

The Nexus between the Somali Customary Law, Traditional Leaders and Conflict Resolution: Evidence from Somaliland

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ABSTRACT

This article examines the traditional leaders in Somaliland and their role in building peace and the state. The study questions if the traditional system existing in Somaliland is a tool for conflict resolution as used before or a dilemma on governance and endeavors to strengthen state institutions to provide social services and security to the citizens in general. The study doesn't undermine the positive role of the traditional leaders within the Somali society has been organized for centuries in clan line structure in which every and each clan has its own leader, literally called 'Chief Aqil' and basically fabricates the bonds between the adjacent and neighboring clans. The study employed both primary and secondary data in which were analyzed qualitatively. The study argues that the current hybrid system existing in Somaliland cannot bring good governance and development, unless the traditional elders abandon the politics, thus produce stable and good governance, which in return brings legitimate, socially inclusive, respect human rights based on the rule of law and the division of power which are imperative in modern state institutions.

INTRODUCTION

Adewumi and Egwurube define traditional leaders as “a group of rulers or tribal leaders occupying communal political leadership positions sanctified by cultural mores and values, and enjoying the legitimacy of particular communities to direct their affairs and their basis of legitimacy is therefore tradition, which includes the whole range of inherited culture and way of life; a people's history; moral and social values and the traditional institutions which survive to serve those values”. Indeed, traditional leaders play an important role in conflict resolution and peace building processes in any society, including those living in Africa, a tradition-dominated continent.

In the Somali society, the traditional leaders are important and respected. Due to this respect, they play a vital role in conflict resolution, especially conflicts between clans through “*Xeer*” – unwritten code of conduct or social contract and a traditional law agreed upon by the clans in each area and depended on the deliberation of elders who gather to resolve specific problems within a clan or between clans. Traditional elders are thus regarded as peacemakers, as they resolve conflicts, reduce tensions between communities, restore trust and harmonies relations between clans, and increase positive interactions among different groups.¹

The traditional leaders are important not only in conflict resolution and peace building, but also in the state building processes in Somaliland since 1991. However, the role of the traditional leaders

¹ Graf, Janine (2012). *Becoming Somaliland: One thorn bush at a time*. Available at https://www.academia.edu/3625348/Becoming_Somaliland_one_thorn_bush_at_a_time_, accessed on October 16, 2017.

in Somaliland has changed since the democratization processes of the state in 2002. This change could be linked with a friction between the two systems in which Somaliland amalgamated together, the modern governance structure and the traditional and customary institutions. This could be linked to this developing world and these roles have changed to a significant degree and cannot be exercised as a result of the dramatic social transformation and changes that have resulted from the introduction of modern governance and administrative system.

This study, therefore, critically examines whether the two systems are mutually inclusive or exclusive. The study addresses the overall problem or the benefit that traditional leaders have on the governance institutions in Somaliland. The study addresses the overall problem or the benefit that traditional leaders have in the governance in Somaliland.

A GLIMPSE TO THE TRADITIONAL INSTITUTIONS

The word tradition refers to “old”. According to Hobsbawm and Ranger, the term is defined as “a set of practices, normally governed by overtly or tacitly accepted rules of a ritual or symbolic nature, which seek to inculcate certain values and norms of behavior by repetition, which automatically implies continuity with the past”.² The traditional institutions have an effect on the social, cultural, economic and political lives of Africans, particularly in the rural areas. Traditional leadership occupies an important place in the African lifestyle as it preserves culture, traditions, customs and values of the African people, while also representing the early forms of societal organization and governance. In the political role, the traditional institutions during the pre-colonial era was quite clear, since law and order were maintained through a normative system that was part of the general social structure, though the system was not sophisticated, the machinery of government was organized enough to manage the affairs, resolve tension and administer justice in the society. Also, the traditional institutions were controlled by certain unwritten laws which ensure the security of institutions. This implies that, traditional rulers had a positive impact on the evolution of political, economic and social institutions in which they had dominant control.³

Prior to the colonial rule, the chiefs enjoyed recognized authority over the people they represent. Traditional political systems may have differed from one structure to another; chiefs may have been challenged by a contender for their titles at times and fight arose over jurisdiction, but the system itself stood intact and inviolate. That has changed since the introduction of a modern political system and the years of foreign rule in Africa. Indeed, African countries have had their traditional chieftaincy systems superimposed on the modern political system. The two political systems, the modern and the traditional, appear to be on parallel tracks.

Traditional chiefs still enjoy considerable respect in their own sphere, but it is a modern political leaders who control today’s western form of governance existing into the continent. In Africa, the

² Keulder, Christiaan (1998). *Traditional Leaders and Local Government in Africa: Lessons for South Africa*. South Africa: HSRC Publishers.

