

Structural Transformations in the Somali Setting in the Face of Protracted War and State Collapse

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This article looks into selected political, legal and social dynamics in Somalia before and mainly after 1991, when the government of Mohamed Siyad Barre was toppled and the state faltered. The guiding question is in how far Somali ingenuity provided solutions for problems caused by the absence of overarching, stable and effective government structures. The argument is that, on the one hand, protracted conflict and statelessness was of course hugely destructive in the Somali setting; but on the other, it has brought about chances to change, transform, test the limits and pave the way for innovations.¹ Thus, from a certain perspective, civil war and state collapse were blessings in disguise. This is not to ignore the downside of the crisis in the Somali setting that is far from over and is still driven by internal and external spoilers. The aim is, however, to go beyond the usual buzzwords used when talking about the Somali disaster, such as ‘warlordism’, ‘state collapse’, ‘terrorism’ and ‘piracy’ and look what has developed during crisis in a creative and constructive manner.

Structural transformations New states

The violence in Somalia from 1991 onward did not only give rise to the dissolution of the state. It also provided space for the political reorganization within the boundaries of the failed state and beyond. Ken Menkhaus, a long-term observer of Somalia, spoke with regard to the situation in the 1990s about the ‘radical localization’ of politics in collapsed Somalia.

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Many clans and sub-clans sought to establish their militia and local stronghold (some were more successful than others in that; and so called minority groups were not able to create their own military basis, due to structural marginalization, lack of access to resources and lack of ‘warrior traditions’). Besides warlord fiefdoms there were also areas

controlled by the armed Islamist group Al Ittihad Al Islami (AIAI). This group briefly controlled the port of Bosaso in the northeast. Once it was evicted from there by rival warlords, AIAI established its ‘Caliphate’ in a place called Luuq in southwestern Somalia, near the Ethiopian border. These local forms of rule were genuinely instable, because they were mainly based on the use of armed force. In the warlord rules, force was complemented by ‘clanism’, a sentiment binding descendants of a common patrilineal ancestor together (and actively manipulated by clan politicians and militia leaders). In the Caliphate of AIAI, Islamist ideology together with force was used to increase cohesion and stability. Additionally, the Islamist leaders accommodated clan to some extent and cooperated with local elders. However, warlord and Islamist fiefdoms rarely existed for long and in a clearly demarcated territorial shape; there was a lot of competition and warring including external interferences.

Ethiopia, for instance, paid certain warlords against others or against AIAI, and Eritrea supported Ethiopia’s adversaries (after the honeymoon between Addis Ababa and Asmara was over in the mid-1990s).

In 1996, Ethiopian air force bombarded Luuq to end the threat which AIAI activities in the Somali region of Ethiopia (also known as Ogaden) posed to stability in the country. These local rules rarely featured a bureaucratic and transparent political and legal order. Elders, militia leaders and sheikhs took the decisions, based on customary law, shari’a and personal considerations backed by armed force. This means that warlord or Islamist rules were not ‘chaotic’ or ‘lawless’; but they certainly were not ‘state-like’.

The first state-like entity that emerged out of the ruins of civil war and collapse was the Republic of Somaliland. Territorially, it comprised of northwestern Somalia that had been a British Protectorate until 26 June 1960. The remainder of Somalia, the northeast and the south, had been under Italian colonial administration. On 1 July 1960 both entities united to form the Somali Republic. But post-colonial statehood descended into dictatorship. In 1981, members of the dominant descent group from the northwest called Isaaq formed a guerilla group called Somali National Movement (SNM) to fight against the government of Mohamed Siyad Barre (1969-1991). In this fighting, the northwest was devastated. In early 1991 the Somali government was toppled by southern rebels who had been loosely allied to the SNM. The Isaaq guerillas called upon all the clans residing in the northwest to meet to discuss about peace and the political future. At a clan conference in Bur’o the independence of Somaliland (in the borders of the former British Protectorate) was declared. But Somaliland did not gain international recognition.

