



**NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
DEPARTMENT OF INTERNATIONAL LAW**

**THE ROLE OF CONSTITUTIONAL DESIGN IN
STATE-BUILDING ON POSTCONFLICT
SOCIETIES: THE CASE OF SOMALIA**

L.L.M.THESIS

ABIRAHMAN MOHAMED ABDULLAHI

**NICOSIA
JUNE, 2024**

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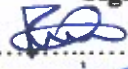


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Approval

Upon careful examination of Abdirahman Mohamed Abdullahi's thesis titled "**The Role of Constitutional Design in State-Building on Post Conflict Societies: The Case of Somalia**". we thus affirm that it is of exceptional quality and possesses a satisfactory level of comprehensiveness, making it suitable for acceptance as a thesis for the Master of International Law.

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I affirm that the information, writings examination, and conclusions in this thesis were collected and presented in accordance with the academic and ethical standards set by the Near East University Institute of Graduate Studies.

I certify that I have appropriately acknowledged and cited any data and material that are not unique to this work, in accordance with the specified rules and guidelines of the Near East University.

ABDIRAHMAN MOHAMED ABDULLAHI

27/06/2024

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ABSTRACT**THE ROLE OF CONSTITUTIONAL DESIGN IN STATE-BUILDING ON POST-
CONFLICT SOCIETIES: THE CASE OF SOMALIA****ABDIRAHMAN MOHAMED ABDULLAHI****LLM, DEPARTMENT OF INTERNATIONAL LAW****JUNE, 2024 90 PAGES**

The main objective of the research was to examine how the design of a constitution affects the process of building a state after the civil war. The study focused on post-conflict societies specifically the case of Somalia. The research analysed the constitutionalism concept in Somalia, the challenges faced in the constitution making and state building development to find out the role of constitutional design in state-building on post-conflict Somalia and explore measures to deal with the challenges of constitution implementation in the country. This thesis specifically focused on how the unratified federal constitution of Somalia can contribute to the state building process after the conflicts. The study used qualitative design and critically reviewed and analysed secondary data. The data was obtained from published and unpublished materials, books, journal articles, academic papers and periodicals. The study's major findings suggest that the constitution's structure plays a vital role in post-conflict state rebuilding. It establishes a well-organized system of governance that guarantees the protection of rights and serves as the foundation for democratic principles. The study's conclusion was that Somalia's new federal Constitution was just temporary and intended to be developed through the state building process and if security and stability in the country warranted a national referendum for complete legitimacy. The research found that in Somalia, there was a lack of effective public involvement and civic education, which has hindered the progress of creating a constitution that is inclusive and representative, as well as building state institutions during the post-conflict state building and constitutional designing process. Furthermore, there has been a lack of willingness among traditional leaders to involve women in political leadership roles, and insufficient allocation of financial resources for the constitution-making activities has also hindered the process. These problems highlight the necessity for a more comprehensive approach to guarantee that the constitution accurately represents the interests and varied aspirations of all sectors of society.

Keywords: Constitutional making, State-building, constitutionalism, post-conflict societies and Somalia

ÖZET**ÇATIŞMA SONRASI TOPLUMLARDA DEVLET YAPIMINDA ANAYASA****TASARIMININ ROLÜ: SOMALİ ÖRNEĞİ****ABDİRRAHMAN MUHAMMED ABDULLAHİ****LLM, ULUSLARARASI HUKUK BÖLÜMÜ****HAZİRAN 2024 90 SAYFA**

Araştırmanın temel amacı anayasa tasarımı için iç savaş sonrası devlet kurma sürecini nasıl etkilediğini incelemektir. Çalışma çatışma sonrası toplumlara, özellikle de Somali örneğine odaklandı. Araştırma, Somali'deki anayasacılık kavramını, anayasa yapımında ve devlet inşasının geliştirilmesinde karşılaşılan zorlukları analiz ederek, çatışma sonrası Somali'de devlet inşasında anayasal tasarımın rolünü ortaya çıkardı ve ülkede anayasanın uygulanmasına ilişkin zorluklarla başa çıkmaya yönelik tedbirleri araştırdı. . Bu tez özellikle Somali'nin onaylanmamış federal anayasasının çatışmalar sonrasında devlet inşası sürecine nasıl katkıda bulunabileceğine odaklandı. Çalışmada nitel tasarım kullanılmış ve ikincil veriler eleştirel bir şekilde incelenip analiz edilmiştir. Veriler yayınlanmış ve yayınlanmamış materyallerden, kitaplardan, dergi makalelerinden, akademik makalelerden ve süreli yayınlardan elde edildi. Araştırmanın önemli bulguları, anayasa yapısının çatışma sonrası devletin yeniden inşasında hayati bir rol oynadığını ortaya koyuyor. Hakların korunmasını garanti eden ve demokratik ilkelerin temelini oluşturan iyi organize edilmiş bir yönetim sistemi kurar. Çalışmanın vardığı sonuç, Somali'nin yeni federal Anayasasının sadece geçici olduğu ve devlet inşa süreci yoluyla geliştirilmesinin amaçlandığı ve ülkedeki güvenlik ve istikrarın tam meşruiyet için ulusal bir referandumu garanti edip etmediği yönündeydi. Araştırma, Somali'de etkili kamu katılımı ve yurttaşlık eğitimi eksikliğinin bulunduğunu, bunun da kapsayıcı ve temsili bir anayasa oluşturmanın yanı sıra çatışma sonrası devlet inşası ve anayasa tasarımı sırasında devlet kurumlarının inşa edilmesi sürecini engellediğini ortaya çıkardı. İşlem. Dahası, geleneksel liderler arasında kadınları siyasi liderlik rollerine dahil etme konusunda isteksizlik mevcuttu ve anayasa yapım faaliyetlerine mali kaynakların yetersiz tahsisi de süreci sekteye uğrattı. Bu sorunlar, anayasanın toplumun tüm kesimlerinin çıkarlarını ve çeşitli isteklerini doğru bir şekilde temsil etmesini garanti altına almak için daha kapsamlı bir yaklaşımın gerekliliğini vurgulamaktadır.