³ Badge, Chijiok (2011). *Role of traditional rulers in community development*, available at <http://caponic.blogspot.com/2011/10/role-of-traditional-rulers-in-community.html>, accessed on October 20, 2017.

institution of traditional leadership is one of the oldest institutions of governance.⁴ Traditions and other customs practiced by the Africans and non-Africans placed a great responsibility on traditional leaders to look after the best interests of their communities. Certainly, traditional institutions in African states were well established in pre-colonial times. But, the arrival of the colonial powers in Africa posed critical challenges against the tradition and customary rules which in return impacted on the post-colonial states.⁵

In the African context, leadership has been viewed as individuals' predisposition to serve their families, their peers, and their communities. Traditionally, African leaders played three roles: political, social and religious roles. In their role of political leadership, leaders were public administrators while in their role of social leadership; they settled social conflicts among followers. Furthermore, in their role of religious leaders, they were priests whose role were serviced to the gods. Although three leaderships resided in the caring and protective hands of the African continent's leaders, this seemed to be no conflict of roles in traditional African society.⁶

The British colonial system in Africa relied on traditional governance structures to facilitate indirect rule and institutionalized a system of traditional leadership that did not previously exist. Additionally, the British did not always follow customary mechanisms of selecting traditional leaders, removing those who were uncooperative and supporting those who were compliant. Leaders not eligible for the position by lineage were appointed, often without seeking approval from councilors or elders. This use of traditional governance structures to further indirect rule continued during the colonial times, with the government bestowing more power on traditional leaders than they had previously held.⁷

TRADITIONAL LEADERS IN THE SOMALI CONTEXT

The Somali society lives in a vast semi-arid or arid environment in the Horn of Africa suitable for traditional animal husbandry. The people share a common experience shaped by decades of colonial rule, a common language, religion and culture. Historically, complex linkage between the pervasive clan-based political culture, economic production dominated by traditional animal husbandry, and judicial institutions characterized the pre-colonial Somali pastoral society.⁸

In the olden days, the Somali society engaged in effective traditional governance. This traditional system works to serve the communities in preventing conflicts, facilitating resource sharing and allocation, and the provision of the rule of law through the traditional customary laws. This

⁴ Mazrui, Ali. 2008. "Conflict in Africa: An Overview". In *The Roots of African Conflicts: The Causes and Costs* (eds). Addis Ababa: Published in association with OSSREA.

⁵ Bulhan, Hussein (2013). *Losing the Art of Survival and Dignity: From Self-reliance and Self-esteem to Dependence and Dhame*. Bethesda, Maryland: Tayosan International Publishing.

⁶ *On the Ethnic Origins of African Development: Chiefs and Precolonial Political Centralization*, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4801007/>, accessed on October 22, 2017.

⁷ Eberbach, Kristina. Kubera, Amber. Lee Okoth, Noëlle & Watanabe, Aiko (2016). *Contemporary traditional leaders a study on land and governance in South Africa*, available at <http://www.institut-gouvernance.org/en/chapitrage/fiche-chapitrage-66.html>, accessed on November, 2017.

⁸ Kamal (2002). *Traditional legal institutions of Somali society*, available at <https://www.tigweb.org/youth-media/panorama/article.html?ContentID=848>, accessed on November 15, 2017.

traditional system of governance has its own rules and regulations which consist of a set of contractual agreements, called *Xeer*. The Somalis survived by practicing this traditional system which in reality saved from many problems. The Somali society trusts the traditional governance because the mechanisms rooted in the traditional governance and the *Xeer* is indigenous and every Somali can claim its rightful ownership.⁹

The traditional leaders are not only engaging in conflict resolutions between clans, but also have been a tool in creating relative stable structures of governance and security in post-1991. Somali Traditional leaders are the only leaders that their decisions work probably. Traditional leaders are often more legitimate than the modern state in the Somali context, because Somalis are a clan based society and traditional institutions basically designate clan leaders in which every clan believes its leader as no one else.¹⁰

The clan system in which the Somali society operates is the most important constituent social factor among the pastoralist Somalis. I.M Lewis argues that the segmented clan system remains the bedrock foundation of the pastoral Somali society and ‘clannishness’ – the primacy of clan interests – is its natural divisive reflection on the political level.¹¹

Though the Somali traditional leaders play an imperative role in building peace within the society, on the other hand, the *Xeer* (customary law) is a traditional contractual agreement applicable in the social grid of the clan and the sub clan structure that constitute the Somali society. The customary rule has shaped and influenced by the Islamic Sharia law.¹² Every dispute or conflict happens between clans or between society were resolved by *Xeer*. This *Xeer* has also been accepted within the clan members in which they do agree and accept it as a binding rule. A case in point of sharing resources like grazing and water points between clans in which the *Xeer* implies how this recourse is shared.¹³

