

# PARTNERS OR COMPETITORS

THE STRUGGLE BETWEEN THE STATE AND TRADITIONAL INSTITUTIONS IN SOMALILAND

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**Cover Photo:** The late peacemaker and icon of Somaliland peace and stability, Haji Abdikarim Hussein Yusuf (left) during a peace mission in Berbera. March 7, 2007. © Tyler Hicks/The New York Times.

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## **ACKNOWLEDGMENTS**

IPCS owes immense gratitude to the support of many in conducting this study. In particular, IPCS is grateful to the Somaliland Ministry of Interior, Sultans and traditional chiefs, scholars, and intellectuals, to name but a few. They greatly contributed to this study, and without their unreserved support, it would not have been possible to complete this informative study. Their contribution to the study is noteworthy. The Institute is also grateful to many who have not been named here, but whose assistance was immeasurably crucial to this study.

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## EXECUTIVE SUMMARY

The discussion to bring together customary and modern institutions is not limited only to Somaliland; it is a global agenda. Different questions require thorough analysis and examination from the global literature available. Some of the questions include: is there a relationship between formal and informal governance structures as an expression of a voluntary process of democratization, or rather as a process of hybridization and indigenization? What forms should the related institutional architecture take? How does one deal with questions of adjudication and conflict between the two forms of governance? Can the political cultures they represent co-exist comfortably with each other? Or is there a primacy when conflicts are involved and one normative order begins to trump the other?

The case of Somaliland is not different from the above discussion. Somaliland has adopted a hybrid political system. The practice of customary law is popular and is currently exercised in the settlement of disputes and arbitration between clan disputes and hostilities and also co-exists with the formal judiciary system of the state in parallel with the Sharia laws.

This study, therefore, examines the changing nature of the traditional leaders and their role in the community. It attempts to identify the disadvantages of their rising number in the community, and the reasons for their increase, and how this

increase impacts the community. It further highlights the historical evolution of the traditional leaders and how their roles and functions changed over the past quarter of a century. This study is expected to come up with solutions, such as the criteria for candidates to fulfill in order to crown them as traditional leaders. Other questions to address include: what is the role and responsibility of a traditional ruler, and how does the advancement of science and technology affect the traditional structures of Somaliland? The study proposes certain policies and strategies to address the growing number of traditional leaders and how to decrease their involvement and engagement in the state's politics which fragments the society.

Nonetheless, there is an administrative failure to cope with the problems of the traditional leaders' proliferation; therefore, this study concludes with the following recommendations to overcome the changing nature of the traditional leaders, which has adversely impacted the society at the grassroots level. Therefore, the parts concerned are expected to:

1. Define roles and responsibilities of traditional leaders into specific areas, such as Diya payment and collection, traditional issues, and solving issues in the rural areas.
2. Build the capacity of state institutions to provide basic services to the public, thereby,

- narrowing the gap between the state institutions and the citizens.
3. The government should transform the structural basis of the economy to achieve economic growth, reduce poverty and income and wealth inequalities. This will increase the legitimacy of the state institutions.
  4. Institutionalize good governance standard operations and procedures to reduce bureaucracy, thus improve transparency, accountability, and equal access to public services. This avoids or at least limits the involvement of traditional leaders and that will lead to a decrease in crowning new traditional leaders.
  5. Improve access to equitable justice and justice for all. Traditional leaders have mostly been involved in criminal justice-related issues rather than other sectors. So, the government should improve institutional capacity and address the gaps in the justice sector.
  6. Enforce rule of law accordingly. Law enforcement is a key aspect that can limit or reduce the role of traditional structure through building the relationship between the community and government institutions.
  7. Develop traditional institutions' regulatory mechanisms. Therefore, establishing a code of conduct for a traditional institution, including roles and responsibilities, and also providing capacity-building programs to the traditional leaders to improve their understanding of the wider context, is necessary.
  8. The Government should encourage and institutionalize insurance companies. This will discourage the growing role of the traditional rulers in the issues which are supposed to be administered by state institutions such as, road traffic injuries and damages caused by vehicles.

## INTRODUCTION

The traditional institutions in Africa were the only system that existed in pre-colonial Africa where the indigenous people were practicing their customs, rules, and regulations. However, the arrival of the colonial system to Africa had an adverse impact on the African indigenous knowledge and institutions. Professor Ali Mazrui argues that the colonial powers' destruction of the old methods of conflict resolution and traditional African political institutions, and their failure to create effective substitutes in their place, had an adverse impact on the post-colonial state institutions and the society at large.<sup>1</sup>

However, contrary to the current political trend of discrediting traditional leadership, Africans have their understanding of democracy, which is sharply from the liberal democracy of the West. The institution of the traditional rule was democratic in its unique way in what is currently known as "consensus".<sup>2</sup> The debate on whether the institution of traditional leadership has a role in democratic dispensations or not is polarized between traditionalists and modernists where these represent two points of extreme divergence.<sup>3</sup>

<sup>1</sup> Mazrui, Ali A. (2008). *"Conflict in Africa: An Overview"*. In: *The Roots of African Conflicts: The Causes and Costs* (eds). Addis Ababa: OSSREA.

<sup>2</sup> Koenane, Mojalefa L. (2017). The role and significance of traditional leadership in the governance of modern democratic South Africa, *Africa Review*, Volume 10, Issue 1, pp. 58–71.

<sup>3</sup> Ibid.

