

SILENT CRY OF SOMALI CUSTOMARY LAW 'XEER'

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ABSTRACT

In more than two decades Somalia witnessed ethnicity and religious fundamentalism which led to the emergence of assertive identity politics with a capacity to mobilize public support for its cause exploiting the advantages and disadvantages of globalization. For a conspicuously distinguished homogeneous Somali society, alternatives to traditional conflict management has yet to achieve clarity on how modern governance framework will best manage their rich diversities of people, achieve good governance, and draw upon its extremely indigenous culture, values, and institutions as sources of strength and legitimacy. International support has proven largely ineffective instigating crisis of identity playing unity through the suppression of diversity which left traditional elders feeling disempowered and unable to see themselves reflected in the governance of their own nation. Since recorded history, tribal elders have been instrumental in mediating and resolving a variety of disputes between diverse local groups. The role of elders (usually men) has been a human resource used to great advantage although ignored at great peril in our modern intellectual landscape. In this study, i argue that, if national governance framework is to embody the soul of the nation, they must reflect the essential cultural values and norms and build on their governance architect to stifle the tendency to focus on traditional conflict management as outdated rather than praising their positive and functional integrative role in nation building. Traditional leaders seek to be recognized for their distinctive role and their underrating has led to some disparities among ethnic groups in the shaping and sharing of power and resources. Somali traditional mediation, called **Xeer** (customary law), existed before Somali people were introduced to other categories of laws during the colonial period. Since then, many in the community believe that traditional mediation (Xeer) is the best justice system suited for

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Somalia under current circumstances, in a country where a high percentage of the population is illiterate. The Xeer's oral tradition and emphasis on long-lasting relationships make it effective in a different way. My research argues that Xeer is the most effective way to mediate and resolve the conflict in Somalia given how well it works within Somaliland and Puntland.

This paper also focuses on the role and effectiveness of clan elders in confronting socio-economic, and legal disputes. This study describes the process and the mechanisms utilized by clan elders (traditional mediators) in resolving conflicts within the Somali community. I explain the kinds of disputes, explore the ways elders interpret clan customs and demonstrate why certain approaches are effective, which may benefit international actors as well. Xeer and clan elders have the power to put aside differences and grant peace back to the community, if empowered as in the example of Somaliland and Puntland.

The Somali traditional system of governance and conflict resolution has survived the civil war in many areas, in particular Somaliland and Puntland.

This paper further argues that the Xeer traditional mediation based on customary law is the best tool to use for Somali conflict resolution. I explore why Somali traditional mediation successful in Somaliland and Puntland, when all international reconciliation peace processes failed in the rest of Somalia? Does this suggest that we need to revive Somali Traditional Mediation for peace in the rest of Somalia and why would deadliest terrorist groups like *Alshabaab* seek the support of traditional leaders?

Introduction and Background of the study

Conflict has consistently prompted an atmosphere of miscellaneous and multifarious social discourse that has ascertained a thrilling uncertainty in global, regional and national orders of human wellbeing. While the nature of conflict features may differ in varying context, its discourse in social, economic and political patterns has been coherently almost similar whilst causing death, displacement and a great ordeal of human suffering. The wide-range disparities in defining its causes and drivers, has somehow shortsighted those mechanism ought to mitigate and diffuse this inter-level human crisis. And sometimes an approach envisioned to mediate its impact in a peaceful model, has exacerbated and induced new kinds of conflict instead of its precipitated end projection. Behind all the existing contemporary architecture, institutions and intellectual landscape, inarguably, a clash of pragmatic and viable consensus on the deficiency of these

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Islamic Sharia in Somalia

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Somalis have long been Sunni-Muslim, observing Islamic *sharia*. Religious education was most readily available in urban centers or wherever mosques existed. Some teachers traveled on foot from place to place with their disciples, depending on the generosity of others for their living. The teachers served the community by preaching, leading prayers, blessing the people and their livestock, counseling, arbitrating disputes, and performing marriages.

As a result, *sharia* did not replace, but rather only informed, the traditional societal structures of the clan, *Xeer*, and the authority of the elders. In the colonial era, Somali clan elders in fact became the protectors of Islam and traditional society and ordered their people to reject the spread of western education. As a result, most parents would not allow their children to attend school as a protest against westernization in general. A sort of educated or adapted Islam, therefore, continues to play a major role in Somali culture and way of life.

The regional groups also exercise strong influence on both the political leadership and traditional structures. The mosques are not only a place of worship, but also used as a place from which to spread social issues. It is a center for families to solve their disputes, such as marriage and divorce or any other disagreement between close families. Islamic Sharia and the dominant pastoral lifestyle together shaped the values and norms that distinguish Somali society and their *Xeer*.