The *Xeer* also is the safeguard of social cohesion litigation and carried out within the framework of this goal. The fundamental aspects of *Xeer* are directly related to human survival. According to Andre Le Sage, the principles of the *Xeer* are: mostly conflicts occurring between Somali society their root causes are the use of natural resources and that is common in pastoral areas. These conflicts continue to be settled by the customary institution of conflict resolution using the principles of *Xeer*. Among the Somalis customary institutions have more acceptability and legitimacy when it comes to conflict resolution. In the Somali customary law (*Xeer*), religious leaders play a vital role in conflict resolution and ceasing hostility. Women and youth have no

⁹ Ali Joqombe, Hassan Sheikh, Johnson, Pat & Menkhaus, Ken (2009). *A History of Mediation in Somalia since 1988*. Mogadishu: Interpeace and Center for Research and Dialogue.

¹⁰ Gundel, Joakim (2006). *The predicament of the ‘Oday’: The role of traditional structures in security, rights, law and development in Somalia*. Nairobi: Danish Refugee Council & Novib/Oxfam.

¹¹ I.M Lewis (1961). *A Pastoral Democracy: A Study of Pastoralism and Politics Among the Northern Somali of the Horn of Africa*. London: International African Institute of the Oxford University Press.

¹² *Ibid.*, 9.

¹³ *Ibid.*, 10.

role in conflict resolution. Because both of them are not allowed to come the tree and participate the negotiations.¹⁴

One important aspect of *Xeer* is that the individual is not responsible for his action or the crime he committed, but Somalis used a collective system which also means that there is no individual punishment for the executor. *Xeer* suggests that the all Diya paying group are responsible for their individual action, this causes increasing the rate of crimes such as killing and physical injury because everybody knows that his clan will pay the *Mag* (blood compensation) and he will not be punished. Traditionally conflicts were solved by clan elders. The accepted mode of conflict resolution was purely a reserve of elders with moral authority to intervene among warring factions and bring peace. Somali society believes traditional leaders and the *Xeer* as a central figure in the management of conflict mediation and disputes, because traditional leaders are a part of the administration system. Therefore, they form an important part of Somali culture. *Xeer* and traditional leaders' help community keep control over the outcome of the dispute.¹⁵

The Somali customary law has many challenges, some of these challenges are: *Xeer* is not written, the number of elders who are experts of the *Xeer* are decreasing from time to time. There is a propensity of favoring the so-called modern institutions by the younger generation, a shift is occurring in urban areas, from traditional to modern institutions for conflict resolution. There is no practical means of enforcing their decisions if one party fails to comply with it.¹⁶ Although *Xeer* have these challenges as Somali society is anchored to the clan system, the legitimacy of the *Xeer* and traditional institutions remain as intact as it is; still *Xeer* is a more powerful tool than any constitution of modern government because Somalis believed *Xeer* and traditional elders than any other institution.¹⁷

TRADITIONAL LEADERS IN SOMALILAND

Somalis have increasingly reverted to their traditional structures because of the failure of the central government to build a functioning structure that serves all of the public without the marginalization of any citizen. In this sense, the reliance on traditional norms and rules can be relatively rational; there is no better alternative because Somali society doesn't have other substitute for the *Xeer* and the tradition because there is no government or other rules, the only thing that Somalis have is the tradition in the side of governing. However, the main function of Somali traditional leaders (settling disputes between and within the clans based on *Xeer*), has since the collapse of State been under constant pressure as they adopted in the very difficult new circumstances of the conflict, lack of rule of law and a rapidly changing socio-economic environment.¹⁸

¹⁴ Amin Yusuf (2011). *Containing Conflicts Within The Cultural Space: The Role of Xeer in Conflict Resolution*. Germany: LAP LAMBERT Academic Publishing.

¹⁵ Raleigh, Val (2015). *The role of traditional leaders in conflict management and peace process in Somalia*, available at <https://valentineopanga.wordpress.com/2015/07/22/the-role-of-traditional-leaders-in-conflict-management-and-the-peace-process-in-somalia/>, accessed on November 23, 2017.

¹⁶ Amin Yusuf (2011). *The Role of Customary Institutions in Pastoral Resource Management*, available at <https://slideplayer.com/slide/9295559/>, accessed on November 23, 2017.

¹⁷ Ibid., 16.

¹⁸ Ibid., 10.

