS reports* Denmark.

¹⁵⁹¹ Moller (2009).

criminality, contraband and smuggling, partial loss of control of border areas and other spill-over effects of state collapse.¹⁵⁹² Moreover, Ethiopia fears that the spread of radical Islamists in Somalia would encourage radicalisation of its own large Muslim population.¹⁵⁹³

As a result of these factors, Ethiopia continues to determine the nature of the state that would be established in Somalia. Ethiopia's intervention in 2006 that collapsed the state-building processes by the Union of Islamic Courts illustrates destructive Ethiopian involvement in Somalia's affairs.¹⁵⁹⁴ In December 2018, Ethiopia's forces arrested Muktar Robow, the presidential candidate of the South-West administration. This resulted in a number of people being injured and killed. UN Special Representative, secretary general Nicholas Hysom demanded an explanation of the circumstances. Subsequently, Somalia's Ministry of Foreign Affairs expelled him as *persona non grata*. Ethiopia's role continues to play negative role in Somalia, and remains a serious challenge to the revival of the state of Somalia.

The US had a good relationship with the military regime led by Barre, but left when it fell and the country disintegrated into fiefdoms ruled by rival warlords. A few years later, the US came back to Somalia to facilitate humanitarian missions in Somalia. However, the Americans did not assist the political process to solve the Somali problem. Rather, they had become part of the conflict and entered into serious confrontation with one of the warlords in Mogadishu. In March 1993, Moller note, 'the US had unilaterally declared war against one of the competing war lords, Mohammed Aided, thus transforming the mission into a man hunt'.¹⁵⁹⁵ Later they left Somalia to itself and ignored the civil strife that the country descended into.¹⁵⁹⁶

In August 1998, the terrorist attacks of the American embassies in Nairobi and Dar es Salaam renewed the US's interest in Somalia as it suspected that some of the operatives behind

¹⁵⁹² Menkahus (2005).

¹⁵⁹³ ICG (2007).

¹⁵⁹⁴ Moller (2009).

¹⁵⁹⁵ Moller (2009) at 12

¹⁵⁹⁶ Ibid.

the attacks were sheltered in lawless Somalia.¹⁵⁹⁷ Accordingly, in particular after 11 September 2001, the US came up with a containment policy aiming at capturing terrorists suspected to have links with Al-Qaeda. Hence, ‘the US focused its policy towards Somalia almost exclusively on concerns about counter-terrorism’.¹⁵⁹⁸ The US’s interest in Somalia was not been for the benefit of Somali society, but to protect its own national interests and to hunt suspected terrorists. In doing this, US has prolonged conflict and instability, and has undermined the creation of a strong functional government in Somalia.

9.6 Recommendations

The recommendations presented here stem from an appraisal of the research topic and offer, it is hoped, a set of workable options for the resolution of the Somali conflict and rebuilding of the Federal State of Somalia so that citizens may live in peace and prosperity.

9.6.1 Strengthening the rule of law

The maintenance of law and order in any society cannot be over-emphasised. With the collapse of the Somalia state in 1991, all institutions of control and the maintenance of law and order crumbled. Somalia disintegrated into tiny polities under clan jurisdiction and militia control. The failure to resolve such conflicts in many instances resulted in the reversal of gains made in times of peace. At times, relapse into worse conflict situations has occurred. Central to political stability and the reinstatement of a viable, effective and legitimate public order in Somalia is the reinstatement of effective internal security, including the police force and criminal justice and correctional systems. Experience elsewhere offers overwhelming evidence that ‘the long-term prospects for democratic governance and stability depend especially upon a viable police, security forces, and justice structure to deal with most salient internal threats’.¹⁵⁹⁹ Rosenblum-Kumar rightly notes:

¹⁵⁹⁷ Y A Mohammed, ‘The consequences of Ethiopia’s armed intervention in Somalia’ www.wardheernews.com. Accessed 4 December 2018.

¹⁵⁹⁸ D H Shinn, ‘*Somalia, the United States and the Horn of Africa*’ (2006) Minnesota.