Somali Social Structure

The importance of the clan for daily living encourages individuals to live in close proximity to their families, and that is what creates the Somali village. The need to be safe from hostile clans is what obliges one to reside in the village of his forefathers, even as the nomadic elements of the culture maintain mobility in order to secure water and grazing lands. From time to time, such circumstances will force opposing clans to live in the same village. In the south of Somalia, however, society is different, as the communities there are farmers who tend to live in one village permanently. Clans do not mix, and the region as a result was historically more peaceful than the north and central, until the civil war started a new phase in South Somalia. Somali villages and nomadic communities have more open conflict than big cities, but the omnipresent clan structure provides for a more open style of conflict resolution as well. Clan elders and Somali *Xeer* were always an integral part of the Somali village, largely because *Xeer* was for centuries the only effective source of managing conflict and ensuring community cohesion and thus played a major role. The key, therefore, to understanding the political constitution of and current challenges to Somali society lies in a more detailed understanding of the concept of the clan, its elders, and *Xeer*. This will enable us to grasp its importance and permanence for the nation.

According to Joakim Gundel report, “The predicament of the elders “Odey, is the overarching family clan is the foundation for an agnatic lineage system.

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21 - 23 December 2018, at the B. The clan subdivides itself into multiple columns of descending categories of clans, sub-clans, primary lineage, and "Mag" known as the paying group.

This group is the social formation of lineage members that ensures social security, economic viability, and physical protection. Mag-paying group is the most stable unit in the social structure; members of the magi-paying group have an informal contractual agreement to support one another and to share payment of a fine (mag-payment), however and from whomsoever it is levied. Clans within the Somalis are established into smaller units based on the mag, which are blood payment or compensation systems, measured in camels, the most prestigious and expensive animal in Somali community. The rules of *mag* are fixed and known throughout the community, establishing a means of certainty that guides the conduct of the members of the group. For example, the compensation for taking a man's life is one hundred camels and the compensation for taking a woman's life is fifty camels. Liability under the *mag* system was collective and as such the *mag* group as a whole is supposed to compensate for the loss that is occasioned to a victim of the acts of one's of its members. *Xeer*, mediated by the clan elders, determines the norms that govern conduct and relations within and beyond the Mag-paying commune.

Somali Customary Law "Xeer"

To sums up the Somali lineage ethic with a well-known Somali saying: "My cousin and I against the clan; my brother and I against my cousin; I against my brother." Within this system, alliances among warring lineages can be formed, while kin who are supportive in one situation can be predatory in another. Traditionally, disputes and conflicts in this agnatic society are resolved through *Xeer*. Clans in a specific area agree both within themselves and among themselves upon certain traditional laws. For example, rather than using written contracts, Somali clans practice intermarriage between different sub-clans as a legitimate means for establishing and strengthening inter-clan relationship and *Xeer* agreements, especially concerning the usage of grazing and water resources (Gundel and Dharbaxo, 2006).

Such moral agreements, guided by *Xeer*, call upon sets of generalized cultural concepts and may be viewed as the due process in dispute management and settlement. To a larger extent, however, *Xeer* may be a specific contract entered into between individuals and between groups. These contracts are twofold: *Toll Xeer* (clanship, lineage) and the inter clan. Both types are activated at points of tension either between individuals or between clans as their individual or collective social, political, or economic pursuits collide. In all cases whatsoever, the guiding principle of settlement for *Xeer* is the safeguard of social cohesion; litigation is carried out within the framework of this goal.

All immutable, fundamental aspects of *Xeer* are directly related to the maintenance of basic social bonds necessary to human survival. Its core principles include the following.

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- Collective payment of Mag. This can occur in cases such as death, physical harm, theft, rape, and defamatio.
- Inter-clan conventions on protection and security, especially in time of war. For example, there are rules that govern the untouchable group Biri Mageydo, “spared from spear.”
- Family obligation including payment of dowry (yared, dibar, and maher).
- Resource-utilization rules regarding the use of water, pasture, and other natural resources.

Most Somalis, both rural and urban dwellers, observe *Xeer* norms, which are the first and preferred recourse to engage the justice system, even before Islamic *Sharia* or constitutional law. Within the clan, the elders, or other traditional mediators, use their judgment and position of moral ascendancy to apply *xeer* in order to find an acceptable solution to various conflicts.

Traditional Authority: “Clan Elders”

Decisions was/are based on consensus within the elders and may be rendered immediately. Resolution may involve forgiveness, a mutual formal release of the problem, and, if necessary, the arrangement of restitution. Power in the rural communities was mediated through traditional elders. The effectiveness of customary law and codes of behavior was weakened by modern politicians who used tactics of divide-and-rule among the clan elders to pursue of their own agendas.