In the absence of recognition, Somaliland developed into a viable de facto state over the past two decades, featuring all key aspects of statehood (a stable government; a clearly demarcated boundary; a permanent population) but lacking international recognition. But the path to stability and peace in Somaliland was not ‘straight’ or ‘simple’. Initially, the government was in the hands of the SNM. But soon, competition over power and the few lucrative resources in the country (such as the port of Berbera) led to in-fighting between SNM leaders commanding (together with the elders) the young men of their respective clans and sub-clans. Interventions by elders often helped to mediate the fighting. Therefore, Somaliland is frequently mentioned in the literature as an example for the productive and creative use of

Somali traditions of conflict settlement. It is clear, however, that also war played a role in Somaliland’s state-formation. In his analysis of the politics of Mohamed Haji Ibrahim Egal, the second president of Somaliland (1993-2002), Dominik Balthasar argues that, first, Egal successfully consolidated his government economically. Second, Egal actually fostered war between various Isaaq clans between 1994 and 1996 which provided him with the chance to emerge as the uncontested leader of the country (and do away with former SNM commanders). The last ‘national’ clan conference in Hargeysa end of 1996 and early 1997, at which Mohamed Haji Ibrahim Egal was re-elected as president, marked the beginning of increasingly strong and centralized governance in Somaliland, and of relatively stable statehood at least in the western and central regions of the de facto state.

What does this tell us about political transformations in the Somali setting after 1991?

First, Somaliland, like also other local polities that emerged soon after the collapse of the government, exhibited initially a personalized form of rule based on patrilineal descent. It was not much more than a conglomerate of clan fiefdoms led by SNM commanders and elders, held together by the experiences during the guerilla struggle in the 1980s and the declaration of independence in 1991. On the way to stable de facto statehood traditional strategies of conflict settlement as well as hard political decisions including those leading to renewed civil war played an important role. The example of Somaliland shows first, that Somalis are capable of building stable and peaceful polities.

Second, state formation in Somaliland happened without much external help. Since Somaliland was not internationally recognized, it did not received much humanitarian or development aid in the first decade of its existence (things changed in the early 2000s; from then onward, Somaliland received more support short of recognition).

Third, and most importantly: state-building is a long winded, messy and possibly violent affair (the current developments in South Sudan end of 2013 are a case in point). With regard to southern Somalia, where the main focus of the international community lay in recent years, this means that with the so called ‘end of the transition’ in Mogadishu mid-2012, state-formation in this region has only begun.

One cannot expect that the schedule and plans laid out by the new government in Mogadishu and its international supporters are likely to lead to quick success in Somalia.

Hybrid political orders

Somaliland, but also Puntland, which was established as autonomous region in northeastern Somalia in 1998 and the administration built by the Rahanweyn Resistance Army (RRA) in the regions Bay and Bakool in southern Somalia between 1998 and 2002, exhibit what in the political science literature is discussed as hybrid political orders. These orders combine state and non-state or 'modern' and 'traditional' political institutions. In the Somali cases, this means that besides military commanders and/or politicians, traditional authorities are integrated in the political process. They constitute the Upper House of parliament (as in Somaliland), nominate the parliamentarians (as in Puntland) or simply assist with conflict settlement and engage in day-to-day local governance (as in the case of the RRA administration, but also in Somaliland and Puntland). Hybrid political orders in general are seen in the literature as a way to constructively accommodate different types of legitimacy in settings characterized by fragile or weak statehood.

It is proposed here that the hybrid political orders in Somaliland and elsewhere in the Somali setting indeed constitute a remarkable innovation and provided a kind of remedy against chaos following civil war and statelessness. However, a closer look particularly at the well-established hybrid political order in Somaliland shows that these forms of political organization tend to become imbalanced, which can produce new conflict. Thus, the excitement of some authors about hybrid political orders as the way forward for African polities is not justified.

While traditional authorities had played a role in Somali politics already before 1991, hybridity flourished openly once the government of Mohamed Siyad Barre was gone, which officially had fought 'tribalism' (and with it, the political importance of elders). Traditional authorities had supported the guerrilla struggle of the SNM in the 1980s. Once Somaliland was declared, traditional authorities had the main responsibility for peace in the northwest. The SNM leaders soon were confronted with in-

ternal rivalries which escalated into open violence at several occasions between 1992 and 1995 and brought Somaliland to the brink of collapse. In this phase traditional authorities constantly negotiated between the warring groups and thus guaranteed the existence of Somaliland. Their moment of glory was the institutionalization of their powers in the Guurti, the Upper House of parliament at the clan conference in Boorama in 1993. Since then, however, their star steadily sank. The closer the members of the Guurti and other high ranking traditional leaders worked with the government in Hargeysa (Somaliland), the more they lost traditional legitimacy. Simultaneously and as already mentioned above, President Egal managed to establish himself as a strong president in the second half of the 1990s. He bribed Guurti members and traditional clan leaders outside of the parliament to follow his will. Sometimes he also intimidated them, as in 2001, when Egal incarcerated a number of clan leaders who had gathered in the capital to challenge him over a political issue. In this way, the Guurti members and high-ranking traditional authorities became increasingly handmaidens of the president.