In the Somaliland context, the traditional leaders have had immense importance in shaping the state's political and social life combined. However, there is a growing trend of the size of the traditional leaders, where the number of recognized Sultans was not more than ten before 1993 and by 2018 had recorded more than a hundred.<sup>4</sup> This is one of the major challenges that steadily face the Somaliland traditional system. This kind of proliferation impacts negatively on the traditional leaders' practices and the customary norms (*Xeer Soomaali*) binding the society living together side by side for centuries. The Somali customary rule obliges members of a Diya-paying group to support each other in political and jural responsibilities.<sup>5</sup> It is the responsibility of the elders, in particular, the traditional leaders to oversee that the terms of the *Xeer* are honored. The Somali traditional leaders however used a customary law as a guiding regulation for the governance of their clan members.<sup>6</sup>

It is important to note that the role of the traditional leaders before the arrival of the colonial powers and post-colonial states was imperative and deserves appreciation. However, the proliferation and

<sup>4</sup> Yusuf, Abdi A. (2018). The Proliferation of Traditional Leaders in Somaliland: Past and Present Situations, *Somaliland Peace and Development Journal*, Volume 2, pp. 11–21.

<sup>5</sup> Gardner, Judith & El Bushra, Judy (2004). *Somalia: The Untold Story – the War through the Eyes of Somali Women*. London: Pluto Press.

<sup>6</sup> Ibid., 4.

Balkanization of the traditional system of Somaliland, in particular, in the post-1991 are quite discouraging. There is a change in lifestyle for the traditional leaders who are key players in the formation, keeping, and sustaining of peace both in the past and in the present.<sup>7</sup>

The socio-political transformations have trickled down into the traditional structures and social bases, leading to a politically motivated proliferation of traditional kings and leaders and politically instigated inter-clan disputes. The engagement of the traditional leadership in urban politics made them no more “neutral” to their clan constituencies. This kind of practice has weakened and eroded their traditional statuses and legitimacy as super clan authorities.<sup>8</sup> To elaborate this point further, and according to the key informant interviews, the traditional leaders who used to be neutral actors within the society in the past have lost their role in the community as many of them are inclined to politics. This remains one of the major differences between the past and the present traditional leaders, and explains why several peace deals brokered by traditional leaders and government officials have not been productive. This contradicts their claims as legitimate figures who can broker just resolutions within society.

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

## SOMALILAND TRADITIONAL INSTITUTIONS FROM A HISTORICAL PERSPECTIVE

The traditional institutions remain one of the historic governance systems, and its practice is as old as the existence of human beings. It is indispensable for a human being to have a leader who is in charge of their affairs, arbitrates, and manages their issues.<sup>9</sup> Traditional leaders such as Aqils and Sultans as well as the religious leaders were the leaders of the society and rulers of clans; they were the adjudicators and referees of the society before the colonial period. In addition to that, the modern government systems came from other nations that have different rules, cultures, and religions from the local community. The introduction of the modern governance system of the colonial masters contradicted both the tradition and the religion of the local communities. So partially, the system was accepted either by coerced means or perceived as a good one while another part was rejected.<sup>10</sup>

This coincides with the arguments of Ali A. Mazrui and Hussein A. Bulhan, who stated the contradictions between the African indigenous institutions and the colonial imported cultures and institutions. It is certainly clear that the colonial rule was alien, superimposed from outside, and established in functioning cultures. The colonial state imposed the administrative

<sup>9</sup> Interview with one of the intellectual figures of Somaliland, Hargeisa, 2021.

<sup>10</sup> Ibid.

structure of an authoritarian state on Africa, which had an impact on the post-colonial state.<sup>11</sup> This could be true in the Somali context which has a history of pastoralism accustomed to moving from one place to another in search of pasture and water. Hussein Abdilahi Bulhan (2013) argues that the genesis of Somalia's conflicts and the prolonged state collapse is a colonial imposed social crisis to the Somali society without considering the Somali social order.<sup>12</sup>

The pre-colonial Somali politics were governed by two interrelated and interacting principles of kinship that included both clanship and social contract, known as *Xeer* and translated as compact, contract, agreement, or treaty. Agnates bound by treaty (*Tol Xeer Leh*) were political groups made up of men who were not based merely on a shared common ancestor, but on treaties that defined their collective political responsibility. These political groups settled conflicts between individuals and groups through payment or collection of compensation for transgressions committed by or against the group.<sup>13</sup> The Diya-paying or *Mag* in Somaliland is a group and the most important operational unit. It 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 Diya-paying group.<sup>14</sup>

Jama Mohamed who is one of the Somali social anthropology scholars states in his article "*Kinship and Contract in Somali Politics*" that there are two important institutions in Somali society: *Shir* (Political Council) and *Xeer Beegti* (Law Council or Jury). Political issues were settled in *Shir* and legal disputes were solved in *Xeer Beegti*. The political council may be held by the Diya paying group or the clan, and it may meet to discuss various issues: it may recognize the promulgation of a new Diya paying group, adopt a peace treaty, plan war against another group, appoint a war leader for such war, or discuss any other issue of relevance to the group. The second important institution was the law council or the jury. The key function of the *Xeer Beegti* deals with legal disputes that concerned Diya-paying groups or lineages or clans or individuals, including issues such as murder, insult, injury, divorce, inheritance, theft, robbery, and affray.<sup>15</sup>

<sup>11</sup> Tordoff, William (2002). *Government and Politics in Africa*, 4th edition. New York: Palgrave Macmillan.

<sup>12</sup> Bulhan, Hussein A. (2013). *Losing the Art of Survival and Dignity: From Self-reliance and Self-esteem to Dependence and Dhame*. Bethesda, Maryland: Tayosan International Publishing.

<sup>13</sup> Fellin, Melissa (2013). The historical impact of Western colonial and imperial policies and interventions on conflict and internal

displacement in Somalia, *Journal of Internal Displacement*, Volume 3 Number 2, pp. 41–62.