¹⁵⁹⁹ J Wilson, ‘Law and order in an emerging democracy: lessons from the reconstruction of Kosovo’s police and justice’s system (2006) *Annals of the American Academy of political and social science* 605, 152–177.

In a post-conflict environment, the general population's most basic need is for security involving the re-establishment of public safety and development of legitimate security institutions to ensure individual safety, collective security and territorial integrity. Security sector reform is an integral and key component of public sector reconstruction in that it must create secure conditions in which all other aspects of reconstruction can be addressed.¹⁶⁰⁰

The provision of security is therefore the most crucial pillar in peace-building efforts; at the same time, the 'building or rebuilding of public institutions is key to sustainability'.¹⁶⁰¹ It is through state institutions that future conflicts in Somalia may be managed and the recurrence of violence avoided. Based on this, it is recommended that in order to rebuild the state, the recruitment and training of a disciplined national security force be prioritised and include the Somali National Army, the intelligence agency and the police force. The large number of unemployed youths serving in militias or as independent agents presents a ready pool of recruits for such a project.

9.6.2 Constitutional safeguards

The demand for stability and flexibility in any federal arrangement requires a fine mix of political and judicial, formal and informal mechanisms for the prevention, management and resolution of federal disputes. One of the challenges facing the Somali federation is how best to solve disputes that arise vertically between the federal government and FMSs and between FMSs regions. As discussed previously, in Somalia there are a number of unresolved disputes between the federal government and the FMSs. Such disputes include the division of powers and functions, distribution of resources, fiscal autonomy, and the protection of sub-units. Because of the absence of an effective adjudication mechanism, most of these critical issues remain unresolved.

Abebe notes that 'a constitution that establishes a federal form of government should establish mechanisms to maintain and safeguard the vertical division of powers, as well as regulate

¹⁶⁰⁰ G Rosenblum-Kumar, 'An analysis of strategic process for conflict-sensitive reconstruction of governance and public administration', in *Reconstructing governance and public administration for peaceful, sustainable development* (2003).

¹⁶⁰¹ K Samuels, 'Post-conflict peace building and constitution-making' (2006) 6 *Chicago Journal of International Law* 1-20.

the horizontal interaction between the states'.¹⁶⁰² Abebe assesses the normative and institutional mosaic in relation to the adjudication of federalism disputes in three African federal states, namely, Nigeria, South Africa and Ethiopia.¹⁶⁰³ He notes that both Nigeria and South Africa's resolution of disputes rest on the courts – on Nigeria's Supreme Court and South Africa's Constitutional Court.¹⁶⁰⁴ On the other hand, dispute resolution in Ethiopia rests only on the House of Federation (HoF), with advisory support of the Council of Constitutional inquiry. He notes that in Ethiopia, to the extent that the HoF exercises the power of constitutional review, political and judicial safeguards have been conflated.¹⁶⁰⁵ In the light of this, Somalia can draw from these countries and establish constitutional safeguards either through the judiciary or by empowering the Upper House to exercise safeguards. Either way, Somalia needs impartial dispute resolution mechanisms.

If they choose to appoint the judiciary to exercise safeguards, it must be a judiciary that is beyond the control of the executive and legislative bodies. This will ensure that both levels of government in a federal system act within their competence. Also, this judiciary must act as an arbitrator when disputes arise between member states and between the member states and the national government. This mechanism is vital in ensuring that any dispute can be settled not by force but by the due process of law. In order for the tribunal or court to fulfil its objectives, it must have jurisdiction over the whole federation and its judgment must be binding on all governments and authorities within the federation. The independence and integrity of the courts are essential to federalism, otherwise they are merely a tool for the government to use in ordering the other levels of government to comply with its wishes.

¹⁶⁰² AK Abebe, 'Umpiring federalism in Africa: Institutional mosaic and innovations' (2013)13 (4) African Studies Quarterly.

¹⁶⁰³ Ibid.

¹⁶⁰⁴ Ibid.

¹⁶⁰⁵ Ibid.