This policy was continued under the next president Dahir Rayale Kahin (2002-2010). The Guurti members not only lost their independence (and traditional legitimacy). They also hampered democratic progress. Between 2002 and 2012, a series of democratic elections was held in Somaliland (including two local government and two presidential elections, and one parliamentary election that concerned only the Lower House called Goolaha Wakiilada in Somali). Yet, the members of the Guurti have never been elected since the foundation of the Upper House in 1993, despite the constitutional provision (dating from 2001) that the members of the Guurti had to be elected one year after the members of the Lower House. In 2006, President Kahin prolonged the term of the Guurti by decree. In exchange, the Guurti prolonged the presidential term several times between 2008 and 2010. Some perceived this prolongation of the president's term as illegal. In this period, tensions in Somaliland flew high and many internal and external observers actually worried about massive corruption and autocratic tendencies within the Somaliland government.

Ethnographic research of the author in various parts of Somaliland between 2002 and 2013 showed first, that members of the Guurti as well as high ran-

king traditional authorities outside of the government who got involved with national politics in Somaliland actually lost power. This was mainly related to a loss of traditional legitimacy, which originally was related to solving concrete problems on the ground (e.g., dealing with conflicts over water and pasture), among their followers (members of particular patrilineal groups). From the mid-1990s onward, the traditional authorities successively became a subordinate institution at least in the areas where the power of the government increased (mainly in western and central Somaliland). This transformation of the powers of traditional authorities, from important aides of the guerrillas (mainly the SNM) to peace builders in the emerging de facto state of Somaliland, to dependent and even corrupt 'quasi-politicians' shows the limits of hybrid political orders. Hybrid political orders may be effective in assisting the transition from a war-torn or very fragile context into a more stable form of political existence. But they do not provide a long-term remedy against state fragility and thus should not be counted on for too long.

This also has implications for the ongoing peace- and state-building process in southern Somalia. There, the end of the transition in 2012 was – following a plan by the UN and the transitional Somali government – guided by several hundred traditional authorities whose traditional credentials were not always clear but who nevertheless were put in charge of adopting the constitution and nominating the parliamentarians. The latter then elected the new president of Somalia. From the beginning of this process, accusations of massive bribing of traditional leaders by politicians flared up. One needs to keep in mind that the merging of traditional and modern (state-) authority comes at a cost and can lead, in the medium term, to serious imbalances within a hybrid political order which is neither democratically nor traditionally fully legitimate.

Role of customary Law

Similar to traditional authorities, customary law or *xeer* in Somali regained strength after the collapse of the state. Under the post-colonial governments between 1960 and 1991 it was officially disregarded but continued to play a role at the margins of the 'modern' state. From 1991 onward, *xeer*, together with Islamic *shari'a*, provided the only remaining basis for a kind

of legal order in stateless Somalia.

In a recent article Günther Schlee emphasizes the basic characteristics of Somali customary law (which actually are the same in other similar customary legal systems): retaliation between the conflicting parties or negotiations about compensation to avoid retaliation, and collective allocation of liability and collective payments and distribution of compensation. He goes on to show that customary law is power-sensitive. Like in all bargaining situations, the parties may have different bargaining power. The logic of compensation is based on that of retaliation. The only purpose of compensation is to avoid retaliation. Therefore, the stronger partner in negotiations can demand a 'better deal' for itself, otherwise it may resort to retaliation.