<sup>14</sup> Leonard, D.K. & Samantar, M.S. (2011) What Does the Somali Experience Teach Us about the Social Contract and the State?, *Development and Change*, 42(2), pp. 559–584.

<sup>15</sup> Mohamed, Jama (2007). Kinship and Contract in Somali Politics: *Journal of the International African Institute*, Vol. 77, No. 2, pp. 226–249.

Until the arrival of the British, most traditional leaders answered to no higher authority, although they generally ruled by consensus; thus, they fulfilled many of the functions of sovereign authorities elsewhere.<sup>16</sup> Therefore, the two systems were running parallel and the reason was that the modern government did not respond to the needs of the public; as a result, needed the role of informal institutions in a way compatible with their lifestyle.<sup>17</sup>

In connection to this background, Somaliland inherited a system of governance competing with their tradition. According to Englebert (2002), most African countries have experienced a dualism of structures of power since their independence, if not since their colonization, with pre-colonial institutions competing first with colonial and then with post-colonial states for the allegiance of their citizens.<sup>18</sup> While Egal (1968) underlined in his paper that the rural traditions will be replaced by elected party officials, the post-colonial Somali elite was eager to marginalize traditional authorities who were considered to be in the way of progress.<sup>19</sup>

It is a reality that the role of the traditional leaders has been changing in the post-colonial state. For instance, in the early years of the revolutionary socialist government under the leadership of Mohamed Siad Barre, it officially banned what is called "tribalism", where the role of Sultans was about to disappear. But when that government became weaker and the situation deteriorated, the government turned to the Sultans, Ugaas, and Garads, etc., for their support and legitimacy/recognition. This is the Pandora box and the gateway of traditional leaders' Balkanization and proliferation. "Whenever a leader opposed the government policy, it simply installed another leader from the same constituency represented by the first leader. The latter will support the government without hesitation" one of the key informants interviewed opined. However, their influence increased again during the war and its aftermath. In the late 1980s, traditional authorities became involved in the guerrilla war of the Somali National Movement (SNM) against the military government and went on to take a leading role in the establishment of the Republic of Somaliland.<sup>20</sup>

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<sup>16</sup> Bulhan, H. A, Abdi, Y. D, Abdirahman, A. J, Abdirahman, Y. C, Mohamed, H, I, O. F., Mohamed & Suad, I. A (1999). *A Self-Portrait of Somaliland: Rebuilding from the Ruins*. Hargeisa: Somaliland Center for Peace and Development and War-torn Societies Project (WSP).

<sup>17</sup> Ibid., 9.

<sup>18</sup> Englebert, Pierre (2002). *Patterns and Theories of Traditional Resurgence in Tropical*

*Africa*," *Mondes en développement*, Vol. 118 (2), pp. 51–64.

<sup>19</sup> Höhne, Markus, V. (2006). *Traditional authorities in northern Somalia: transformation of positions and powers*. Germany: Max Planck Institute for Social Anthropology.

<sup>20</sup> Interview with one of the researchers of Somaliland, Hargeisa, 2021.

## CORE FUNCTIONS OF TRADITIONAL LEADERS

### *Conflict resolution within community members*

The role of conflict resolution is a core role of the traditional leaders in Somaliland. Traditionally, disputes and conflicts in Somali society are resolved through recourse to an unwritten code of conduct or social contract called *Xeer*.<sup>21</sup> The Somali system employs a mix of Islamic Sharia and customary law, in which precedence plays a considerable part, and is applied to all issues from the smallest to the largest. Social and criminal matters are guided by unwritten sets of moral and social rules, which form the basis for the resolution of issues arising within or between clans or sub-clan groups. New *Xeer* rules are developed to address unforeseen occurrences, so the system is a dynamic and evolving one.

### *Diya payment and collection*

The blood compensation (Diya-paying) is another core responsibility of the traditional leaders, particularly, the Aqils. The study notes that Aqils is an important component of traditional social structure, dealing with issues related to clan disputes, Diya payment and collections, and more recently, political issues within the clan such as screening and endorsing political candidates.

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<sup>21</sup> Xeer is a traditional law agreed upon by the clans in each area, and dependent on the deliberations of elders who gather to resolve specific problems

According to discussions with Maroodi-Jeeh region traditional leaders, the Aqils noted that road traffic accidents are number one on the issues they deal with. The traditional chiefs interviewed by this study underlined that the involvement of the traditional chiefs in traffic accidents and the collection of blood compensation money associated with traffic accidents goes back to when Somaliland withdrew from the failed union of 1960 in 1991. "The traditional leaders are victims of issues they don't personally commit but because of their role as traditional leaders cause their detention. This is one of the disadvantages of our role and we are liable for the clan" they emphasized.

However, some gaps and weaknesses exist within the traditional system itself. "There are some people who are registered as Aqils but have never done a traditional role, ever. They are indeed politicians...You will see them appearing on the TVs, but you will never see them taking a single traditional task...they misuse their title" a government official argued. "It would be better to keep them out of politics because politics and tradition are two different things" he added.