9.6.3 Building state institutions and infrastructure

The conflict in Somalia has not only consumed institutions of governance and law enforcement but also infrastructure. The conflict has resulted in the complete destruction social and economic infrastructures. Most federal and state institutions were destroyed by many years of civil war. A radical reconstruction of institutions and infrastructure is required, and should include the rebuilding of government institutions, hospitals and schools and the creation of social, economic, political and governance foundations for sustainable peace. Reconstruction should also include the prevention of conditions that would fuel a recurrence of violence. A strong and viable federal system will require legitimate, functioning governance and public administration institutions that can anchor an enduring peace and strengthen participation to re-legitimise state authority.

The peaceful management of disputes is an essential building block of federalism. It is therefore essential to get governance institutions, public administration systems up and running in order to support the growth of federalism in Somalia. This will require a substantial amount of resources and manpower. Somali stakeholders, including the UN, EU, USA, Turkey, Arab countries, AU and other regional partners, should launch a Somalian reconstruction fund to respond to this need. Reconstruction efforts should target state institutions including the judiciary, police, administration, the education system, social services, hospitals and the economy so as to directly benefit ordinary Somalis. Sustainable peace and stable governance structures can only be put in place if functioning and effective state institutions are re-instituted and the newly constituted state is capable again of mediating effectively between distrustful clan groups. In this way, the parties may slowly gain confidence in the safeguards contained within their new federal structures.

9.6.4 Finalising the review of the Constitution

The ongoing constitutional review process is aimed at addressing complex issues such as the forms and structures of federalism, the allocation of powers and resources, the status of Mogadishu, boundary demarcations, the status of Somaliland and compliance with international treaties signed

by the country. To resolve these issues, consultative meetings to bolster a consensus-driven approach are needed. Given the tremendous complexity and sensitivity of the Somali constitutional review process, all of these bodies and institutions will need to be complemented and supported by constitutional experts, the international community and the UN.

Once the constitutional review process is completed, a referendum and implementation process will follow. The constitutional experts who drafted Somalia's Provisional Constitution deferred decisions on a number of critical issues. The drafters faced various limitations, including those of limited consensus, time and information, all of which can lead to significant challenges. In many parts of the world, constitutional deferral is frequently used as a drafting strategy. This makes good sense, given the presence of decisions and errors found in constitutional designs. Given these pressures, rationale designers will leave certain issues open for future decision-makers, such as future elected officials, judges or the future generations of citizens.

Table 8.1: Deferral Clauses in the Provisional Constitution

Principles/issues	Section	Legislation	To be negotiated & agreed	Comment
Division of powers & function	Art. 48, art.54, art.50 Art.51		To be negotiated by FG & FMSs	Yet to be negotiated
Distribution of resources	Art. 50(e)		To be negotiated & Agreed	Yet to be negotiated
Inter-governmental relationships	Art.51(1), art 51(3)	Art 51(5)(a)-(b)		On going process
Fiscal autonomy		Art. 124	Art 122	Yet to be negotiated
Mechanism of dispute resolution	Art 50(g)			Yet to be agreed
Electoral system	Art 47	Art 47		Yet to be negotiated

The above table illustrates the clauses that have been deferred either for future negotiation between the federal government and FMSs or for parliamentary legislation. The deferral of these critical issues is straining the state-building process. It is therefore recommended that the constitutional review process takes note of the clauses above in finalising the constitutional review processes.

9.6.5 Somaliland's status

The matter of Somaliland is very sensitive; it is a time-bomb that could lead to war if it is not adequately addressed. Somaliland is thriving today and enjoys a strong measure of stability. It has established a strong government based on the rule of law, and its citizens have made it clear that they want to secede from the rest of Somalia, as discussed in Chapters 4, 6, 7,8 and 9. The Somali Federal Government and international community are opposed to the independence of Somaliland. The UK, United Arab Emirates and Turkey have all sponsored talks between Somaliland and Somalia; however, genuine and comprehensive debates are yet to start about its status in future political dispensations. What would a future relationship between the two entities constitute? The recommendation is that either a peaceful divorce be granted to Somaliland, or that it be accommodated through asymmetrical federalism in which it is given considerable power and a say in running its affairs.