Since primeval times, the clan elders have played a major role in terms of security and social cohesion. The elders in Somali communities form the customary mechanism of conflict management by through “Xeer” to the conflicts and issues arising within the clan or among different clans. These elders command an authority that makes them effective in maintaining peaceful relationships and the community-centered way of life. The elders derive this authority largely from their historical position in Somali society. They control resources, marital relations, and networks that go beyond the clan boundaries, ethnic identity, and generations. Many Somalis also believe that the elders even hold supernatural powers.

Trend analysis and Current situation in Somalia

In the last decades, Somalia has witnessed different informal and formal governance systems; warlords and Islamic extremists conducting immense atrocities and piracy, clouding poverty and anarchy prevail. The civil war had multiple complex causes, including political, economic, cultural,

and psychological. Since the fall of the central government in 1991, various warlords have simply fought against one another, a fight over sharing and shaping of power and resources. In the past 51 years since its independence, Somalia has had only 9 years of multiparty democracy, 20 years

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of military dictatorship, and almost 25 years of anarchic civil war. The war-loads based on clans protection was succeeded by Beneh phase (known as Union of Islamic Court which many believe received financial support from Arab countries. Furthermore, Ethiopia's occupation of southern Somalia heralded a more dangerous era in the horn of Africa. Somalis perceive the United States as supporting the Ethiopian presence in 2007 and the reprehensible behavior of Ethiopian troops in their country. Somalia and Ethiopia have had a long history of animosity and have fought several wars against one another. The war of 1977 was the major conflict of the Cold War era.

Furthermore, religious extremist (Al-Shabab) established itself in Somalia. This group carried out the most horrific acts of human insecurity in all its folds. *"In East Africa, the Somalia-based terrorist group al-Shabaab remained the most potent threat to regional stability, having regained territory in parts of southern and central Somalia"* (Country Reports on Terrorism 2016 - US Department of State). Equally, the Somali based Hiiraal Institute 2018 study explains *"The group skilfully uses clan elders to manage and control local populations, collect taxes, raise armies, and settle disputes. (Taming the Clans: Al-Shabab's Clan Politics)*

The country currently share mixed system of federal governance whereby a 4.5 clan based system is intertwined in a contemporary governance stamped with ailing democracy, whilst raising eyebrows of numerous contentious gaps.

Prospects of Hope: Somaliland and Puntland

The civil war has generated general confusion and apathy, a loss of psychological peace, a loss of hierarchical discipline of society, a lack of conformity to religious and cultural norms, and the violation of traditional forms of law and order. Although this instability greatly affected all areas of Somalia, nevertheless two regions to the north, Somaliland and Puntland, have remained relatively calm and more peaceful.

When compared with the southern regions of the country, these two states have displayed a remarkable social cohesion. Their stability atmosphere has attracted thousands of people from outside its original indigenous groups; Puntland and Somaliland have, in fact, doubled the socioeconomic and security burdens of this area. These two regions have somehow broken away from the rest of the country and now operate independently, while a federated government and Islamist factions continue to rule the rest. Therefore, a more careful examination of these two regions may shed some insight on creating a sustainable peace in the rest of the country

For its part, Somaliland sits in the northwest part of Somalia. The region declared its independence unilaterally in 1991 but has not been recognized by the international community. Since 1997, the last clan conflicts were resolved and Somaliland has been characterized by relative stability and functioning government institutions. Its legislature is composed of a House of Elders and House of Representatives. At present, Somaliland has a three-party political system

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and democratic elections have been successfully held for the offices of the president, parliament,
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This remarkable development in Somaliland stem in part from a 1993 conference that began to provide for a sustainable peace in the region. The Borama Conference did not end conflict in Somaliland region, but it did result in an interim constitution that eventually led to a more lasting peace. The constitution ensured popular elections for the local government, a president, and a lower house of parliament. The success of the 1991-1993 process was built on a set of deeply embedded social norms that emphasized the importance of dialogue between antagonists; a willingness to accept that the most complex grievances would be set aside indefinitely to avoid the contentious process of negotiating compensation payments; the opening of space for the intervention of mediators; and a sustained commitment to consensus building in preference to divisive voting. In short, local resources have been employed effectively in the cause of achieving a lasting peace and what appears to be an able system of democracy .Therefore, the methods used in the Borama conference recall and honor the long-standing Somali traditions of the clan-centered society, the role of *xeer* in conflict resolution, and the authority of elders

Puntland, which was declared an autonomous state in 1998, lies in the northeast corner of Somalia. Puntland avoided the spiral into war that engulfed the south:

“In 1991, after the collapse of the Somali state, the Somali Salvation Democratic Front (SSDF), which was one of the opposition factions against Barre, was the only political and military structure that existed in Puntland. The SSDF leadership, supported by the population, had directed its political and military actions toward defending its territory. After a series of locally sponsored conferences, in which a traditional council of elders (*Isimada*) played an important role, the SSDF leadership and community elders at last took positive steps toward peace, calling for an allinclusive general conference in Garowe in 1998.”¹

Today, Puntland is less stable than Somaliland, but nevertheless carried out a peaceful transition of government through democratic elections. Another peaceful political transition was achieved in late 2008: A new parliament was sworn in, and a new president was chosen by that parliament. Furthermore, the office of the minister was created to oversee the ongoing democratization process. In that same year, the Puntland Regional State was formed with its three branches of government: the legislative, the judiciary, and the executive. The creation of the Puntland state was a by-product of the instability and confusion of the greater Somali political arena by then and

of the failure of so many efforts in the national reconciliation process. The people of the region, who share a common ancestry, decisively agreed to move forward to form their own Puntland State of Somalia.

Therefore, the two northern regions of Somalia, drawing on their common ancestry and heritage, have been able to bring a certain measure of stability out of the chaos of civil war. The same

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cannot, however, be said of the central and southern areas of the country. “Despite the abundance of local village-level peace processes, there has been no establishment of a more durable government structure of the types that have emerged in Puntland and Somaliland. Certainly, traditional elders have played a critically important role in mediating and regulating the interactions within and between local communities. However, a number of factors have made their quest for peace at a national level more difficult.

First, “the powerful, clan-based faction leaders, or warlords, that have emerged from the conflict in south central Somalia have consistently challenged the traditional elders’ authority. During the prolonged period of chaos and lawlessness, such leaders, along with politicians and businessmen, recruited armed militia to further their own interests. They also promoted their own choice of elders, who lacked local legitimacy and thereby undermined the traditional system of leadership” (Amber, 2007).

The second complicating factor is simply that the south is a more resource-rich area. The economic center of the region, is a coveted prize for warlords and businessmen seeking to exploit its wealth. This is evident in the contested transit routes leading to the highly populated ports of Mogadishu and Kismaayo. Many warring clans desire easy access to rich and fertile agricultural lands, close proximity to the fishing industry, and the abundant agriculture and livestock of the region.

Most importantly, the south has been concentrated with power and decision making with massive foreign interventions and peace brokers.

With this brief history of Somalia and deeper understanding of the current state of its various regions, we are now equipped to evaluate the country’s need for mediation and a peaceful resolution to its longstanding conflict.

Western and Somali Traditional Mediation: A Literature Review

Conflict and attempts at its resolution are a universal human phenomenon. In order to better understand Somalia’s situation and possibilities for its recovery, we require a broader view of mediation. Through a review of current mediation literature, we describe both the Western and

traditional African approaches to conflict. We hope to make possible analysis and evaluation of Somalia’s particular circumstances.

The Western-style Mediation: Western mediation is first a voluntary, confidential process to which a neutral third party is invited or accepted as the adversaries dispute issues of mutual concern. As Kew (2002) points out, “Typically in the Western approach to establishing triangulation, the mediator has some distance from the parties within the context of the conflict and is subordinate to them, in the sense that the mediator plays a service role.” The adversaries,

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21 - 23 December 2016. The basic principles of mediation include voluntariness, self-determination, impartiality (or neutrality), and confidentiality (Mediation Training Manual: CDSC; 2010).

Western cultures tend to be individualistic; that is, they assume the human person to be ego-centric rather than other-centric. Second, it is based on the assumption that power and status are earned by individuals rather than received due to one's family or birth. Third, conflict and mediation are seen as rational and formal processes; structure is crucial to resolution, which is achieved as a sort of business agreement. Therefore, leadership roles (i.e., the mediators) are highly specialized: technical, impersonal, and professional expertise in mediation is valued as criteria for trust. Finally, time is seen as a commodity to be used efficiently in order to affect a resolution as quickly as possible

Somali Traditional Mediation: Somali traditional forms of conflict resolution. In contrast to the Western-style of mediation, traditional mediation dates much farther back in human history and can be found in almost every culture. Because it pre-dates the modern state, traditional mediation often appears in the aftermath of widespread conflict where no other mechanisms for social regulation exist. This is evident in the case of war-torn states such as Somalia, in which indigenous mechanisms provide order when external influences have only promoted chaos. Thus, a review of traditional mediation as an alternative to Western techniques will foster a deeper understanding of Somali processes involving the clan, elders, and *Xeer*.