## THE ROLE OF TRADITIONAL LEADERS IN STATEBUILDING

Elders have always played a central role in Somaliland society. But in the aftermath of the civil war, elders have ventured into the

within a clan or between clans. A gathering of senior elders considering issues of governance and general well-being is known as a Guurti.

political sphere in an unprecedented way. An Upper House of Parliament better known as “*Golaha Guurtida*” or House of Elders was institutionalized in the Borama Conference of 1993, as a check on the power of the executive and to ensure the preservation of peace. Elsewhere in the country, an increasingly urbanized and educated class of elders has begun to challenge the stereotype of the Guurti as a rural, traditionalist, and apolitical structure. Many Somaliland citizens welcome these changes, but the broader political and social role of the traditional leadership is coming under criticism from some quarters.<sup>22</sup>

In the early stages of Somaliland's statebuilding, the traditional authorities regained considerable importance, especially in creating peace, security, and law and order after the Somalia state collapse. The traditional leaders managed the process of reconciliation in a society where clan politics is entrenched and developing a social contract has managed to achieve the relative peace and tranquility that Somaliland currently enjoys. Subsequent actions that paved the

way for a democratic process have furthered the ambitions of building a stable state based on democracy and

respect for individual civil rights.<sup>23</sup> Therefore, successful post-conflict development requires the establishment of a stable policy and a representative political system.<sup>24</sup>

One of the Sultans interviewed for this study recalled the efforts of traditional leaders in Somaliland's peacebuilding processes as they were the cornerstone and foundation of the Somaliland peace and stability:

“The wounds and scores of the civil war in Somaliland were only dressed and cured by the traditional leaders” he stressed. “When the wars broke out every leader, Imam, Sultan, Ugaas from Awdal went as far as Burao to stop that bloodshed. Hence, the traditional authority played a vital role in the Somaliland statebuilding process of the early stage of Somaliland, and the state was built from the ruins and rubble of the Somalia state collapse. In particular, the Grand Conference of Burao in 1991, was the precursor followed by the peace conference of Borama in 1993 and Hargeisa in 1997” he added.

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<sup>22</sup> Ibid., 16.

<sup>23</sup> Abdi, Suad I., Duale, Ali E., Ghani, Mohamed H. & Hersi, Mohamed F. (2010). *Democracy in Somaliland: Challenges and Opportunities*. Hargeisa: Academy for Peace and Development.

<sup>24</sup> Richards, Rebecca (2015). Bringing the Outside in: Somaliland, Statebuilding and Dual Hybridity, *Journal of Intervention and Statebuilding*, 9 (1), pp. 4–25.

The role of traditional leaders was not limited only to clan conflict mediation but they took part in the demobilization of clan militias representing their clan constituencies. The traditional leaders and elders are responsible for today's success of Somaliland. This means that the traditional elders sold the idea of disarmament to the clans and negotiated the representative of other clans. Therefore, the security was outsourced to the traditional leaders, and government involvement was minimal, and the clan elders became increasingly involved in local governance, including overseeing the provision of social services till the government gained full control of public order.<sup>25</sup>

The traditional leaders' primary role is still the regulation of access to shared resources such as grazing areas and water. The role of the clan elders in this cannot be overstated, as they are simultaneously acting as legislators, executors, and judges.<sup>26</sup> However, the role of traditional structures transformed from clan issue management into clan politics. Initially, the traditional leader's role was limited to clan affairs and solving problems, to name but a few. This engagement and function were quite suitable for their role because the

<sup>25</sup> Renders, Marleen (2012). *Consider Somaliland: State-Building with Traditional Leaders and Institutions*. Netherlands: Martinus Nijhoff Publishers.

<sup>26</sup> Gundel, J. & Dharbaxo, A.A.O. (2006). *The Predicament of the "Oday": The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*. Nairobi: Danish Refugee Council & Oxfam/Novib.

majority of the population used to live in the countryside.

The selection criteria for the traditional leaders were their integrity, honesty, impartiality, and wealth. "In the past, the people were wealthier and their leaders were not parasites like some of them behave now; indeed, the leaders were the ones who could offer help to the needy," one of the key informants of this study stated. In the pre-colonial period, the traditional leaders<sup>27</sup> were involved in 'pastoral politics'. Their main task was the regulation of access to and use of important resources such as water, pasture, land, and caravan routes, involving only relatively small groups of pastoral nomads and agro-pastoralists in their respective local settings.<sup>28</sup>

Somaliland moved from a customary form of governance into a multiparty system based on the constitution which received a public referendum on May 31, 2001. Clan politics, however, continued to play a role in party politics.<sup>29</sup> Therefore, the traditional leaders still play an active role in the democratic elections and multiparty politics as noted by one of the interviewers of this study. "Somaliland has adopted multiparty politics and has three

<sup>27</sup> Traditional leaders' structure in Somaliland context: Sultan, Garaad and Ugaas are synonymies, use of the name depend on location and regions followed by chief Aqil, then Aqil.

<sup>28</sup> Ibid., 19.

<sup>29</sup> Höhne, Markus, V. (2006). Limits of hybrid political orders: The case of Somaliland, *Journal of Eastern African Studies*, 7 (2), pp. 199–217.

authorized political parties, but it seems that it has returned to the customary form of governance. For example, if the political parties want to appoint someone to run for an election, they should get the endorsement of the clan leaders and without the approval of the traditional leaders to the candidate, the party cannot run for that election” he added.