Anahtar Kelimeler: Anayasa yapımı, Devlet inşası, anayasacılık, çatışma sonrası toplumlar ve Somali

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List of abbreviations

AMISOM	African Union Mission in Somalia
AU	African Union
CDC	Consultation Draft Constitution
DDR	demobilization, and reintegration of former combatants
FCC	Federal Constitutional Commission
FGS	Federal Government of Somalia
FMS	Federal Member States
HDM	Hazbiya Digil Mirifle
ICRIC	Independent Provisional Constitution Review and Implementation Commission
IDPs	internally displaced persons
IFCC	Independent Federal Constitutional Commission
IGAD	Intergovernmental Authority on Development
MRNDD	Movement for Democracy and Development
NCA	National Constituent Assembly
NDIIA	National Democratic Institute for International Affairs
NGOs	non-governmental organizations
OC	Oversight Committee
PBC	Peacebuilding Commission
PCC	Post conflict constitutions
RPF	Rwandan Patriotic Front
RRC	Reconciliation and Restoration Council
SCCA	Somali Constitutional Commission Act
SNPC	Somali National Peace Conference
SNRC	Somali National Reconciliation Conference
SRRC	Somali Reconciliation and Restoration Council
SSR	security sector reform
SYL	Somali Youth League
TFC	Transitional Federal Charter
TFG	Transitional Federal Government
TFP	Transitional Federal Parliament

TNA	Transitional National Assembly
TNC	Transitional National Charter
TNG	Transitional National Government
UCDP	Uppsala conflict Data program
UN	United Nations
UNPOS	UN Political Office for Somalia

CHAPTER I INTRODUCTION

1.1 Background of Study

Constitutional design refers to the process of formulating and organizing a constitution for a nation or an institution.¹ It necessitates a systematic approach to arranging and establishing the foundational and guiding principles, institutional frameworks that govern the functioning of the government, the allocation of authority, the safeguarding of individuals rights and liberties.² The modern concept of constitutional design is linked to the emergence and dissemination of written constitutions and it's a deliberate and intentional process that considers the historical, social, cultural, and political context of a nation or organization. the goal is to establish a system that promotes democratic principles, rule of law, accountability and transparency, ensures the separation of powers, prevents tyranny and protects individual rights.³

The Post-conflict state-building has employed constitutionalism as a major strategy to tackle conflicts in communities that are fragmented due to ideological disparities.⁴ The formation of the constitution in post-conflict states is crucial in determining the future direction of these nations. the process entails creating a structure that encourages active participation in politics, the distribution of authority to local authorities, and a distinct separation of powers between the central government and the individual states. this process necessitates extensive overhauls, encompassing the establishment of a multiparty system, a thorough examination of the constitution, and the cultivation of an environment that fosters political competition through democratic elections.⁵ The establishment of constitutions plays a crucial role in the process of constructing stable governments in cultures that have experienced conflict. It entails creating a framework that fosters stability, inclusiveness, and compliance with legal norms. the formulation of a constitution is a crucial factor in the establishment of states after a conflict.

¹ Zim Nwokora, 'Constitutional Design for Dynamic Democracies: A Framework for Analysis' (2022) 20(2) IJCL 581, 583.

² Ibid 584.

³ Femi Omotoso and Olayide Oladeji, '*Legislative Oversight in the Nigerian Fourth Republic*' (edn, J.Y Fashagba and others 2019) 57.

⁴ Stefan Wolff, 'Post-Conflict State Building: The Debate on Institutional Choice' (2011) 32(10) TWQ 1777.

⁵ Ibid.

Constitutive designing in post-conflict state building is the process of creating and enacting a constitution that specifically deals with the distinct difficulties and requirements faced by a society in the process of recovering from a conflict. Throughout this procedure, crucial determinations regarding the government's structure and jurisdiction must be decided, alongside deliberations on power distribution, inclusivity, decentralization, and representations.⁶

State building refers to the deliberate and systematic efforts undertaken by a country to enhance its infrastructure, systems, and institutions after a civil war. The goal is to establish a stable form of governance and achieve long-term peace. Some of the tasks involved in this process include setting up an effective government, rebuilding public services, fostering economic growth, addressing social conflicts and complaints, building trust and public support, facilitating agreement, tackling the root causes of disagreement, and guaranteeing the active involvement of all parties in the decision-making processes.⁷ The founders of the Constitution utilized the design as a strategic roadmap to delineate a broad spectrum of matters, encompassing the application of Hobbesian concepts such as the covenant and the explicit articulation of fundamental principles governing social, moral, political, and cultural aspects of society, including the objectives that policy should strive to achieve the goals of state building in post conflict countries.⁸

the constitutional design has its roots in Aristotle's Politics, where he carefully examined the Greek city-state constitutions to offer ideas for normative theorizing about the best possible design of constitutions, then the Classical scholars engaged in extensive discussions over constitutional matters when examining the fundamental principles of governance in China, India, and other regions. These interpretations remained prevalent among prominent Western political theorists, such as John Stuart Mill, Montesquieu, and Niccol Machiavelli. They particularly drew inspiration from the early federalism practiced by the biblical Israelites.⁹

As Darin E.W. Johnson argued the formulation and design of constitutions have a significant influence on post-conflict transition processes in nations that are

⁶ Abubakar Mohamud Abubakar, *'The Patterns of State Rebuilding and Federalism in Somalia'* (2016) 10 (6) AJPSIR 90-95.

⁷ Paul R Williams and Milena Sterio (eds), *'The Research Handbook on Post-Conflict State Building'* (2020) 1.

⁸ Tesfatsion Medhanie, *'Constitution-Making, Legitimacy and Regional Integration: An Approach to Eritrea's Predicament and Relations with Ethiopia'* (2008) 5.

⁹ Rosalind Dixon and Tom Ginsburg, *'Comparative Constitutional Law in Asia'* (2014) 28.

transitioning from autocracy and civil war. Drafting a fresh constitution can also symbolize the toppling of an autocratic regime, provided that it ensures the rights of formerly marginalized populations within the confines of the new constitutional framework in the post conflict countries.¹⁰

Comparative constitutional study has emphasized the need of employing participatory constitution-making as a means of achieving democratic transition after conflicts. The participatory constitution-making processes in Yemen and Libya were hindered in their pursuit of their intended conciliatory objectives due to the excessive violence that characterized the both countries. the ongoing violent war hinders the essential elements of openness, transparency, inclusivity, and involvement that are crucial for a participatory constitution-making process. the integrity of consensus-based constitutional texts was jeopardized, mediation procedures were weakened, and the likelihood of conflict constitutions that worsened rather than resolved the underlying reasons of conflict increased. On the other hand, Somalia can be considered in the overall progress, it is important to note that its constitution making process is still under progress. The capacity to attain a consensus on a universally accepted definition of statehood is currently under scrutiny as it pertains to the constitution-making process. Currently, the differences between the various domestic factions are too significant to be resolved through a constitution-building process. Consent is the cornerstone of every constitution-building process, particularly when there are not enough internal or external forces to keep all the parties at the bargaining table and subsequently carry out the outcomes, as we can learn from Somalia.¹¹ Therefore, that is the reason of the study to investigate the role of constitutional design in state-building on post-conflict societies, specifically the case of Somalia.