According to Augusburger (1992), whose work includes cross-cultural studies of a myriad of human societies, despite modern technological advances, most societies have opted for more traditional processes in resolving disputes, although the form that the process takes will be determined by the culture of the society involved. Thus, unlike the West, due to its philosophy of individualism, mediation tends to resolve conflict through personal action and self-determination rather than through direct confrontations between the antagonists. In contrast, more community-oriented traditional societies like Somalia, have produced mediation processes that make central the indirect and third-party system of a go-between the disputants.

The fundamental characteristics of traditional mediation follow a mode of negotiation or arbitration rather than resolve the conflict or issue in the court room. Second, tribal norms preclude violence and coercion as a means to resolution, since serious violence destroys the possibility of living together in a single community. Instead, the tribe itself enforces the terms of the resolution. In order to avoid the breakdown of the community, conflicting parties always attempt to find a compromise between their claims rather than fulfilling the demands of each. Finally, the tribe requires that not only the antagonists but also their neighbors and relations take sides in the conflict. No conflict occurs in isolation, and therefore mediation draws in the entire community.

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The community alone, however, is not enough to sustain traditional resolution processes. Authority figures, in the persons of tribal elders, are central to community dialogue and decision-making.

The indigenous nature of these mediators is necessary: Conflicting parties are more likely to accept guidance from mediators from within their own communities than they are to receive third-party, neutral mediators. This is primarily because accepting an elder's decision—even if it requires a personal loss—does not necessarily entail any shame and is reinforced by local social pressure. The end result is, ideally, a sense of unity, shared involvement and responsibility, and dialogue among groups that otherwise would be in conflict.

The elder's status within the community is well-established: His life-experience and birth provide the basis for a profound trust between him and both antagonists. Because the traditional mediator comes from within the very community that bears the burden of the conflict, he transforms that conflict into an opportunity for building relationships. The entire process can then become an informal, familial gathering based on trust and mutual interests. The elder shares basic cultural norms and accepts the same pre-legal norms as the antagonists. Thus, his decisions and judgment are to be trusted.

At first glance, the village elder model might appear to be a form of arbitration rather than mediation. The elder, however, does not simply adjudicate a decision. Rather, he seeks to achieve a resolution through the process of mediation itself by striving to address its primary, or root, causes as opposed to simply negotiating a limited settlement to the immediate crisis. He passes judgment on actions that transgressed community standards and were committed by either one or both parties. Thus, each party must do to rectify the situation and restore their good standing in the community.

In sum, traditional mediation provides a stark alternative to more prevalent Western-style mediation techniques. Rather than catering to individualistic goals, traditional processes demand a more community-centered resolution to conflicts. In order to preserve the clan—and, in so doing, to preserve individual members—antagonists must openly discuss their differences and come to a compromise that their neighbors and family members will enforce. Their discussion is

mediated, not by the neutral and alien third-party, but by the tribe's or clan's elders who seek to heal the wounds of the community.

Mediation Techniques, Restorative Justice and Transformation

Mediation techniques, whether Western or traditional, are only as good, however, as the effect they have on real-life conflict situations. In the ideal, both the Western and traditional processes can claim certain strengths and have, historically, led to agreements and treaties among various peoples. Mediation literature refers to such hybrid approaches as “restorative justice.” This section will (1) examine the meaning of restorative justice as a solution to conflict and then (2) turn to the goals of transformation theories of mediation, which complement and expand upon

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Restorative justice theory takes many shapes but carries several universal themes, examining the phenomena of victimization, encounters, reconciliation and reparation, as well as collaborative decision-making. This theory provides a creative response to the trauma of crime, recognizing that victims have many needs that transcend the capabilities of current criminal justice systems.

King explains that these programs typically display four key values: First, they create opportunities for victims, offenders, and members of the community who want to encounter one another in a safe setting. These discussions provide an avenue for “restoring,” as it was, the communal life that was destroyed by crime or conflict. Second, restorative justice programs encourage offenders to make amends to repair the harm they have caused. Third, they seek to reintegrate both the offenders and victims as fully-functioning, productive members of the society. To that end, they provide opportunities for all parties affected by the crime—offender, victim, and neighbors—to participate in the conflict’s resolution and reach a satisfying agreement (King, 2008).

Mediation, however, must go beyond mere resolution: The ultimate goal of conflict resolution is to change people from within. Former enemies, through mediation, should gain a broader perspective and even empathy for each other. This new understanding between people, or “transformation,” is the measure of mediation’s success. Recently, scholars of global conflict have emphasized that mediation’s greatest value lies in its potential not only to find solutions to people’s problems but also to change people themselves for the better (Folger, 1994). Thus, both Western and traditional forms of mediation must be evaluated in terms of their ability to transform the communities they affect.