Asymmetrical federalism allows regions to negotiate separately with the centre for autonomy and to establish a menu of which powers may be developed. Regions may use concurrent powers or be endowed with the powers to determine their own structures for the exercise of autonomy, leading to different constitutional arrangements with regions. Asymmetry may exist with respect to a myriad of competencies, ranging from policing (in Catalonia) to monetary and fiscal affairs (in Hong Kong).¹⁶⁰⁶

Scholars are divided on the potential of asymmetrical federalism to bring peace.¹⁶⁰⁷ Kymlicka maintains that 'the very success of federalism in accommodating self-government may simply encourage national minorities to seek secessions ... where national minorities become politically mobilised ... secession becomes more feasible, even with best-designed federal

¹⁶⁰⁶ See Hannum H (1996).

¹⁶⁰⁷ IV Duchacek (1970), R Watts (1970), Stevens (1977) and D Elazer (1987) are some of the political theorists who have contributed to the development of the concept of asymmetrical federalism.

institutions'.¹⁶⁰⁸ Burgess and Gress argue that asymmetrical federalism is an instrument for 'accommodating difference in a way which adds to the overall political stability of federations'.¹⁶⁰⁹ Similarly, Funk argues that asymmetry is essential for the survival of a federation in cases where deep diversity is present.¹⁶¹⁰

From the foregoing discussion, there are convincing arguments both for and against the use of asymmetry as a stabilising tool within a federation, which can have both successful and perilous consequences. In reference to Somalia, it is one of the options that will most likely bring Somaliland into the fold of the Somali federal system. If this approach is taken, Somalia will need to make provisions in its constitution or have a legislative framework that can guarantee terms of agreement between Somaliland and the FGS.

9.6.6 Strengthening the role of the traditional governance system

The traditional governance system in Somalia has proven its resilience over the centuries. Unfortunately, the Provisional Constitution has not clarified the role of traditional authority (clan elders), *shiir* and customary law in Somalia's constitutional dispensation. Similarly, colonial and post-colonial Somali governments excluded the traditional governance system in their legal framework. Even so, traditional institutions continued to play vital roles in Somalia, particularly in rural communities where the visibility of modern institutions has largely been absent. After the fall of the military regime, people resorted to the traditional governance system. Consequently, the latter has shown resilience in restoring and maintaining a semblance of governance.

In the light of their continued relevance, the viable option for improving governance in Somalia is accommodating traditional customs and institutions within the existing state structure. A system of legal pluralism that allows traditional institutions to discharge their responsibility would greatly

¹⁶⁰⁸ W Kymlicka, 'Federalism, Nationalism, and Multiculturalism' in D Karmis and W Norman 'Theories of federalism: a reader' (2005) at 286.

¹⁶⁰⁹ M Burgess, and F Gress, 'Symmetry and Asymmetry revisited' in R Agranoff, 'Accommodating diversity: Asymmetry in federal states' (ed) (1999) at 43-56.

¹⁶¹⁰ Funk (2010).

improve problems of governance and strengthen the federalism that is taking shape in Somalia. Through a system of decentralisation, there are opportunities for creating conducive environments to expand the role of traditional institutions at the national, regional and the local levels. This would be a valuable peace infrastructure that is recognisable and legitimate to many Somali people.

It is therefore recommended that the Somalia federal government adopt principles of legal pluralism whereby the formal and informal systems work together to achieve transitional democracy, rather than adopting Western liberal values only. Such multiple institutional development in Somalia could address its challenges of democratic governance.

The appropriate procedure would be to install the Western constitutional system within the context of traditional values. Somali traditional institutions have their own features that could serve as the foundation to build a democratic system of governance. Such features include the *shiir* and *Xeer*. These traditional institutions rely on the principles of consensus and reconciliation, conflict resolution and justice system, which could serve as the foundation to build a democratic transitions in Somalia.