¹⁰ Darin EW Johnson, 'Post-Conflict Constitution-Making' in Paul R williams and Melena Sterio (eds) *Research Handbook on Post-Conflict State Building* (Edward Elgar 2020) 6.

¹¹ International IDEA, 'Constitution Building after Conflict: External Support to a Sovereign Process' (*Bulls Graphics, Sweden 2011*) 12.

1.2 Problem Statement of the study

This study aims to investigate the process of Constitutional Design and State Building in Post-Conflict Societies, with a specific focus on Somalia as a Case Study. The outbreak of the civil war in Somalia in 1991 revealed a minor deficiency in constitutional governance and the collapse of the state. The aforementioned factors were only incidental and indicative of a fundamental issue of a dearth in a culture of constitutionalism, which has given rise to politics centered around exclusionary power sharing based on clans and detrimental rivalry for power inside the nation. The issues might be attributed to the lack of a broadly agreed upon constitution since the military coup in the country in October 1969. During the bloodless military coup, the National Assembly was shut down, political parties were deemed unlawful, the constitution was put on hold, and the state was purportedly ruled by a Supreme Revolutionary Council.¹² In Somalia, there has not been a fully recognized central government since 1991, when President Mohamed Siad Barre was overthrown by power oriented armed tribal rebels which resulted unstoppable civil war.¹³

Could these challenges stem from the lack of adherence to the constitutions in place in the country? Is the problem in the design of the constitution? How constitutional design can contribute in the state building efforts in Somalia? It is the purpose of this study to analyse the role of constitutional design in the state building process on post-conflict Somalia and answer the above questions. The main purpose for this correlation is to assess whether adherence has been achieved to the constitution, the challenges facing the constitution in the realization of the state-building process and long-lasting peaceful and political stability in Horn of Africa post-conflict state of Somalia.

¹² IM Lewis, 'The Politics of the 1969 Somali Coup' (1972) 10(3) JMAS 383, 400.

¹³ Abdiwahab Hussein Mohamed, 'Constitutionalism in Africa: A Comparative Study of Kenya and Somalia, 2004 - 2012' (Masters Thesis, University Of Nairobi 2014) 3.

1.3 The Objectives of the Study

The general objectives of the study were to examine the role of constitutional making in State Building on Post-Conflict Societies with a case study of Somalia. More specifically, the study aims to:

1. Examine the concept of constitutionalism in State-building in post-conflict situation in Somalia;
2. Analyse the challenges faced in the constitution making development in state-building processes in post-conflict Somalia;
3. find out the role of constitutional design in state-building efforts in post-conflict Somalia.

1.4 Literature Review

This section was a review of the academic literature of the research and focuses on a number of variables; among them: The conflict in Somalia, State building efforts in the post-conflict Somalia, Constitutional building Processes in Post-Conflict Somalia, Challenges of constitutional building in Post-Conflict Somalia and Literature Gap of the study.

1.4.1 The conflict in Somalia

Dolles Demmers argued that the casualty threshold distinguishes between conflict and war; a conflict is considered to be in war as soon as the annual toll from war-related Deaths hits 1,000. Data sets like Uppsala conflict Data program (UCDP) demonstrate how in the Post-World War II era, hostilities have shifted globally from being between states to being within states.¹⁴ This trend peaked in the early 1990s, when over 50 conflicts were documented between 1989 and 2004, of which just seven were inter-state wars.¹⁵ there were 40 armed conflicts in 2014, 39 of which took place within states, making the lone interstate conflict between India and Pakistan. Thirteen (33%) out of the 39 conflicts were classified as internationalized, meaning that one or more states provided troops to one or both opposing sides. Afghanistan, Azerbaijan, Iraq, Mali, Nigeria, Somalia, South Sudan, Uganda, Ukraine - Donetsk, Lugansk, Novorossiya, the

¹⁴ Jolle Demmers, *Theories of Violent Conflict* (2nd edn, Jolle Demmers 2017) 3.

¹⁵ Therése Pettersson and Peter Wallensteen, 'Armed Conflicts, 1946–2014' (2015) 52(4) JPR 536.

United States - the war with Al-Qaeda, and Yemen were the locations of these conflicts.¹⁶

H. M. Adam argues in *Searching for the Roots of Conflict in Somalia* that a nation is more than just a collection of individuals who share certain traits. Somali people have historically found that speaking the same language makes oral communication more successful. Antagonisms between clans and lineages do not negate a desire to come together or a sense of shared destiny, particularly when it comes to a common enemy. Somali genealogies indicate that the concept of the Somali state is currently unclear and has become a legal abstraction, likely to remain so for many years to come. Additionally, they function as a means of differentiating between clan families and clans, while simultaneously serving as a reminder of their shared lineage. Somalia was considered to have one of the rare mono-ethnic administrations in Africa.¹⁷

Elmi & Barise assessed that the Somali conflict was caused by a wide range of intricate political, economic, cultural, and psychological factors. Throughout the battle, both internal and outside parties have taken on a variety of duties. We contend that the main reasons for the Somali civil conflicts were rivalry for resources and power, an oppressive government, and the legacy of colonialism, based on our observations and studies of peacebuilding literature. The politicized clan identity, the ease of access to firearms, the high percentage of unemployment among adolescents, and some characteristics of Somali culture that support violence are also considered to be significant causes.¹⁸ Clan-based militia conflicts in Somalia have mostly been sparked by the desire for power and wealth. This collection of literature and the collective memory of the Somali people testifies to the fact that long before Somalia gained independence, Somali factions had regularly fought over resources like water, livestock camels, and grazing. In the past, Somali traditional authorities have arbitrated these conflicts in line with system of traditional law also known the Xeer.¹⁹

¹⁶ Anke Hoeffler, 'Post-Conflict Stabilization in Africa' (2019) 23(3) RDE 1238.

¹⁷ Degefe Kebede Gemechu, 'Inter-Clan Conflicts and the Long Journey To State-Building in Somalia – Internal and International Effects' (2023) na(16) PS 167.

¹⁸ Afyare Abdi Elmi and Abdullahi Barise, 'The Somali Conflict: Root Causes, Obstacles, and Peace-Building Strategies' (2010) 15(1) ASR 33.

¹⁹ Ibid 35.