#### THE PROLIFERATION OF TRADITIONAL LEADERS AND ITS IMPACT ON THE STATE

The resurgence of traditional authority has led to contradictions, on the one hand, traditional authorities are increasingly seen as the creators and guarantors of the relative peace and stability that exist in Somaliland. On the other hand, this system is violating the peace complex and there is a risk of splitting the stability. One source of this fragility was the increase in the number of elders, as group leaders, politicians, fighters successfully divide sub-clans into sub-clans to select a new elder who is loyal to a given group.<sup>30</sup>

This has made it increasingly unclear who are the legitimate traditional leaders. However, it has been combined with a legitimate reason for the selection of new elders, including but not limited to massive population increase, which has led to an increased need to split *Mag* groups into two or more as they became too big for

the Aqil to manage. In any event, the system can hardly cope with the demand in terms of the number of issues it is expected to address, because of both a lack of resources and of knowledge about how modern governance and business sectors work. Further stress is caused by the rapid social changes such as urbanization, technology advancement, youth culture, and globalization.<sup>31</sup>

The proliferation of traditional leaders goes back to the colonial era where the creation of Aqils and other paraphernalia of indirect rule actually 'weakened the stability of Diya-paying groups' because it created 'artificial positions of leadership.'<sup>32</sup> However, the proliferation of traditional leaders became visible during the formation of Somaliland in 1991. The formation of the new government started with the gathering of tribal leaders and the tribal conference (Shir Beeleed) was held in which every representative had to be backed by his clan elders first. By this move, the traditional leaders got power and a political value because no politician could be appointed without the support of the traditional leaders; therefore, they became political figures.<sup>33</sup>

In the post-1991 Somaliland, traditional leaders have been involved in politics, where successive governments of Somaliland saw the traditional leaders as an opportunity to remain in or retain power. However, the current government sees the issue of traditional leaders

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<sup>30</sup> Ibid., 26.

<sup>31</sup> Ibid

<sup>32</sup> Ibid., 15.

<sup>33</sup> Ibid.

differently. It seems that in the last few years, the government has deviated from that policy and has not invested in traditional elders, except Aqils who are legally registered at the Ministry of Interior, leaving the rest unattended to. It seems they have left many platforms although it is a never-ending phenomenon that can come back at any time.<sup>34</sup>

One of the key informants interviewed for the study argues that the selection process of the traditional leader was different from the post-1991 period. "In the past, many things were looked at and certain conditions were taken into account such as quality, values, religious conduct, honesty, responsibility, conscientiousness, humaneness, and generosity. These characteristics were easy to observe in the past; everyone in the society was able to observe the conduct of the traditional leader since the number of people was less but today the population has increased. The culture has changed and many of these qualities cannot be determined easily" he opined.

The selection criteria of the traditional leaders have changed over time, according to the study, which revealed that there are no standard criteria that they use when selecting or choosing traditional leaders; some traditional leaders are self-appointed. "The search for opportunity within the clan, for example, if the clan is not having a traditional leader,

they fill that gap by appointing themselves. Or sometimes they solve some problems within the clan thus materialize that opportunity by appointing themselves as a traditional leader," a senior government official said. "There is no set of criteria and when you look at the traditional leaders' quality and experience, even their political attitudes are varied" one government official argued. "In the past it was different, there were criteria which Somali people at least used when choosing or selecting a leader, so it changed over the century when the first colonial power came to Somaliland. The quality of requirement has changed, and requirement in the past was strict as the Somali society was always at war" he added. Becoming excellent in war, neutral actor in judicial disputes within the community and clan members, hospitality, and serving the community, were the qualities that Somali leaders were required to possess, but it is no longer the case in the recent times.

Also, the proliferation of traditional leaders is related to politics and political representation. "What we need to understand is the social structure of Somali society. We are a tribal society where access to political positions and taking your clan's share from the state resources is dependent on how you are organized. You need a traditional leader who can organize and mobilize their clan members in a way that their constituencies can get an advantage" he added. The

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<sup>34</sup> Interview with one of the well-known authors and scholars of Somaliland, Hargeisa, 2021.

traditional leaders are a platform through which the local community expresses their grievances, interests, and can make some political or economic choices.

The multiplication of the traditional leaders in Somaliland will have a negative impact on Somaliland and can easily fragment the clans and sub-clans. "This is one reason why traditional leaders have sometimes been involved in chaos and violence" another key informant argued. However, it is a reality that the increased number of traditional leaders questioned the quality of traditional leadership. Earlier leadership was an inherited one, but now external influence is bigger than the tradition of inheritance. "Sometimes people in the Diaspora appoint a Sultan, in some cases the elites appoint them, and worst of all even the state interferes with the clan positions" another scholar argued.

Weak state institutions remain another critical point that deserves thorough analysis. The UK Department for International Development (DfID) described the term state fragility or weakness as where the government cannot or will not deliver core functions such as quality health, education, security, access to clean water, and affordable energy to the majority of its people,

including the marginalized and the poor.<sup>35</sup> Thus, the state loses legitimacy from the citizens. In this regard, weak state legitimacy is understood to be a key defining characteristic of fragility. Evidence indicates that the failure of the state in providing basic social and security services to the citizens makes the link between the government and the governed weak. In this, it disperses the relationship between the state and its citizens and undermines state legitimacy.<sup>36</sup> In a broad sense, state legitimacy implies the ability of citizens to make autonomous judgments, the separation of political power from other types of social power, and the validity of subjective views as the basis of legitimacy.<sup>37</sup> In connection to this broad literature, the traditional leaders tried to fill the vacuum created by the Somali state collapse in 1991:

"The traditional leaders filled the gap left by the government after the Somali state collapse in 1991 and played a crucial role in the restoration of Somaliland. Therefore, every human being needs to have his/her property protected and his/her interests to be preserved. When the government becomes weak the only one who could do it, is the traditional system. This has led to

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<sup>35</sup> Okome, M. Olufunke (2013). *State Fragility, State Formation, and Human Security in Nigeria* (ed). New York: Palgrave Macmillan.

<sup>36</sup> Kamrava, Mehran (2016). *Fragile Politics: Weak States in the Greater Middle East*. New York: Oxford University Press.