Bush and Folger note that mediation’s transformative potential stems from its capacity to generate two important effects in the opposing parties: empowerment and recognition. “Empowerment” means restoring to individuals a sense of their own value as well as confidence in their capacity to handle life’s problems. “Recognition” means evoking empathy for the “other” and acknowledging the complexities of a conflict situation. Mediation that has achieved recognition in the opposing parties has also brought out and convinced the antagonists of the intrinsic goodness that lies within each human being (Bush and Folger, 1994, 2005). When both empowerment and recognition arise through the mediation process, conflicts become opportunities for moral growth, and the transformative potential of mediation is realized.

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With this deeper understanding of the transformative goals that ought to inform mediation processes, we are poised to evaluate both the use of Western methods and the successes of traditional methods to resolve conflicts and change entire societies. Modern scholarship on transformation theory will provide the analytical framework within which we can define the way forward for Somalia. We will assess the potential of the clan, the tribal elder, and *Xeer*—as alternatives to Western techniques—to transform native societies based on their ability to build consensus and inspire a lasting forgiveness between warring parties. The village elders are usually seeking to develop theoretical and practical foundations for building peace within the community by using the models of conflict transformation mediation and restorative justice, so that conflicts can actually strengthen both parties themselves and the society they are part of.

In sum, the effectiveness of traditional mediation can be assessed based upon the following impacts:

Transformation: the mediator responds to the issue by referring the disputants to wider social issues.

Consensus building: the mediator reminds the disputants of the wider contexts of the community, social relationships, and productive corporations. The dispute and the settlement must manage within this wider context.

Forgiveness: the process leaves the disputants with good will toward each other. Somali traditional Mediation (*Xeer*) has the potential to lead to a lasting peace in Somalia, as the clan elders have the power to encourage peace in their respective regions. Even in the absence of government, the Somali people have engaged their own resources and culture based on traditional mediation to restore security in many areas.

The northern polities of the Republic of Somaliland and Puntland State of Somalia are evidence of what Somalis can achieve. Even in the volatile south central Somalia, there has been evidence of the positive impact that Somali approaches to reconciliation and security management can have (Bradbury and Healy, 2010). Forgiveness, consensus building, and transformation are what Somali elders rely upon in their mediations to create a lasting peace.

Case study: The Effectiveness of *Xeer* in Somaliland and Puntland

We may all agree that the disease which Somalia suffers today is of Somali origin. It is an old virus variety of clan politics, aided by modern weapons and foreign interests. Clan or sub-clan politics and conflict are not new, for these have been with Somalia since they formed a Somali community early on. We should ask ourselves; how did they get along with each other? The answer is very clear for anyone who is open to see it; it is programmed in Somali traditions.

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- These communities have a strongly traditional law and clan elder leadership, which manage conflict through dialogue.
- The clan leaders have trust and respect from the members of their community.
- Somaliland and Puntland political leaders believe that given the necessary support and facilitation, the clan elders will be able to do much more for the development of the peace and security in the regions.
- Somaliland and Puntland clan elders and political leaders believe that international intervention will have only a temporary effect, such that there is no substitute to the genuine effort of the Somali leaders to put their difference aside and put their house in order, and bring an end to their hostilities.
- The mediation process in Somalia is a powerful tool for satisfying the genuine human desire for justice and to the individual dispute and most importantly, the interest of the community.

Both Somaliland and Puntland are evidence of the effectiveness of the revival of traditional structures after the state collapsed in 1990. As Gundel stated, “the 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” (Gundel, 2006). In this way Somaliland and Puntland built a traditional grassroots peace building process based on trust and confidence among communities, which provided indigenous peace and governance from the ‘bottom-up’ and made Somaliland unique in the Horn of Africa.

Characteristics of Xeer

Somali traditional mediation is an oral tradition. Clan leaders are not trained or educated to become state leaders, political thinkers, intellectuals, government functionaries or professional managers of a modern state. They do not write modern constitutions, elaborate penal systems build sophisticated judiciary structures or adopt parliamentary democracy procedures. They have their own system regulated by the Clan Xeer (Customary law), which is based on clan lineage culture, traditional values and partially influenced by Islamic Sharia (Shuke, 2003).

This is why it is vital to understand the importance and the complexity of the Somali Xeer. The difficulty emerges from the fact that Xeer is oral law. Laws are amended over time in societies as times change but the Somali Xeer endured such changes. For example, blood compensation and Xeer (Mag) Marriage (Guur) have not changed, because they are based partially on Islamic Sharia and not only Somali traditional customs.

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In the Xeer mediation, there is no strict formula, but several elements (characteristics) of Xeer are very important to the community and their expectation of the outcome. If the starting point of the process does not meet the characteristics of Xeer, usually, is not easy to reach the objective or goals such as; “consensus building, community relationship, transformation and most importantly forgiveness and recognition”. In other words the objective is to restore harmony and social order in a given society.