In Somaliland, the traditional leaders were the only instrument that didn't collapse, and provided the only protection people could get, for example, the armed movement, the Somali National Movement (SNM) depended upon the traditional elders because the elders gave moral support for the SNM and also financial support which was the backbones of the successes of SNM and made it seem natural that the establishment of the new state of Somaliland was largely driven by both the SNM and the elders, the Guurti. Therefore, Somaliland was founded on a series of grassroots-based peace conferences called *Shir Beeleedyo* from 1991 to 1997.¹⁹

The elders played a vital role at that time; including disarmament, and held reconciliation for the people of Somaliland. At that time, elders played important role which politicians, scholars couldn't do; they return peace in the country and provide governance including peace and order. Somaliland wouldn't reach this progress without traditional leaders. To elaborate the point further, the elders play an important role in the peace building processes in Somaliland and are the only body that mediates the conflicts in Somaliland; for example, when the political parties and the government have disputes, the elders are the ones who solve these disputes. The peace and stability that Somaliland enjoys was brought about by elders and without them Somaliland become similar as the south-central Somalia. Government especially courts use the traditional leaders, especially *Aqils* in the cases of killings, because the court don't know more deeply for the clans and how they pay blood compensation and also the previous cases that clans have for murder issues.²⁰

Traditional leaders are an important pillar for the peace of Somaliland because the Somaliland system is not powerful like developed countries. So traditional leaders, especially Guurti are the peacekeepers and they built the peace existing in Somaliland for their hands, maintain the order and manage conflicts. The duty of the Guurti is to keep peace, culture, religion and also mediate conflicts, when conflict happen between the government and the parliament, the Guurti is the only actors that resolve this conflict by using the Somali customary law.

The legitimacy of the Guurti is based on its clan representation and the trust the population has vested in its political conflict resolution capacities. However, as the older members have died their sons have taken over, and many seats in the house are thus currently held by individuals who have inherited the seat or been politically appointed (by the president), rather than people selected through a process of local clan consensus. Interestingly, women are not allowed to be a member of the Guurti, because they are not allowed to become elders in the traditional system".²¹

Traditional system in Somaliland seems better at producing outcomes that guard social security than the state system. The respondents emphasized that Somaliland cannot warrant the traditional leaders, especially in the case of peace and security because the Somaliland government is not enough strong and can't manage the disputes between the clans, so in this time the elders are the necessary unit for the peace and the security of Somaliland.

¹⁹ Nasir M. Ali (2014). Building State Capacity in a Post-Conflict Situation: the Case of Somaliland, *American International Journal of Contemporary Research*, Volume 4 – No. 1, (January, 2014), pp. 157–170.

²⁰ Interview with a traditional leader, in Hargeisa, Somaliland on October 6,2016.

²¹ Interview with a member of the house of the elders Guurti, Hargeisa, October 1,2016, 10:03.

One may argue that the liberal democracy can't work in Somaliland because the people don't trust the term, but rather trusted the traditional system and believed that the democracy is against their Muslim values enshrined in the Islamic religion. Furthermore, the clan has more effect among the Somali people in general and Somaliland society in particular. Therefore, one may conclude that democracy and clan don't work together.

CONCLUSION

This study examined the role of the traditional leaders in conflict resolution, peace and state building processes in Somaliland. It questioned the role of the traditional leaders in the post-democratization period of Somaliland, since most of the traditional leaders engaged in politics by allying the politicians who are leading the political parties established in post-2001 referendum on the constitution. The traditional leaders can't be labeled as a negative on the state and political structures of the state, but and without doubt, they have been active or the precursor of the state's stabilization processes in the 1990s.

The traditional elders played imperative roles such as state and peace building processes as well as the reconciliations that have taken place in the country. This reconciliation has had both political and social reconciliation which is a process that brings people together and tries to fix cracks in social relationships, allows and encourages forgiveness by conflict, and which at the same time cultivates trust among the society.

However, though Somaliland claims as being a democratic state which built all the institutions required for a democratic state like holding fair and free elections, which are unique in this continent raged by civil wars and military coups, still the traditional elders are working and they are involving the politics of the country which is contrary to their mandate which is reconciling and mediating the clans who are in a state of conflict. So the democratization process in Somaliland faces challenges in which the traditional leaders are one of the critical challenges that face the state's infant democracy.

In Somaliland, the elders were involved in establishing governments, which only functions owing to an extensive interaction with the traditional authorities. The strength of both these governmental formations is their hybrid construction linking modern and traditional forms of governance. Today the traditional authorities themselves emphasize that they can't stand alone in the long run, and need a functioning government to ensure that their *Xeer* (or a state law endorsed by them) is enforced.

The reason that traditional leaders are still involved the politics is, because the leaders of the modern state or the politicians are not committed, the lack of committed leaders is one of the main challenges of a democratic state working in Somaliland. So as Somaliland leaders are not committed the country would not reach development.

The current hybrid system existing in Somaliland did not reach Somaliland for good governance and development if Somaliland went to develop and reach good governance the traditional elders must be out of the politics, also a stable and good governance must also be legitimate, socially

inclusive, respect human rights, based on the rule of law and the division of powers, which all in theory are related to modern governmental institutions.