<sup>37</sup> Kaplan, Seth D. (2008). *Fixing Fragile States: A New Paradigm for Development*. Westport, Connecticut: Greenwood Publishing.

the proliferation of Sultans and expanded their mandates. There is no government system regulating them. If in the past the clans were ruled by one Sultan now they need more than one; one is not enough. Everyone should have one who represents them, act in their interest, supports them, and fill the space that the government left. So, by the time the Somaliland government is restored, the government still relied on and kept the traditional structures as it is" one of the key informants stressed.

In addition to that, financial interest is another key driver of the proliferation of traditional leaders' and it became the source of wealth and honor and a gateway to government access.<sup>38</sup> "Getting a title and power has led to many people organizing and crowning themselves traditional leaders without anyone else choosing them. That is why we see so many traditional leaders today. Sometimes the government pushes the newly crowned Sultans by organizing platforms and encouraging them for political purposes" another intellectual accentuated.

The clan interest and competition over a position and power are regarded as a driver of the proliferation of traditional leaders. The traditional structures maintained the roles of conflict

resolutions, assisting those seeking support or who need to be spoken to or advocated for when their interest and security are threatened and the government response. On the other hand, the traditional structure became a tool used in many places to serve the interest of its clans. For example, the traditional leader is currently busier working than before because the government has failed in the provision of justice service to the citizens. The people will look at other alternatives which can serve in preserving their interests.<sup>39</sup>

In this regard, one may question: is there any disadvantage associated with the traditional structures that existed in Somaliland. Traditional institutions in Somaliland indeed compete with a similar role to the government by sometimes confronting the government. This phenomenon became apparent in 2001 when a Council of Sultans was established in Burao. The confrontation between the Council of Sultans established in Burao and the Government led by Mohamed Haji Ibrahim Egal was based on the issue of legitimacy in terms of who is the highest authority in the country; the government argued that it is the highest organ and has the mandate of citizens.

The Sultans council, on its part, argued that they are the highest authority in Somaliland. The government perceived the Sultans' Council as unconstitutional and arrested four Sultans and declared

<sup>38</sup> Ibid., 9.

<sup>39</sup> Ibid., 9.

that the government will not tolerate tribal and religious leaders' authorities to challenge the legitimacy of the government, referring to the constitution which states that the House of Representatives and the House of Elders (Guurti) are the only and legitimate councils within Somaliland.<sup>40</sup> It seems traditional leaders assumed that the approved constitution for Somaliland will replace their role with elected officials and the country is moving from a clan-based form of government into the multi-party democratic system which immediately replaces their role in the government formation.<sup>41</sup>

The Aqil is an important element in the Somaliland traditional structure whose position in the clan is to handle matters related to tradition and lately to political issues within the clan. However, the politicization of the role of the traditional leaders has eroded some of the respect and stature which Aqils and Sultans had enjoyed in the past. Indeed, while Aqils originally handled peace negotiations, the settlement of Diya paying (blood compensation), and conflict management both in and outside the clan according to the set *Xeer*, their role is dramatically changing in most recent times, where the traditional leaders who are supposed to be neutral and impartial assumed additional tasks such as lobbying for government positions and parliamentary seats.<sup>42</sup>

On the other hand, traditional leaders involved in issues which were supposed to be the role of the Government, for instance, issues related to road traffic accidents where the traditional leaders always collected blood compensation money which is related to traffic accidents. This is raising the question of what is the role of the government towards rule of law.<sup>43</sup> Also, some of the traditional leaders also engage in other activities which are contrary to their role and jeopardize their responsibility. In the Somaliland state system, those who want to take the national ID from the concerned state institutions should bring his/her clan's traditional leader in order to certify his/her belongingness to their clan membership. In this regard, some traditional leaders certify some people who are not members of their clans. After a thorough investigation, the government realized the reality and how those traditional leaders are cheating and corrupting the state system.<sup>44</sup>

#### RECONCILING CONTRADICTIONS BETWEEN FORMAL AND INFORMAL INSTITUTIONS

In many parts of the world, and especially in post-colonial states, customary institutions remain important. The tendency in the past was to see 'traditional' and 'modern' forms of social

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<sup>40</sup> Ibid., 25.

<sup>41</sup> Interview with one of the Somaliland Sultans in Hargeisa, Somaliland, 2021.

<sup>42</sup> Ibid., 23.

<sup>43</sup> Interview with traditional Aqils in Hargeisa, Somaliland, 2021.

<sup>44</sup> Interview with one of the officials of the Somaliland Ministry of Interior, Hargeisa, 2021.

organization as distinctly separate and 'development' as the transition from the former to the latter. Even very recently it has been argued that the failure to reform customary institutions in many countries in Africa has led to the division of populations into 'citizens and subjects' in the context of bifurcated states.<sup>45</sup>

Somaliland has had to grapple with similar dilemmas in negotiating an accommodation between a clan-based social structure and representative democracy; yet, despite evident contradictions, the system offers the basis for possible resolution. Despite an increasing tendency towards the autocratic government, socio-political norms that emphasize the importance of negotiation and compromise have averted several crises in recent years, and the hope remains that they will continue to support similar progress in the future.<sup>46</sup>

On the other hand, traditional institutions, and state systems are two distinct trajectories: informal and formal systems respectively. The state service is individually based while the traditional institutions are clan-based and this cannot go along together. The traditional

institutions lack accountability and that's why even a state minister cannot fire an incompetent member of his/her staff. When a corrupt civil servant is fired by a minister, his/her clan questions the legitimacy of that minister or wants him/her to be removed instantly.<sup>47</sup>