1.4.2 State Building efforts in the Post-Conflict Somalia

The Endeavours of State-building requires establishment or restoration of rule of law, robust institutions for peaceful resolution of conflict, and a long-lasting foundation for effective governance in post-conflict settings.²⁰

As Katarina Ammitzboell and Harry Blair stated, over the past fifteen years, there has been a rise in the involvement of international and bilateral development organizations in efforts aimed at rebuilding and stabilizing states after conflicts, known as post-conflict state-building efforts. Starting in the early 1990s, a total of over forty initiatives with similar characteristics have been carried out, beginning with Cambodia, El Salvador, and Mozambique. These projects have expanded to include Kosovo, East Timor, Afghanistan, Liberia, Sudan and Somalia in recent years.²¹

There is a significant amount of interest in building states after conflicts among individuals who are involved in international development. Although the international community has significant expertise in assisting the institutional development of these countries, there is still a lack of understanding about the best way to structure and prioritize the initial measures needed to help a post-conflict state regain its ability to govern the political system and carry out essential state functions.²² As far as the case of Somalia in state building is concerned the historical documentation of foreign engagement in the Somalia conflict illustrates the absence of triumph in efforts to construct unified nations. Following a catastrophic result and the United States retreat in 1994, the Restore Hope operation, overseen by the United Nations and starting in 1992, ended in 1995, thus leaving the nation to its fate.²³ From 1993 to 1998, there were multiple attempts to establish peace using top-down approaches, primarily involving warlords and receiving some support from the international community ranging from the initial Addis Ababa Agreement to the Cairo Agreement. Followed by the Boroma reconciliation conference in 1993, the Hargeysa peace negotiations between 1996 and 1997, and the Garowe initiatives in 1998. the United Nations (UN) decided to discontinue the building blocks method that had been used to facilitate local

²⁰ Joris Voorhoeve, *'from War to the rule of Law'* (Amsterdam University press, 2007) 19.

²¹ Katarina Ammitzboell and Harry Blair, Katarina Ammitzboell and Harry Blair, 'First Steps in Post-Conflict State-Building: Establishing Critical Functions and Setting Priorities' (2011) na ICM 1.

²² *ibid*

²³ Matthew A Baum, 'How Public Opinion Constrains the Use of Force: The Case of Operation Restore Hope' (2004) 34(2) PSQ 187, 188.

reconciliation in Somaliland and Puntland. This decision was made in response to the situations in those regional entities. Instead, the United Nations started recognizing new national efforts headed by the community, such as Arta, which led to the formation of a Transitional National Government (TNG). This decision was based on the belief that a process of national reconciliation was possible in a severely divided society like Somalia. These initiatives aimed to reconcile the interests of the warlords and the composite society. They were based on the same assumptions that had led to achieve this by appealing to various sectors such as Somali civil society, non-governmental organizations (NGOs), the diaspora, traditional leaders, and other relevant entities.²⁴

In 2002, the 2nd national conference was held in Eldoret by the international community specially The Intergovernmental Authority on Development (IGAD) as a response to the collapse of the Traditional National Government of Somalia.²⁵ This assembly enabled the involvement of both military commanders and members of the civilian population. Following forty unsuccessful days of trying to reconcile the conflicting elements, the summit was rescheduled to take place in Nairobi. Somaliland exemplifies the feasibility of conducting a state-building endeavour even in the absence of significant international assistance. It is essential to differentiate between the traits that are unique to Somaliland and those that are genuinely Somali and may be applied to the rest of Somalia.²⁶

1.4.3 Constitutional building Processes in Post-Conflict Somalia

According to International institute of democracy and electoral assistance there is no agreement among experts on the exact meaning and nature of constitution building. An objective in the quest for a widely recognized and precisely defined field of constitution building is to bring together the discussion on effective international support for constitution building processes. The phrase constructing a constitution denotes the following: The continuous process of building new structures and improving old ones; the persistent effort to strengthen and refine the political system and governance; and Expanding inclusivity such as stakeholders, including the general public, public

²⁴ Federico Battera, 'Some Considerations on State Building in Divided Societies and the Role of the "International Community": Somaliland and Somalia Compared' (2003) 10(3) NAS 225, 227.

²⁵ Yasin Mustaf Ibrahim, 'The Intergovernmental Authority on Development (IGAD) and Conflict Resolution in Somalia' (2023) 10(7) IJARESM 1625, 1631.

²⁶ Battera (n 24) 227.

employees, international advisers, activists, drafters, designers, and negotiators, are allowed to engage in different stages of the constitutional building process.²⁷

Moreover, it entails adopting a strategic outlook and striving towards a broad goal or plan for the government's social contract as a whole, rather than making important adjustments to address very particular issues. On the other hand, the phrase constitution making is often used to specifically highlight the process of creating and implementing a constitutional document. Often, the creation of a constitution is a part of a broader process of constitutional change. The desire to recognize and prioritize a constitution-making moment implies a well-defined procedure. Nevertheless, in nearly all circumstances, it is unfeasible to ignore the agreements and historical occurrences that occurred prior to a determination to create or modify a constitution. The process of formulating a constitution involves a series of distinct sequences and phases, which may not always occur in a strictly sequential manner.²⁸

The process of creating a constitution should be tightly integrated with the peace process, conducted at a careful and deliberate speed, and aim to achieve maximum coordination with the current legal frameworks. Elections should prioritize the promotion of discussion, participation, and national unity, rather than being seen as the sole goal of a peace process. Moreover, they should not be utilized as a shallow public display of dubious democratization. In order to achieve sustainability and ensure security, it is crucial to implement proper reintegration procedures alongside disarmament and demobilization efforts. Additionally, the promotion of the rule of law is vital for establishing long-term structural stability.²⁹

Moreover, it is crucial to create and execute a nationwide reconciliation program that is thorough and encompasses all individuals, in order to effectively repair the deep emotional scars resulting from prolonged periods of violence. The United Nations, with its responsibility for global security and extensive experience in post-conflict rebuilding, is nevertheless facing challenges in systematically developing the necessary

²⁷ International IDEA, 'Constitution Building after Conflict: External Support to a Sovereign Process' (*Bulls Graphics, Sweden 2011*) 11.

²⁸ International IDEA, 'Constitution Building after Conflict: External Support to a Sovereign Process' (*Bulls Graphics, Sweden 2011*) 11.