This leads to the conclusion that customary law, which provided a legal basis in the absence of statutory law in Somalia since 1991, should not be confused with a system that – like state law, at least in principle – aims at providing equal justice for all. Therefore, statelessness certainly did not mean lawlessness in many regards, but it certainly meant quite different chances to get justice for different social groups (women, men, majority groups, minority groups). Individual accountability was replaced with collective accountability, and retaliation frequently prevailed over compensation. Punishment in the western legal sense was almost absent. This means: from 1991 onward, most perpetrators committed their deeds with impunity and only, at best, collective responsibility was established. This was different under the governments before 1991 (it was also partly different under the Union of Islamic Courts and al-Shabab that effectively ruled much of southern Somalia between 2006 and 2011 and used *shari'a* which knows individual accountability). This transformation from a statutory to a customary legal order over the past decades has long-term effects for the currently ongoing reconstruction process in Somalia. In many areas of Somalia, people have only a vague memory if at all of statutory law. Any new legal system has to prove its effectiveness before it becomes accepted in a setting in which customary law and *shari'a* had filled the void left by the collapse of the state institutions. Even in Somaliland and Puntland in northern Somalia, where effective state-like orders exist since over a decade, customary law prevails over statutory law, at least in the vast rural hinterlands.

Empowerment of Women

The last transformation I would like to highlight here concerns the social, political and economic status of women in the Somali society. Somali society can be characterized as patriarchal to the bone. But upon closer examination, one can argue that civil war and state collapse provided a blessing in disguise for Somali women. In pre-colonial and post-colonial time until 1991, Somali women played hardly any role in politics. They did not feature at all in the democratic government between 1960 and 1969. Even the socialist government under Mohamed Siyad Barre empowered women only rhetorically. But actually, women gained very little political power during that period. Women were sometimes used for propaganda campaigns, yet the Politbureau consisted only of men; in the Central Committee there was only one woman out of 76 members; in the 51 member council of ministers there were only two female vice-ministers, and only around 6 per cent of the parliament were female. In the economic sphere, women were in pre-colonial, colonial and early post-colonial time largely confined to the nomadic or urban household and were supposed to look after the children, the animals and the house. In the countryside women contributed substantially to the pastoral-nomadic economy, but this did not translate into high social or political status. Up until 1991, Somali society remained essentially a patriarchal society, despite national discourses about modernization and socialism, and social and economic developments related to urbanization. Politics and economy was the domain of men.

Things changed visibly from 1991 onward. Already in the late 1980s, women supported armed guerilla movements. Some took up arms; others supported the fighters in other ways (e.g., through cooking and washing or as nurses in bush camps). Despite the cliché about the passive and peace-loving Somali women, many encouraged their men to fight in the clan-wars in the late 1980s and early 1990s. They used female forms of poetry called buraambur in Somali to instigate fighting. But the longer the civil war lasted, the more women turned their energies and skills to peace making. Individually or collectively, Somali women protested for and demanded peace, and again sought to influence their men through buraambur. As members of their own patrilineal clans and wives to men from other clans (due to clan-exogamy) women

often played the role of emissaries between warring groups. This traditional role, however, could not be performed in the worst days of internecine fighting, due to the general risks involved and also because in Somalia from 1991 onward, sexual violence became a weapon of war. From peace-activists, some women developed into community workers and developers. They established hospitals, orphanages and schools and therefore contributed to some basic social rebuilding in war-torn settings such as Mogadishu, Merka or Hargeysa.

In the year 2000, when the Arta peace conference for Somalia was held in Djibouti, women made their ways into national politics. Asha Haji Elmi and other women activists persuaded rival political leaders of the five major Somali clans to allow women's participation in the conference. Their aim was to think beyond clan boundaries in drafting a peace agreement. They founded a group called the 'sixth clan' which, despite its name, helped women to transcend clan boundaries and gain political influence. While the sixth clan was not officially participating at the subsequent peace conferences in Kenya (2002-2004) and Djibouti (2008-2009), women continued to challenge men politically. At Arta they gained round 10 seats in parliament. At the following conferences their quota was increased to 12 per cent and in the current government (2012-) they are supposed to take 30 per cent of all seats in parliament. In fact, these quotas were so far never fulfilled, but still, they indicate the growing acceptance of women in politics. Additionally women gained local and national political positions in Somaliland, Puntland and Somalia, with Somaliland featuring Edna Adan as first female foreign Minister in 2003 and Fowsia Yusuf Haji Aadan becoming Foreign Minister of Somalia and Deputy Prime Minister in 2012.