The competition and reconciliation of customary and modernity issues were raised during the late 1940s. According to Jama Mohamed (2007) when the local government councils were established under the 1950 ordinance, the key question that confronted the government was: should the councils represent the population geographically or 'tribally'? In other words, since in each district, various 'tribes' lived together and since the 'tribes' were also dispersed geographically over large areas, how was the representation to be made? This question was the recurring theme in all the discussions about making the institutions representative. Gerald Reece stood on one side of the debate, and the Colonial Office on the other. The Colonial Office feared that the administration was creating a system of

<sup>45</sup> Beall, Jo Ngonyama, Mduduzi (2009). *Indigenous Institutions, Traditional Leaders and Elite Coalitions for Development: The Case of Greater Durban, South Africa*. Crisis States Working Paper from Crisis States Research Centre and University of KwaZulu-Natal. Available at <https://www.lse.ac.uk/international-development/Assets/Documents/PDFs/csdc-working-papers-phase-two/wp55.2-indigenous-institutions-traditional-leaders-elite-coalitions.pdf>. Accessed September 2021.

<sup>46</sup> Kibble, Steve & Walls, Michael (2009). *Tradition and Modernity in Somaliland Beyond polarity: negotiating a hybrid state*. Paper presented at Leeds University Centre of Africa Studies (LUCAS), 'Democratisation in Africa: Retrospective and Future Prospects' conference 4–5 December 2009. Available at [https://www.progressio.org.uk/sites/default/files/Tradition\\_and\\_Modernity\\_in\\_Somaliland\\_conf\\_paper09.pdf](https://www.progressio.org.uk/sites/default/files/Tradition_and_Modernity_in_Somaliland_conf_paper09.pdf). Accessed September 2021.

<sup>47</sup> Ibid., 20.

direct rule rather than a system of indirect rule.<sup>48</sup>

The question is: How would constituencies be determined? Was the constituency to be based on 'tribe' or territory? On the other hand, there was a discussion on the role of the traditional leaders in politics. According to Jama, the 1959 commission recommended that traditional authorities play a key role in the politics of the country. Although there was no clear strategy rather the commission's formulation was ambiguous: who were such authorities - the Aqils and Sultans, or urban politicians who were anxious to find a reliable constituency?<sup>49</sup> The commission did not say. Unlike the 1958 commission, the majority of the members of the 1959 commission were Somalis some of them were political heavyweights and business people.

Confusion still exists between the terms of the traditional leaders and the contemporary modern state which have never been recognized. The two (formal and informal institutions) work together but they have never accepted each other. The negligence of traditional structures by contemporary Somali governments developed a system that nobody owns. Despite that, Somali states intentionally created traditional leaders for political purposes.<sup>50</sup> On the other hand, the contemporary Somali states' governments were also trying to eliminate the

traditional system because they think that traditional leaders are crossing their line or traditional borders into politics.<sup>51</sup>

It is important to note that the traditionalists regard Africa's traditional chiefs and elders as the true representatives of their people, accessible, respected, and legitimate, and therefore still essential to politics on the continent. Apart from the above discussion, several factories support the existence of traditional institutions, such as the existence of a hybrid system, limited state capacity, lack of insurance service, traditional institutions which are peace and security agents in the rural areas, to name but a few. Therefore, the traditional leaders are required so long as the state is not fully functioning across the country and there are limitations in the provision of services by the government, thus filling the gap between the state and the public.

#### ESTABLISHING A REGULATORY FRAMEWORK FOR SUSTAINABLE TRADITIONAL INSTITUTIONS

In the contemporary world, the power of traditional leaders varies dramatically. Some countries have successfully replaced traditional forms of government with elected politicians or bureaucrats while others do not have. In addition, the strength of the traditional leaders often varies dramatically in the different communities as the traditional structure is

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<sup>48</sup> Ibid., 15.

<sup>49</sup> Ibid.

<sup>50</sup> Interview with one of the lecturers and scholars of the University of Hargeisa, Somaliland, 2021.

<sup>51</sup> Ibid.

a result of a complex historical process.<sup>52</sup> Despite the above, the Somaliland traditional structures have transformed throughout history: the pre-colonial, colonial, and post-colonial era. One of the interview participants approached by the study highlighted that the traditional structure is a parallel system to the government that everyone can use for his interest and does not have rules and regulations; for instance, if you approach an Aqil he will act on your interest as you like whether it is right or wrong.

The fact that traditional leaders have an indefinite term of office they have an incentive to invest in building local institutions that offer long-term benefits in a way that elected leaders do not.<sup>53</sup> The traditional authority that has risen during times of crisis and helped establish the foundations for the new state currently exists both within and alongside the central governing structure, creating a centralized and seemingly permanent amalgamation of state and clan. Further to that, the role of Guurti was institutionalized and the constitution also gave clan elders an important role as grassroots decision-makers within the movement. With this recognition of the centrality and importance of the clan and clan elders in politics, the Somali National Movement (SNM) proposed combining

the advantages of Somali democracy and egalitarianism with the benefits of the modern national government.<sup>54</sup>

The need exists to establish a regulatory framework for the traditional institutions. The government only regulates Aqils and chief-Aqils. While Sultans are left for an open door. Therefore, a regulatory framework is very crucial in setting their role and determining a uniform system of crowning traditional leaders, establishing a uniform system of remuneration, and establishing a uniform status and role for traditional leaders. Such matters should be placed and treated as urgent since the lack of uniformity leads to a great degree of discontent and an unmanageable state of affairs.