²⁹ *ibid* 12.

concepts and capacities to effectively promote state-building. Senior United Nations officials acknowledge that their organization is sometimes lacking in resources and management to effectively support the implementation of changes. Additionally, they recognize that they may not always have the necessary expertise to provide relevant advice on the timing and methods of implementing these reforms. The organization should ensure that its actions conform to the light footprint principle and refrain from establishing duplicate institutions and processes that could weaken local authority, impede coordination, and provoke competition. The Peacebuilding Commission (PBC) was established to address the growing discrepancies between knowledge and practice, with the aim of bridging these gaps. If the PBC effectively fulfils its role in managing resources, securing support, and enhancing cooperation in state-building and peacebuilding efforts, it will surely gain significant recognition. However, the task of reforming the United Nations' efforts to rebuild states after conflicts would be a difficult and lengthy undertaking, similar to the process of restoring governments.³⁰

1.4.4 Challenges of Constitutional Building in Post-Conflict Somalia

The act of formulating constitutions has become a well-established and traditional procedure followed by authorities worldwide. Currently, the bulk of the 200 national constitutions that exist are less than twenty-five years old. Over the past ten years, seventy developing democracies have made changes to their constitutions, either by amending them or by making significant alterations. Between 1990 and 2000, a total of seventeen African governments, fourteen Latin American nations, and most post-communist Eastern European and former Soviet Union countries made amendments to their constitutions. Countries such as Bosnia-Herzegovina, Bolivia, Iraq, Kenya, Nepal, and Sri Lanka have recently made changes to their constitutions. Aside from Madagascar and Turkey, two other countries have recently revised their constitutions.³¹

In August 2012, NCA of Somalia officially approved the PC for Somalia, putting an end to a period of twenty years without a recognized government, unsuccessful attempts at reconciliation, and temporary governance. Because the drafters could not agree on important aspects related to state building, they considered their work to be

³⁰ Lakhdar Brahimi, 'State Building In Crisis And Post-Conflict Countries' (2007) 4.

³¹ Ali Hirsi Ahmed, '*Constitution-Making in Somalia: A Critical Analysis, 1960-2013*' (Masters Thesis, University Of Nairobi 2014) 16.

inadequate. As a result, they incorporated provisions for a thorough revision of the constitution. According to Chapter 15 of the PC of 2012, the review process would end in August 2016 or within the first term of the Somali Federal Parliament, after a four-year timeframe. The Somali Federal Parliament was expected to analyse the Somali PC, suggest changes with a two-thirds majority in both houses, and then submit the updated constitution to a referendum for final approval by the Somali people. By utilizing the expertise of the Independent Provisional Constitution Review and Implementation Commission (ICRIC) and the Provisional Constitution Review and Implementation Oversight Committee (OC), this objective can be accomplished. According to the 133, 134, and 136 articles of the provisional constitution.³²

Unfortunately, it was not possible to meet these deadlines. The legally required review institutions, the OC and ICRIC, were created in 2012 and 2014 after a prolonged period of inception. An extensive analysis of the constitution was conducted, during which grammatical and referencing problems were corrected, and improvements were made to the Somali translation. In July 2016, the Somali Federal Parliament's house of the People or Lower House, was provided with three different review alternatives. According to Article 138(2) of the Somali Provisional Constitution, if all Federal Member States are not established, the Somali Federal Parliament acts as a unicameral federal legislative body. The House of the People of the Somali Federal Parliament has chosen to delay the assessment of the report submitted by OC and ICRIC to the second term of parliament due to insufficient time to thoroughly review and progress the proposed constitutional reform options.³³ In December 2016, after another round of indirect elections, the Somali Federal Parliament became bicameral, with the establishment of the Upper House in January 2017. As per the Somali Provisional Constitution, the OC underwent restructuring to become a joint committee of both chambers. It worked together with the ICRIC to forward the constitutional review process. The OC and ICRIC collaborated to create a modified constitutional amendment proposal that included various provisions: the completion of the federal structure, a revamped framework for the three branches of government; federal, state,

³² 'The Provisional Constitution of Somalia, Adopted August 1, 2012.<<http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf>> Accessed 19 May 2024.

³³ Mohammad Osman Jawari, 'The Finalization of the Constitutional Review Process in Somalia' (*Constitutionalnet and International IDEA*, 2023), <<https://constitutionnet.org/news/finalization-constitutional-review-process-somalia>> accessed 24 March 2024.

internal and an extra chapter dedicated to public financing. This happened after signing a Memorandum of Understanding with the Ministry of Constitutional Affairs, which established a framework of principles, commitments, and functions. Furthermore, the OC and ICRIC made use of the three constitutional review options proposed by the previous OC during the first term of the Somali Federal Parliament. A number of Somali civil society organizations, the Constitutional Affairs Committees of the five Federal Member State Legislative Assemblies, and the Ministries of Constitutional Affairs of the five Federal Member States took part in the consultation process for this document. Ultimately, the approval of the draft constitutional amendment put out by the OC and ICRIC was rejected. In December 2020, President Mohamed Farmajo issued a Presidential Decree to extend the timeline for completing the constitutional reform process until the third term of the Somali Federal Parliament. The introduction of the new constitution exacerbated the disagreement between the Federal Government and the Federal Member States amidst heightened tensions resulting from delays in election preparation and a lack of consensus on the implementation of these elections. Consequently, this delay was considered essential. The primary cause for the delay in political negotiations between the Federal Government and the Federal Member States, which involve important unresolved issues such as resource and revenue sharing and federal power sharing, was the lengthy process of forming the Somali Federal Member States between the ninth parliament in 2012 and 2016. At first, the Jowhar and Baidoa agreements, which included areas including the distribution of natural resources, the administration of justice, the conduct of elections, and the maintenance of security, were successful. In addition, the Ministries of Finance at both the Federal and Federal Member State levels have effectively prepared the chapter on public finance. Nevertheless, the breakdown of relations, particularly with the Federal Member States of Puntland and Jubbaland, and the excessive meddling by the Federal Government in the elections of Federal Member States resulted in the collapse of the negotiations.³⁴

This unexpected and unusual event not only highlights the growing importance and purpose of constitutions during state building process, but also brings about a fundamental change in the process of creating constitutions, particularly in countries

³⁴ Ibid.

that are recovering from conflict. Creating a new constitution in the state building process aftermath of a conflict, Somalia is faced with numerous difficulties. Some of the challenges are the following: The process of creating the constitution lacked both legitimacy and inclusivity. The lack of legitimacy and inclusiveness during the Constitution's drafting process undermines its overall validity and efficacy; The reluctance of traditional leaders to include and involve women in political leadership positions sustains gender disparity and exclusion; The absence of adequate civic education and public involvement in the constitution-making process impedes the advancement towards establishing a constitution that is representative and inclusive, effectively protecting the interests and objectives of all sectors of society. If the building of Somalia's post-conflict constitution is delayed by excessive external demands and influences from international organizations, it could put Somalia's territorial integrity and independence at risk; Conflicts and disagreements may occur as a result of differences among political stakeholders and groups throughout the process of creating a constitution; Insufficient financial resources and capacity development for those involved in the creation and production of constitutions is a problem in post-conflict Somalia. To ensure a fruitful and long-lasting constitutional-building process, it is crucial that the Somali government and its foreign partners address and overcome these challenges.³⁵