The community members involved in the conflict participates in the dispute resolution process. All participants have their own role to play the mediation. These community members can include traditional authorities such as elders, chiefs, religious groups, women’s organizations, local institutions and business professionals. Opening and closing ceremonies and poems and proverbs also play major roles in the mediation process and make the Xeer unique.

Chiefs and religious groups are highest in position to open and close the mediation process, usually they create the spiritual atmosphere and remind the parties to forgive each other and respect their clan elders. Also they encourage the clan elders to do their best mutual agreement and remind everyone of the past conflict experience. Business professionals are treated the same as Chiefs and religious groups, but usually do not settle disputes themselves. Instead, their task is to encourage rivals to make peace. Clan elders can be part of the religious groups same as the religious leaders can be clan elders. Somali people tend to trust more the religious man who is also present as clan elder.

Proverbs and poems and peacemaking skills are used to ease the tension. Usually they use as starters points, and then the parties forget the personal interest for the sake of the public interest. Somali elders manage the emotion and the communication where the mediators help people to express their emotions mostly in poetry or proverbs. This helps Somalis express their feelings and it makes easy for mediators to understand party positions. Poetry, which is the most celebrated and respected art form in Somalia, is used for the cause of peacemaking. It is widely understood and enjoyed and like the mass media in the west, it has the power to influence opinion.

In the Somali tradition poetry was the way they express happiness, sadness, promote war and later the message of peace. Poems sent through messengers were passed between parties as a means of dialogue. When Somali elders sit under a tree for mediation of parties, the ceremony is opened with the Quran and poems. Proverbs are recited in the dialogue to show wisdom and understanding of the issues at hand and how the proverb relates to the case. In Somali society poetry and proverbs provide wisdom and a reliable vehicle of communication to help the coherence of society.

Clan elders are main characters in the process of mediation. They are the ones whose judgments produce the outcome in mediation. The question is who meets the criteria to become a mediator. There are several characteristics for one to poses in order to be nominated as a mediator; First

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and most important is the elder should have religious knowledge and fear of God; they should remain loyal to the truth, justice and concern for humanity. They should know the society's history, traditions and norms. They have to have the ability to express and explain, convince, bring together and reconcile by exposing sometimes painful and embarrassing facts. Oratorical skills and ability to facilitate a difficult conversation can qualify one to become a mediator. As a mediator possessing all or some of the above characteristics can make one gain the respect of the clansmen based on a combination of heredity, reputation, and proven skills and ability to deliver justice. For example, I remember my father telling me that his clan nominated him to become an elder, but only after he proved his worth by successfully negotiating the return of some stolen camels. Appendix A also offers a great example of how communities need the elder's wisdom.

Conclusion

Somalia is a place of great suffering. There is famine, civil war, clans fighting for power and all the crimes that go along with them. The consequences of war go far beyond physical damage. The Somali crisis has witnessed not only the collapse of state institutions, but also social institutions: traditional authority, cultural values, marriage, and kingship solidarity are among the societal casualties of the long years of conflict and chaos, and also many Somali youths have no memory of a functioning government or the rule of law in their own country.

One can't discuss present Somali politics without focusing on the roots of the problem; this will enable us to build the framework for any future peace process. Then we can move toward a phase of reconciliation and mediation to talk about stability, peace, development, and human security.

Many scholars believe that the current conflict is tribal. Each clan believed that they are the victim and suffered. None of the clans consider themselves as perpetrators and that is why the Somali people lost the reconciliation track. The lack of trust however, is entirely due to the clan politics that politicians have exercised in order to favor their own clan. The current mistrust for Somalia originated from independence due to poor leadership, but the confusion of Somali clan mentality is the driving force of the Somali conflict.

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When the clan elders free themselves from hatred, bias, and stereotypes and then come together as Somalis and share their wisdom and knowledge from their wise men and within community, trust will be restored. Somalis survived for centuries by allowing the elders to play their roles. Somalis must find a way to return and revive Xeer (Somali Traditional Mediation). Once the Somali clan elders find a way to communicate again and start resolving conflicts that exist in their communities one at a time as they did for centuries then we will see peace return to Somalia. The participation of the Somali elders will also pave the way for a larger reconciliation process. We must remember that there are three major laws which Somali people practice normatively whether written or unwritten:

- 1) **Somali-penal System:** The first was Somalia's codification of laws designed to protect the individual and to ensure the equitable administration of justice. The basis of the code was the constitutional premise that the law has supremacy over the state and its citizens. Unfortunately, there is no strong central government to implement this law.
- 2) **Islamic Sharia:** Islamic teachers served the community by preaching, leading prayers, blessing the people and their livestock, counseling, and performing marriages. Although the Sharia law plays an important role in Somali culture, they do not settle disputes themselves or sit in judgment. Instead, their task is to encourage opponents to make peace.
- 3) **Somali Traditional Mediation (Xeer):** There is no argument that this traditional mediation (Xeer) existed before Somali people were introduced to the other two categories. The whole process rests on the sincerity and truthfulness of the elders, their skills as mediators, and their just application of Xeer agreements. Xeer is more than a contract. It shapes basic values, laws and rules of social behavior.