Somali can also learn from other African countries that have adopted diverse forms of legal pluralism to accommodate their informal traditional institutions. These approaches include the incorporation of traditional authorities into the governance structure with a largely advisory role, as in Ghana,¹⁶¹¹ the incorporation of traditional authorities into regional and local governance to

¹⁶¹¹ Ghana incorporated traditional authorities into its governance structure, particularly the recognition of the traditional institution of Chieftaincy. The Ghanaian Constitution established a National House of Chiefs that has a wide responsibility in determining the role of traditional chiefs. The 1992 Constitution of Ghana recognises customary law and includes the traditional courts as part of the country's judicial system. Article 125(2) of the Constitution of Ghana, 1992 provides that '[c]itizens may exercise popular participation in the administration of justice through the institutions of public and customary tribunals and the jury and assessor systems'. See JB Akamba, and I Kwadwo Tufur, 'The future of customary law in Ghana,' In J Frentich, P. Galizzi, and T E Higgins (eds) 'The future of Customary Law' (2011).

avert conflicts, as in South Africa,¹⁶¹² and the granting of traditional authorities wider decision-making powers, as in Somaliland¹⁶¹³ and Botswana.¹⁶¹⁴

Somaliland has gone further than most African countries in that the traditional governance system is incorporated into the modern institutions of democracy. Traditional institutions share power with formal government structures. As discussed in Chapter 5, Somaliland has two houses of parliament, the House of Representative and House of Elders (commonly referred to as the House of *Guurti*). The House of Elders is a legislative body with responsibilities for the maintenance of peace and security and for the protection of tradition, culture and religion. Its powers include enacting laws concerning religion, culture and peace; assisting and advising the government; and holding the executives accountable.¹⁶¹⁵ Additionally, the government structure at the centre is replicated at the regional level, where representatives selected through multi-party municipal elections operate in tandem with traditional regional councils.¹⁶¹⁶

The House of Elders is inextricably linked to both the state and the people through the common denominator of the pervasive clan. As a result, the government institutions are in a position where they are both a part of the state and society, as well as a bridge between the two, linking the state to society and society to the state and holding the government, society and culture together. As Richard rightly argues, the House of Elders not only links the government to the people but also ensures that ‘Somaliland’ is not lost in the process of building a modern government. The inclusion of the clan authority, incorporating the old and the new (Western-governance system) has brought peace and stability in Somaliland.¹⁶¹⁷ Warah, quoting Michael

¹⁶¹² The recognition of traditional leadership and indigenous law was enshrined in the 1996 South African Constitution. Section 211 of the South African Constitution, 1996, provides that the institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.

¹⁶¹³ Renders, *M Consider Somaliland State-building with Traditional Leaders and Institutions* (2012).

¹⁶¹⁴ Jones, DS ‘Traditional Authority and State Administration in Botswana’ (1983) *The Journal of Modern African Studies* 133-139.

¹⁶¹⁵ Mancuso, S ‘Short notes on the legal pluralism(s) in Somaliland’ in S.P Donland, L Heckendorn (eds) *Concepts of Law* (2014).

¹⁶¹⁶ For more on Somaliland’s hybrid system, see U Terlinden, and M Renders, ‘Negotiating statehood in a hybrid political order: the case of Somaliland’ (2011) 41 (4) *Development and Change* 723-746. M Renders, ‘*Consider Somaliland: State building with traditional leaders and institutions*’ (2012) Leiden: Brill.

¹⁶¹⁷ R Richards, ‘*Understanding State building, Traditional governance and the modern state in Somaliland*’ (2014).