There are a number of questions to be answered: who regulates traditional leaders? Who are they accountable to? Who has the right to say you are right or you have not followed the code of conduct? "In the contemporary Somaliland system, for example, the people have the right to vote and the president is accountable to the people, the parliamentarian is accountable to those elected but traditional leaders are not accountable to anyone. Whoever does what he wants, he is a Sultan. If he spoils it, he is a Sultan. So, the other problem is

<sup>52</sup> Baldwin, Kate and Raffler, Pia (2017). *Traditional Leaders, Service Delivery and Electoral Accountability*.

Chapter prepared for edited volume on decentralization. Available at <http://piaraffler.com/wp->

[content/uploads/2018/12/Baldwin\\_Raffler\\_TraditionalElectedLeaders.pdf](content/uploads/2018/12/Baldwin_Raffler_TraditionalElectedLeaders.pdf). Accessed September 2021.

<sup>53</sup> Ibid., 25.

<sup>54</sup> Ibid.

that the traditional authority has no one to hold them accountable and evaluate what they have done and what they did wrong and what they have done right manner” a key informant argued.<sup>55</sup>

The traditional authorities and their structures are popular in rural residents as the rural people are primarily dependent on traditional leaders as a source of justice and arbitration. In the urban areas, though the role of the traditional leaders is weak compared to the rural areas, the absence of an effective state gives room for the traditional leaders. Therefore, there is an urgent need to improve the service delivery tools of the state to close that gap. What always weakens the state is the competition between the state and the clan so the traditional leader is the gatekeeper of the clans or dependent on a clan and everything that tends towards the clan weakens the government because it is a decision within a decision. If the government wants to be strong, and to weaken clannism the approach may include not to provide traditional leaders a political role or a role that they can challenge the government.<sup>56</sup>

The involvement of traditional leaders in the recruitment and nomination of officials is a challenge against the competence of government institutions. Therefore, eliminating or at least reducing the role of the traditional leaders in political issues is necessary. In this respect, the traditional

leaders should only focus on their responsibility and serve their constituencies based on traditional issues. “The government has to maintain competency and transparency, the government should limit traditional leaders’ involvement in service provision and facilitate a platform and mechanism by which people can freely access government institutions. The person should be able to run government positions or access benefits and rights without the support of the traditional leader. But if the government empowers the traditional leaders there will be competition between the clan and that will create a proliferation of the traditional leaders.<sup>57</sup>

## CONCLUSION

The idea behind state formation used to be as a shield to protect citizens from internal and external dangers and extend any social services to a larger community. This is contrary to the Somali social context and structure where the Somali people used to receive shelter and safety from clans through traditional institutions represented by traditional leaders. Due to the advancement of science and technology, the role of both state and traditional institutions in Africa has been in limbo. This means that the modern institutions attempted to replace the role of the traditional leaders where the elders and their institutions resisted the move

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<sup>55</sup> Ibid., 9.

<sup>56</sup> Interview with one of the intellectuals of Somaliland, Hargeisa, 2021.

<sup>57</sup> Ibid

against them. This is one of the major challenges that face the current Somaliland state institutions which are an outcome of traditional conferences spearheaded by traditional leaders and local community elders.

The traditional leaders in contemporary Somaliland however, remain the major challenge that hampers the strengthening of the state institutions by resisting the reforms of the state institutions and also challenging the figures appointed by the successive governments because they regard those figures as people who neither represent them nor serve the interest of their respective clans. In addition to that, some of the current traditional leaders, though certainly not all of them, are involving themselves in political issues which is also contrary to their mandate, as a traditional leader is expected to be neutral and impartial in all issues related to politics.

Therefore, establishing institutions that could handle the issue of traditional leaders is necessary. Additionally, developing policies and strategies that can tackle their problems is another approach which can address the growing threat of traditional leaders. However, though the traditional leaders are critical against the growing capacity of the state institutions, there is a convergence point where the interest of the traditional leaders and the state institutions meet: that is the preservation and maintenance of the hard-won peace and stability of this great nation, the Republic of Somaliland.

## ABOUT THE STUDY

One of the major actors of the Somaliland peace and stability and its social cohesion is the traditional institutions which survived even during the colonial time. The Somali traditional institutions, in particular those in Somaliland, provide a competent management and regulatory framework through customary rules and regulations called Xeer in Somaliland. The traditional leaders or institutions work under the framework of the culture, religion, and values of the society, which mainly encourages helping each other, and in particular, the most vulnerable and the needy people, as well as working on peace and social coexistence and the cohesion of the society. Despite the positive attributes of the traditional institutions during the past, modernity and the advancement of science and technology brought challenges against the traditional institutions. However, there is a convergence point between the traditional and modern institutions in Somaliland: that is preserving the peace and stability of this nation together. In many regards, there is a link between those challenges and the post-colonial state structures that emerged where there has been an immense change over the characters of the traditional leaders. For instance, the contemporary traditional leaders lost neutrality and impartiality, which were the major attributes and the character of a traditional leader. This study, therefore, examines the changing nature of the Somaliland traditional leaders, and how once-promising traditional leaders who built this state from ruins and rubble are losing their credibility by aligning themselves with the competing political actors. The study proposes policy options and strategies that could address the growing challenges of traditional institutions.

## ABOUT THE INSTITUTE

The INSTITUTE FOR PEACE AND CONFLICT STUDIES (IPCS) is a higher learning and research institution based and operating within the institutional framework of the University of Hargeisa, Somaliland. The IPCS was established in February 2008 in response to the long-recognized call for an in-depth multidisciplinary approach to understanding and addressing the conflict and violence that has engulfed many parts of the Horn of Africa. The mission of the IPCS is to provide interested scholars, institute members and students with opportunities to engage in intensive study and research on Somaliland and Somali-inhabited regions in the Horn of Africa on an interdisciplinary basis.



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IPCS PAPER

ISSN: 2709-2399