The most relevant transformation, however, took place in the economic sphere. During the civil war, many men were injured or killed; survivors lost their mind; many became jobless. Of course women suffered massively from the fighting too. But while many men either continued fighting or delved into chewing qaad (a mild stimulant traditionally consumed in Somalia, Kenya and Ethiopia) and thus, became economically unproductive (chewing qaad takes several hours and consumes vital family resources), women took over the feeding of their families. They opened

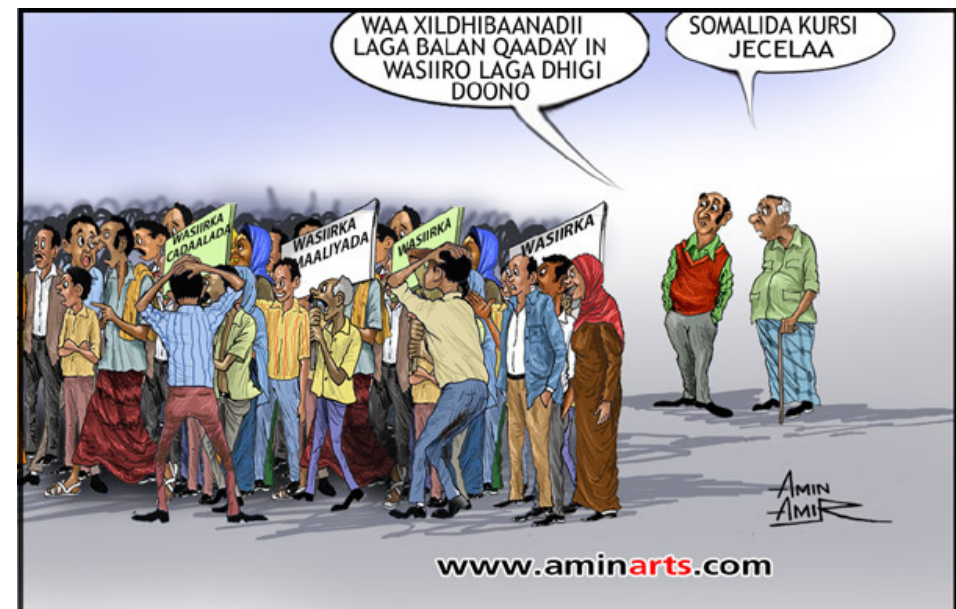
small shops or even bigger businesses or went abroad to apply for social welfare or work and send remittances. In this way, they became breadwinners of the family while still remaining prime care-takers of their children. This double burden is rarely acknowledged by Somali men. However, their economic activities certainly gave Somali women more freedom to care for themselves and more influence in the household.

Nonetheless, the transformations of gender roles emanating from the socio-political upheaval since 1991 did not (yet) lead to sustainable changes of the social structure. Particularly Somali politics are still embedded in the traditions of clanism and patriarchy, and the social status of women is generally still low, particularly in the more rural settings, notwithstanding women's tremendous engagement for improving the Somali condition.

Conclusion

Despite the massive destruction and human and material costs of the civil war and the external military interventions in Somalia since 1991, the period of crisis in the Somali setting provided room for creative and innovative new constructions in the political, legal and social sphere.

In many regards, Somali ingenuity was simply a sign of resilience; it was necessary to cope with disaster and survive. However, the examples above can also be read positively as a way of 'reforming' Somali society from below (without any government or international plan to 'modernize' Somalia). Particularly the self-empowerment of women and the decentralization (or localization) of politics constitute tremendous reforms that had been long aspired to – at least officially – by post-colonial Somali governments, but were never pursued effectively against the massive resistance of men and certain 'noble' groups and corrupt politicians clinging to power and monopolizing state resources. Some of the transformations, mainly the emergence strong regional states such as Puntland and the de facto state of Somaliland (which actually sees itself as completely separate from the rest of Somalia) will be difficult to reverse. Also statutory law will have to compete with customary law for a long time in the delivery of justice for ordinary citizens. It is a major task of the current government in Mogadishu and its external supporters to find ways to accommodate these substantial transformations and to tie in with this creative potential of Somalis.



Städter: „Das sind Parlamentarier. Sie haben Geld erwartet, denn sie wollten Minister (Wasiirka) werden.“
Nomade: „Somalier lieben Machtsitze.“