Walls, notes that the Somaliland governance model is ‘the first indigenous modern African form of government’ that fuses traditional forms of organisation with those of representative democracy. According to him, Somaliland ‘represents a strong counter-argument to the preoccupation with state failure and corrective external intervention, while also holding out the hope that an accommodation is possible between discursive politics of traditional and representative systems more suited to the Westphalian State’.¹⁶¹⁸

Article 50 of the Provisional Constitution sets out the principles of federalism; subsection (g) notes that one of them is the ‘resolution of disputes through dialogue and reconciliation’. Article 111(f) goes into more detail regarding how this would be achieved in practice: an interstate commission will be established and will have the powers ‘as the federal government deems necessary’ to, among other things, ‘resolve any administrative, political or jurisdictional disputes between the federal government and one or more governments of the federal member states or between the government of the federal member state’. This institutionalisation of the mediation process in the constitution is an important step in creating opportunities to prevent conflict, either between the federal government and the FMSs, or between FMSs. Although it is not clear how this commission will take shape, it would be ideal if it incorporates traditional methods and structures of conflict resolution, such as *shiir*, with the inclusion of clan elders. This would be a valuable peace infrastructure that is recognisable and legitimate to many Somali people. As noted previously in this thesis, federalism is a two-way traffic that thrives on (continued) bargaining between two levels of governments. In the Somali traditional system, bargaining (negotiation) is held in a very high esteem; hence both systems can compliment each other.

Some African countries include traditional institutions particularly the courts, as part of their judicial systems. Ghana, Botswana and Rwanda have adopted this approach. In Botswana,

¹⁶¹⁸ R Warah, ‘The call of the clan: challenges facing Somalia’s Fledgling democracy’ available at www.theelephant.info/features/2018/05/11/the-call-of-the-clan-challenges-facing-somalias-fledgling-democracy/. Accessed 4 December 2018.

customary courts play a significant role in rendering justice to the community.¹⁶¹⁹ In Ghana, traditional laws are applied by the courts having jurisdiction over the case and, secondly, cases are referred to an informal system of dispute settlement commonly referred to as ‘customary arbitration’.¹⁶²⁰ One pillar of the peace and reconciliation process in Rwanda after the 1994 genocide was the resort to the *gacaca* traditional dispute settlement system to solve most of the criminal cases connected to the genocide. According to Mancuso,

the resort to the *gacaca* jurisdiction was proposed by the Rwandan government as a quicker and a more effective alternative to trials by state courts, and as a process which is based more on forgiveness and reconciliation than on the punishment. It has been widely lauded by the international community.¹⁶²¹

Gacaca courts in Rwanda exemplify how traditional mechanisms have been employed to solve conflicts. The decision to use the *gacaca* (which literally means ‘lawn’ or ‘small grass’), the local mechanism to solve disputes, is due mainly to the high number of people involved in the genocide. It was clear that the domestic courts would take too long and require too many resources. In their traditional form, *gacaca* courts heard disputes over property, inheritance, personal injuries, and family matters. According to this model, older men would solve disputes on their lawns. The punishment was not individual but collective. Judges had the ability to impose restitutions on the perpetrators’ family and even their entire clan. Significantly, *gacaca* courts have been substantially introduced in the court system, and six laws have been enacted by the Rwandan parliament to deal with different aspects of the system.

Somali traditional courts are useful and desirable mechanisms for the speedy resolution of disputes, given their nature as an easily accessible, inexpensive (virtually free), and simple system of justice. The *shiiir* system offers a highly viable means for addressing issues such as conflicts around property, land and natural resources. Due to the effectiveness of social pressure in

¹⁶¹⁹ Ibid.

¹⁶²⁰ JB Akamba, and T Kwadwo (2011).

¹⁶²¹ Mancuso, S ‘An African concept of settlement of disputes’ in T Nhalop, Arogundade, E and H Garuba (eds) *African Culture, Human Rights and Modern Constitutions* (2013).

enforcing decisions, the *Xeer* can in fact guarantee a rapid solution to many controversies. As with *gacaca*, the *Xeer* system is associated with the idea of restorative justice. One of its main goals is to re-establish social-order. Victims are compensated through the *diya*. It also serves to deter further crimes and reintegrate victims and perpetrators in the communities.

Considering the importance, acceptance and legitimacy that the clan system and customary practices have had throughout Somali history,¹⁶²² the traditional *shiir* system ought to be considered a primary means to bring accountability to the people. It is therefore recommended that *shiir* be institutionalised within the existing judicial structure.