1.4.5 Literature Gap

The Somali Republic was a stable and constitutional democracy with a functioning constitution approved by a referendum as of 1961, a year after Somalia gained independence on 1st July, 1960. Following nine years of civil democratic government in the country a military coup lasted in 21 years took place in the country. But unfortunately, civil war erupted in 1991. After the civil war the nation of Somalia has been a prime example of a state collapse in the context of modern society. Several violent conflicts, the terrible humanitarian situation resulting from the breakdown of community service delivery, the illicit operations of alleged revolutionary parties in Somalia, and the participation of neighbouring countries were the key indicators of this

³⁵ Jibril Ali Aw Mohamed, 'Settling the Questions: Somalia's Constitution Review Process' (*Hiiraan Online*, 2024)3<https://www.hiiraan.com/op4/2024/mar/195435/settling_the_questions_somalia_s_constitution_review_process.aspx> accessed 24 March 2024.

issue. Furthermore, an analysis of Somalia's past makes it abundantly evident that the country's state systems have been collapsing for the past 30 years, which is the root cause of all state failure in Somalia. Researchers studying constitutional design and state building find that Somalia provides a rich field of research. This study aims to address the issue of unfavourable conflicts in Somalia by looking at the discourses and arguments surrounding constitutional making and state building process from Arta peace process in Djibouti in 2000 to 2024. Thus, the purpose of this study is to investigate and maybe provide an answer to the following questions: which of Somalia's growth processes toward constitutional making have been used to end the nation's conflict and built a situation of consensus and stable government in the country.

1.5 Justification of the Study

Civil wars, terrorism and clan-based conflicts are some of the challenges that come with poor constitutionalism in Somalia. These are the challenges are directly associated with poor constitutional making efforts since the central government was overthrown in 26 January 1991. This study will evaluate the procedure of formulating constitutions and its impact on the formation of nations in post-conflict nations like Somalia. This country has experienced substantial casualties in the past. All of these problems can be attributed to clauses in several of the existing constitutions. Studying the country's compliance with the new constitution is especially productive as these changes were motivated by the instability caused by insufficient legislation. This study provides valuable empirical evidence to government entities responsible for implementing the new constitution in the country. The study will additionally present a concise overview of feasible remedies for the issues that have emerged as a result of the constitution's implementation. The study provides valuable insights for the academic community that may be utilized in literature reviews. The report also enumerates various research gaps that might be employed to direct future inquiries into the establishment of governments and constitutions in post-conflict environments. The prevalence of tribal disputes has significantly influenced both national and international security measures, leading to a number of severe civil wars.

Hence, to mitigate the prevalence of conflicts in nations recovering from war, such as Somalia, it is imperative for both international and national authorities to prioritize peace initiatives, policies, and the enforcement of constitutional measures. The current efforts to restore democracy and uphold the rule of law in connection to human rights, along with the deficiencies in implementing the constitution, indicate the need to learn from these issues in order to enhance future policies and constitutional frameworks. Consequently, this study has significant ramifications for both policy and education. To enhance Somalia's ability to establish peace and develop a new constitution, it is crucial for us as researchers to determine the reasons behind the failures in implementing laws and policies.

1.6 Hypotheses of the study

this research will be examined the following hypotheses:

- I. There is a general misunderstanding about how constitutional design can contribute state building in post-conflict societies specially in the case of Somalia;
- II. Insecurity and tribal/clan politics contribute to complex constitutional-making in state-building Processes in post-conflict Somalia;
- III. The concept of constitutionalism can best serve its desired interests if there is Recognition that constitutions are living documents in Somalia.

1.7 Conceptual Framework of the Study

A theory is a set of ideas that makes it possible to find and analyse real facts. The importance of Constitutional design in state-building processes for post-conflict societies has a lot of support around the world, but it can also be criticized. Scholars assert that the formulation and creation of a constitution can exert a substantial influence on political and governance advancements. Following a conflict, the process of creating a state's constitution offers a chance to establish a shared vision for the future and a plan for attaining it. The Constitution functions as both a treaty of peace and a framework for governing the nascent democracy.³⁶

³⁶ Zim Nwokora, 'Constitutional design for dynamic democracies: A framework for analysis' (Oxford University Press, 2022) 581.

An optimal approach for formulating a constitution possesses the capacity to accomplish a diverse range of goals. As an illustration, it has the potential to serve as a catalyst for the transition from war to peace, to facilitate the transformation of violent cultures into ones that effectively address political problems, and to create the governance framework that regulates the distribution of resources and authority both of which are significant causes of conflicts. Additionally, it is imperative to establish the necessary structures and norms to guarantee the peaceful resolution of future societal conflicts, devoid of any resort to violence. The involvement of national actors in decision-making is crucial under all circumstances.³⁷

The empirical evidence has shown that endeavours to achieve enduring peace through international cooperation in seclusion have not consistently yielded positive outcomes. After a decade of international and domestic efforts to establish a functioning government, Haiti experienced a period of hopelessness and chaos in February 2004. After the 1997 elections that were supervised by the United Nations, Liberia faced interference from external sources before returning to conflict in 2004. Despite persistent democratic endeavours, Afghanistan remains plagued by everyday violence and instability. Kosovo, under the administration of the United Nations, is still grappling with conflicting interests and an uncertain future. The successes of South Africa, Cambodia, and, more recently, Liberia and Sierra Leone have served as examples for newly formed post-conflict nations. Conversely, duplicating these achievements is challenging. The narrative of Nepal is distinct. Although the effort of creating a new national constitution is yet incomplete, the peace process that commenced in 2005 is largely acknowledged to have reached a critical turning point. Is it possible to achieve peace without a Constitution, which is an essential element of the peace agreement? This description presents a series of questions with the aim of prompting comments and fostering the exchange of comparative experiences among specialists from other countries.³⁸

³⁷ Ibid.

³⁸ Ibid.

1.8 Research Methodology

The research framework has incorporated a case study design. Case study designs are a research methodology that involves thorough analysis of real-world happenings, phenomena, or observations to generate theories, evaluate instructional aids, or conduct investigations.

This project aims to examine the importance of constitutional design in the process of establishing a functioning government in countries that have experienced conflict, focusing specifically on Somalia. The analysis will be conducted using a qualitative research approach. This will enhance a thorough understanding of the complex nature of these difficulties and offer significant insights into the nation's experiences in establishing its state after the conflict.

population: This research is going to involve post-conflict societies. specially the Somali community both inside and outside the country's borders, the refugees from Somalia being housed in the surrounding countries and staff working with NGO's and Peace keeping agents involved in constitution making process of Somalia.