Clan elders are a potential source for reconciliation because of their ability to shape relations between warring groups. Instead of focusing on differences, the common bonds of language, religion, traditions, and inter-clan marriage, can unite communities. The Somali system like other African nations seemed to have a way of resolving conflict that outsiders may not be well versed with. This is more effective first because it originated from the people and second it sustains itself. If this can be incorporated in all mediation processes then there is no reason why peace will not be attained in this country that had endured years of turmoil.

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With respect to the resolution of the conflict, the unity and peace of the Somalis, as well as their mutual understanding, are based on the Xeer. The Xeer stands at the center of the Somali identity; without it there could not be a Somali nation. The Xeer is both father and child of the Somali nation. It protects the sovereignty of every Somali. The Federation must respect the Xeer and leave it free to develop into a modern body of law than manipulation.

Somali Traditional institutions are governed by a set of customary and traditional laws that deal with the needs of the local people. These laws were made and used over many centuries and are appropriate to restore people's need to manage their lives in the environment they live. The traditional institutions mirror and represent the local peoples' culture, feelings, mode of behavior, social and economic relations and the rules of dealing with other groups and political establishment. Seen under this perspective, and in absence of a political authority capable of enforcing efficiently its statutory laws in a pervasive manner to all pastoral and nomadic communities, it seems unavoidably necessary to consider incorporation of those aspects of the

traditional mechanisms that are absolute and relevant into the legal and political system. The Somali people stoutly believe and trust traditional structures more than in the western designed model of governance, in which the clan characteristics is not defined and recognized. The Somali Xeer makes the parties feel that religious and cultural obligations were fulfilled after the mediation is completed. *As a Somali adage goes; "if clan elders convicted my son, the remaining question is: did he accept the decision made by the council. If yes, then by God he is indeed the one I gave birth to."*

"People do not resist or reject decisions made through traditional mechanisms or Islamic Sharia (both are intertwined and overlapping), because people know them, respect and abide by them" (Shuke, 2005). People tend to refuse to go along with and reject modern governance structures and laws developed by the western system. Somali society is an oral society, and people do not read constitutions, penal and civil codes, security laws and other unidentifiable laws hidden in thick books and require long processes involving police, lawyers, courts etc.

The Somali peace process needs the wisdom of Somali clan elders, technical advisors, artists, women's groups, and moderate religious groups in order to create the atmosphere to support confidence-building among the community. Efforts by the international community to contribute to peace and stability in Somalia should be guided by the question of how a peace process could be supported that is owned by the Somalis themselves.

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Recommendations:

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The most important step is to start meetings of community traditional elders (*Caaqil*) in each given region in Somalia. This step will expedite the possibility of having Somali network of traditional elders and will revive the role of the Somali elders used to play in making peace. It is important that Somali elders be given housing centers where meetings can take place, as there is vast distance between regions in Somalia and transportation is not good. There must be a way to facilitate the elders getting to know each other, as it will prevent conflict better when they know each other. There must be a way to fund the elders meeting and centers so the work can continue. We cannot put a timeline on the process and how long it continues. This is a revival of the fractured Somali traditional conflict resolution mechanism and it could take some time and resources. The Somali elders must take responsibility once it is placed on their shoulders and revive their role in the community. This was a lesson learned from Somaliland and Puntland

where the elders took a significant role to revive Somali (Xeer) and contributed to a sustainable peace in their regions.

The international community could advance the course by promoting Somali traditional mediation or local dispute resolution mechanisms, by paying attention to the traditions, customs, cultures, and roles of elders and by learning about the community structure in areas where external players are operating programs, which includes the role of the elders, women, and young people.

Using traditional authorities to implement activities other than conflict-resolution activities, such as development or relief programs, can help jump-start intra-community dialogue that has broken down. Equally there is need to find ways on how “xeer” can be incorporated in modern governance system and double edged civic education might be an opportunity to reconcile the clash between modern and traditional system conflict management mechanism

Women play a unique role in conflict management and resolution in the Somali community and external agencies can recognize the importance of this role and promote the inclusion of women in mediation among the Somalis.

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