9.6.7 The role of external actors should be advisory only

As discussed in Chapter 4, the competing and divergent interests of external actors in Somalia have impeded peace processes; as a result, a concerted effort to support emerging organic administrative entities inside Somalia is a necessary step. The recent developments in the Horn of Africa – the peace agreements between Ethiopia and Eritrea, Eritrea and Djibouti – are significant. Most of these regional countries have been fighting proxy wars in Somalia, each supporting particular groups or clans, thereby prolonging conflict in Somalia. These new developments will give the federal government a good opportunity to build a viable federal system. The future role of external actors should only be advisory, as Somalia would be able to solve its conflict without external actors.

9.7 Concluding remarks

Federalism is certainly not the solution for every conflict. It provides a toolbox with typical elements. There is no ‘one-size-fits-all’ model. Each system has to find its own balance, as well as the right means to adapt itself over time to changing circumstances and contexts. Institutional features provided for in Somalia’s provisional constitution can play a significant role in resolving

¹⁶²² Van Notten, rightly argues that the best way to govern Somalis is to find a peculiar character of Somali societies. See M Van Notten, ‘*The law of the Somalis: a stable foundation for the economic development in Horn of Africa*’ (2005).

Somalia's conflicts. It is imperative, therefore, that all defects are corrected for federal objectives to be realised in Somalia. These recommendations seek to contribute to global efforts to rescue Somalia from its nearly three decades of catastrophic governance collapse. While they are not exhaustive, they could assist in peaceful state-building if implemented effectively.

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Appendix 1: Interview questions

1. What is your name and occupation?
2. Are there clan(s) or sub clans (s) that you associate yourself with? If any, please mention it.
3. Where were you born and raised in Somalia?
4. Do you understand the meaning of the federal system?
5. Do you think federalism is the best model for governing Somalia? If not, what is another potentially effective model?
6. Do you think a federal system will bring peace in Somalia?
7. Who is pushing for adaptation of the federal system in Somalia?
8. What are the challenges that impedes the realisation of the federal system in Somalia?
9. What are the biggest obstacles to the regional state formation processes?
10. How is the government running its affairs at the moment? Please comment on the relationship between the federal government and the federal member states.
11. What is your vision for power and resources sharing between different spheres of governments? How do you think this can be accomplished?
12. Are minorities, women and youth given opportunities in the Somalia federal system as well as at the federal member state level?

APPENDIX 2: CONSENT FORM**Name of researcher**

IBRAHIM HARUN

Title of research project

FEDERALISM AS AN INSTITUTIONAL DEVICE FOR PEACE IN
SOMALIA: PROSPECTS AND CHALLENGES

By answering the questions put to me:

- I agree to participate in this research project.
- I have read this consent form and the information it contains and had the opportunity to ask questions about them.
- I agree to my responses being used for education and research on condition my privacy is respected, and my responses can only be used in a way that I cannot be personally identifiable.
- I understand that I am under no obligation to take part in this project.
- I understand I have the right to withdraw from this project at any stage.
- I understand that this research might be published in a research journal or book. In the case of dissertation research, the document will be available to readers in a university library in printed form, and possibly in electronic form as well.

The researcher must supply you with a cover letter which provides his / her contact details, outlines the nature of the research and how the information will be used and explains what your participation in the research involves (e.g. how long it will take, participants' roles and rights (including the right to skip questions or withdraw without penalty at any time), any anticipated risks/benefits which may arise as a result of participating, any costs or payment involved (even if none, these should be stated))

Has this been provided?	YES		NO	
Have you received verbal confirmation/explanations where needed?	YES		NO	

Name of Participant:

Signature of Participant:

Date:

'If you have concerns about the research, its risks and benefits or about your rights as a research participant in this study, you may contact the Law Faculty Research Ethics Committee Administrator, Mrs Lamize Viljoen, at 021 650 3080 or at lamize.viljoen@uct.ac.za. Alternatively, you may write to the Law Faculty Research Ethics Committee Administrator, Room 6.28 Kramer Law Building, Law Faculty, UCT, Private Bag, Rondebosch 7701.'