Materials: This study will be critically reviewed and analysed secondary data. The Data will be gathered from both published and unpublished sources, including scholarly articles, journal articles, graduate dissertations and internet sources. This research has analyzed and case studies to effectively demonstrate the extent to which its goals and objectives have been accomplished. The data was chosen in the impact of constitutional design on the recovery of governments after a crisis was demonstrated by the example of Somalia. This study focused on analyzing the notion of constitutionalism in the context of post-war state-building in Somalia. It explored the difficulties that emerge while creating new constitutions and the significance of constitutional design in the efforts of rebuilding the state after a conflict. The data was comprised case studies, historical evaluations, policy documents, and expert opinions. Together, these sources will provide insights into the intricacies of the challenges.

Research plan: The study was carried out throughout the period of February to June in 2024, which was designated by the faculty administration as a study period for students.

Data Collection: The primary source of secondary data used in this study was online resources, along with academic books, journal articles, and complimentary

dissertation papers written by academics. By concentrating on the situation of Somalia, these sources offered a plethora of knowledge on the function of constitutional design in state-building in post-conflict societies.

Analytical plan: This study has utilized a descriptive and qualitative style to analyse the collected data. The problem phenomena will be comprehensively explained using inductive reasoning and qualitative research approaches. The researcher will systematically analyse and articulate the experience he has encountered during the study by initially delineating the issue, subsequently elucidating its underlying causes, and ultimately scrutinizing the fundamental problem to eradicate any incongruous situations. In addition, a thematic analysis will be conducted on the gathered data, with a specific focus on Somalia. The goal is to identify recurring themes and patterns of conflict that are linked to the role of constitutional design in the state-building process of post-war states. In order to achieve the goals of this study, it is crucial to encode and classify the data in order to reveal important information and provide a detailed representation of the obstacles to progress.

The Procedure: Before modification, all data will undergo assessment to ensure accuracy and acceptability. Before utilizing any data, it is imperative for academic experts, such as supervisors, to grant their consent. The data will be collected utilizing the aforementioned methods.

1.9 Limitations of the study

Due to the utilization of a qualitative methodology, there will be not feasible to gather statistical data concerning the achievements or shortcomings of the endeavours to attain the constitutional model of Somalia after the conflict situation and state building efforts.

Given that this purpose is still being developed. Assessments, evaluations, and recommendations were made using historical and contemporary data from the government, reports, Books and Academic journal articles as well as numerous web resources.

CHAPTER II

CONSTITUTIONAL DESIGNING IN POST-CONFLICT COUNTRIES: THE CASE OF SOMALIA

2.1 INTRODUCTION

Post-conflict states refer to regions or nations that have recently experienced a period of armed conflict or civil war.³⁹ These societies are characterized by the aftermath of violence, destruction, and loss, as well as a complex set of challenges that arise in the process of rebuilding and stabilizing the society. The important aspect of post-conflict societies is the need for a comprehensive and inclusive process of reconciliation, both on an individual and collective level. This process involves addressing the root causes of the conflict, promoting justice and accountability for human rights abuses, and working towards sustainable peace and development. Constitutional law plays a crucial role in protecting human rights in post-conflict societies.⁴⁰

In most post-conflict situations, ethnic elites have a significant impact on the process of establishing a constitution. They do this by trying to create language that accurately represents the core values and goals of the nation. This concept is primarily comprehended in connection with ethnic identity. Modern constitutionalism is separating national emotions from the political system and recognizing the constitutional rights that every person is entitled to. Modern constitutionalism is a deliberate strategy that seeks to create and enforce rules, organizations, and procedures that protect the rights of minority groups, while also restricting the authority and discretionary choices of the majority group. Currently, scholars are reevaluating the relationship between popular sovereignty and the creation of new constitutions in post-conflict situations, using the modern constitutionalism paradigm as a guiding principle.⁴¹ By 1994, internal conflicts had arisen in almost 50% of African republics, leading to the subsequent development of constitutions as part of continent-wide

³⁹ Derick W Brinkerhoff, 'Governance In Post-Conflict Societies' (edn, Daniele Ganser and others 2007) 3.

⁴⁰ John Brewer and Bernadette C Hayes, 'Post-Conflict Societies and the Social Sciences: A Review' (2011) 6(1) TFCS 5.

⁴¹ Adem Beha, 'Constitution-Making and Statebuilding in Kosovo: We (You) the People' (2023)2.

peacebuilding efforts. The constitutional formulation procedures indicated above occur within the context of wider democratic changes that often follow conflicts.⁴²

Although a new constitution is now being drafted, Somalia is still an essential part of the change. The evaluation of the ability to construct a universally agreed definition of statehood through the process of constitution-making is now underway. So far, the significant differences among the various domestic forces have proven to be insurmountable impediments for the process of establishing a constitution. The case of Somalia exemplifies that consent is the fundamental basis of any constitution-building process, especially when there are inadequate internal or external pressures to ensure the participation of all parties in negotiations and the subsequent implementation of agreements.⁴³

2.2 The Contemporary Constitution-Making in Cost Conflict countries: the case of Somalia

The process of drafting and formulating new constitutions is crucial for countries undergoing the transition from civil war and dictatorship to democracy. A new constitution might be seen as a departure from the autocratic history and as a means to guarantee the rights of marginalized groups within its boundaries.⁴⁴ When it comes to constitutions and the related ideas of constitutionalism, many classifications are used depending on the purpose of the categorization; The realist perspective posits that a constitution functions as a manifestation of the dynamic interaction among many powers during its creation. According to the idealist perspective, a constitution plays a crucial role in distributing rewards among the ruling elite and establishing the limits of authority. It represents the progression of the current system and its breakdown. The transitional or new perspective varies from the realist and idealist perspectives in its belief that a constitution serves as the fundamental basis for establishing a new political order, although this belief may vary in intensity. It closely adheres to the idealist perspective, but it imagines a more fundamental and comprehensive

⁴² International IDEA (n 12) 7. International IDEA, 'Constitution Building after Conflict: External Support to a Sovereign Process' (*Bulls Graphics, Sweden 2011*) 7-8.

⁴³ Ibid.