Appendix 3: Respondents

	Interview	Clan/Sub clan	Sex	Region	FMSs	Mode of interview
1	Interview 15	Habargidir	Male	Mogadishu	Benadir	Telephone
2	Interview 20	Abgaal	Female	Mogadishu	Benadir	Cape Town- face to face
3	Interview 2	Sheekhal	Male	Mogadishu	Benadir	Telephone
4	Interview 7	Abgaal	Male	Mogadishu	Benadir	Johanesburg-Face to Face
5	Interview 41	Mursade	Male	Mogadishu	Benadir	Johanesburg-Face to Face
6	Interview 1	Habargidir	Male	Mudug	Galmudug	Cape Town-Face to Face
7	Interview 3	Habargidir	Female	Dhusamareb	Galmudug	Telephone
8	Interview 10	Habargidir	Male	Galgadud	Galmudug	Telephone
9	Interview 22	Mursade	Female	Galgadud	Galmudug	Johanesburg-Face to Face
10	Interview 24	Habargidir	Female	Dhusamareb	Galmudug	Telephone
11	Interview 28	Abgaal	Male	Galgadud	Galmudug	Johanesburg-Face to Face
12	Interview 18	Habargidir	Female	Mudug	Galmudug	Telephone
13	Interview 19	Habargidir	Female	Galkayo	Galmudug	Cape Town-Face to Face
14	Interview 39	Habargidir	Male	Dhusamareb	Galmudug	Johanesburg-Face to Face
15	Interview 40	Habargidir	Male	caadado	Galmudug	Johanesburg-Face to Face
16	Interview 4	Ajuuran	Male	Middle-shabelle	Hirshabelle	Telephone
17	Interview 6	Abgaal	Male	Middle-shabelle	Hirshabelle	Cape Town-Face to Face
18	Interview 8	Mursade	Male	Hiran	Hirshabelle	Cape Town-Face to Face
19	Interview 13	Mursade	Male	Hiran	Hirshabelle	Johanesburg-Face to Face
20	Interview 25	Ajuuran	Female	Hiran	Hirshabelle	Telephone
21	Interview 5	Hawadle	Male	Hiran	Hirshabelle	Pretoria- Face to Face
22	Interview 9	Habargidir	female	Middle-shabelle	Hirshabelle	Cape Town- Face to Face
23	Interview 14	Hawadle	Male	Hiran	Hirshabelle	Telephone
24	Interview 11	Ajuuran	Male	Buale	Jubaland	Pretoria- Face to Face
25	Interview 17	Marehan	Female	Gedo	Jubaland	Cape Town-Face to Face
26	Intervi 26	Ajuuran	Male	Gedo	Jubaland	Johanesburg-Face to Face

27	Interview 27	Ajuuran	Male	Middle-juba	Jubaland	Telephone
28	Interview 29	Ogadeen	Male	kismayo	Jubaland	Telephone
29	Interview 31	Ogaden	Male	Buale	Jubaland	Telephone
30	Interview 44	Degodia	Male	Gedo	Jubaland	Telephone
31	Interview 23	Majeerteen	Male	Bari	Puntland	Telephone
35	Interview 32	Majeerteen	Female	Garowe	Puntland	Telephone
36	Interview 33	Majeerteen	Male	Garowe	Puntland	Telephone
32	Interview 12	Dhulbante	Male	Sool	Somaliland	Cape Town- Face to Face
33	Interview 21	Dhulbante	Male	sool	Somaliland	Telephone
37	Interview 34	Rahanweyne	Male	Baidoa	South-west	Telephone
38	Interview 35	Dhulbante	Male	Hergeisa	Somaliland	Telephone
34	Interview 16	Rahawayn	Male	Bokol	South-west	Telephone- Durban
39	Interview 36	Rahawayn	Male	Baidoa	South-west	Telephone- Durban
40	Interview 37	Rahawayn	Female	Baidoa	South-west	Telephone- Durban