⁴⁴ Darin EW Johnson, 'Post-Conflict Constitution-Making' (2011) 6.

comprehension of how a constitution contributes to the establishment and progress of a new society.⁴⁵

This study examines the importance and objective of a constitution in periods of political change, as contrasted to periods of political stability. This text describes the rapid pace at which the constitution evolves after a significant shift in political authority. This variant of constitutionalism entails the constitution assuming a pivotal function in the establishment and sustenance of democratic governance. According to Widner, this viewpoint acknowledges the intricate and multifaceted role of constitutions, but also sees constitutionalism as a continuous process that is closely intertwined with revolutionary politics.⁴⁶

Constitutional stability primarily involves safeguarding the longevity of the norms and institutions established by the supreme legislative authority, preventing them from being easily reversed as opposed to regular laws.⁴⁷ Numerous scholars have conducted thorough investigations into the durability of constitutions, as well as other subjects such as lifespan, and have examined methods to attain them. Constitutions that are currently in effect generally incorporate mechanisms for amendment, which aim to achieve a balance between inflexibility and adaptability in order to ensure stability. The design of a constitution includes limitations on the ability to make amendments, whether in terms of procedures, time constraints, or the content of the amendments, in order to enhance stability. The fundamental premise of constitutional design choices that include procedural constraints and other measures is that the efficacy of majoritarian democracy and its institutions is assumed, and any potential abuses are either regulated through political methods or by mechanisms such as supermajority voting requirements in veto institutions.⁴⁸

Anthony Depalma has recently argued that there is a contradiction when it comes to constitution making in post conflict countries. the main goal of a constitution is for the people to collectively agree on the ideas by which they want to be governed, no other legal document causes as much disagreement. Here, he argues that the confusion and

⁴⁵ Jennifer Widner, 'Constitution Writing and Conflict Resolution' (2005) 502.

⁴⁶ Ibid 503.

⁴⁷ Mark Tushnet, "*The Oxford Handbook of Comparative Constitutional Law*", Oxford University Press, 2012.

⁴⁸ Yaniv Roznai and Duncan M Okubasu, 'Stability of Constitutional Structures and Identity amidst "Political Settlement": Lessons from Kenya and Israel' (2023) 1(1) CCS 102.

uncertainty surrounding disagreements within a general consensus stem from a common misunderstanding of the contemporary process of formulating a constitution. by perceiving constitution creation as a realm of contention rather than a mere documentation of outcomes, the paradox is overcome. the process of drafting a constitution is a crucial part of a broader effort to completely transform and resolve conflicts. The goal is to build a practical agreement on the core principles and approaches of governance in developing and changing nations.⁴⁹

A constitution serves as a concrete and unambiguous representation of the process of establishing a state, and hence contributes to the promotion of peace. The process of drafting a constitution is considered an occasion for opposing groups to come together and create a legally enforceable text that meets the needs of all parties concerned. The warring factions are anticipated to observe a brief cessation of hostilities while engaging in the process of document creation, allowing the drafting to function as a peaceful means of negotiation. The constitution is anticipated to resolve fundamental problems while guaranteeing enduring stability, security, and justice.⁵⁰

A significant body of writing has been devoted to the Republic of Somalia. The country has recently caught the attention of the world community since it has adopted a new constitution. The Republic of Somalia has adopted a new system of governance and has become a member of several African countries, including Tunisia, Egypt, South Sudan, and Libya. The enactment of this new constitution aimed to bring an end to a prolonged period characterised by tension, violence, instability, and sporadic chaos. Its objective was to develop effective political institutions and implement a governance system that is more accountable and responsive to the needs of the population. This study aims to analyse and assess the Provisional Constitution of the Republic of Somalia. The objective is to conduct a comprehensive analysis of the role played by the constitution-writing process in Somalia's endeavours to establish a state after a period of violence and civil war.⁵¹

⁴⁹ Vivien Hart, 'Constitution-making and the Transformation of Conflict' (2001) 26(2) PC 153.

⁵⁰ Hallie Ludsin, Hallie Ludsin, 'Peacemaking And Constitution-Drafting : A Dysfunctional Marriage' (2011) PCL:LSR 242.

⁵¹ Antonios Kouroutakis, 'The Provisional Constitution of the Federal Republic of Somalia: Process, Architecture, and Perspectives' (2014) 3(4) CILJ 1195.

2.3 Constitution as a Peace agreement in Post Conflict Countries: the case of Somalia

Peace agreements have become a prominent feature of political and legal methods for resolving internal conflicts in recent decades. A strong association exists between the development of constitutions and peace processes. As a result, some scholars argue that a unique understanding of constitutionalism is required.⁵²

Regarding Teitel, the conventional understanding of a constitution is that it is a fundamental and immutable component of the country's political future. Thus, it fosters a comprehensive perspective of the process of drafting a constitution as a distinctive, nationwide occurrence that brings together political participants indefinitely. Conversely, Teitel contends that a more effective method to understand a period of political transformation resulting from a peace treaty is by employing the notion of transitional constitutionalism, which juxtaposes the potential for future peace with the conflicts of the past. Transitional constitutionalism is characterized by its adaptability and recognition of the current constitutional requirements, particularly in situations where there is a departure from previous norms. Similarly, Hart saw the constitution as an ongoing dialogue that effectively resolves disputes, rather than a definitive and unalterable contract. Peace treaties, according to experts such as Christine Bell, might be seen as a form of temporary constitution. Peace agreements are frequently accompanied by substantial constitutional modifications or comprehensive constitutional reform, either before or after their implementation. Peace processes in fragmented societies may involve discussions and agreements aimed at implementing or strengthening federalism or decentralization of authority. This phenomenon presents several challenges for the study of comparative constitutional law in nations that have experienced civil war.⁵³

Peace agreements are commonly recognized as contractual arrangements designed to eliminate violent conflicts or significantly alter them to enable more constructive outcomes. The agreements are formal written records that are made public after consultations including some or all of the conflicting parties, as explained in detail. They mainly demonstrate the level of agreement among these individuals in terms of

⁵² Melissa Crouch, 'Peace Processes and Constitution-Making: An Introduction' (2020) 18(4) IJCL 1.

⁵³ *ibid*

the necessity to address and eliminate physical violence. Peace accords, publicly available formal documents, aim to address issues with the goal of resolving them. The decisions are made by a consensus of the disputing parties after engaging in discussions with them. A peace agreement is a voluntary agreement made by one or more parties involved in a dispute. Its purpose is to resolve unresolved concerns and establish guidelines for future communication, with the ultimate goal of ending hostilities. Therefore, it is theoretically acceptable to categories of post-conflict constitutions (PCCs) as peace agreements. The primary goal of a PCC is to assist in ending a violent conflict inside a single country and prevent it from happening again by addressing the underlying causes and motivating elements of the war in the countries that have experienced the conflict.⁵⁴

Contemporary violent conflicts mainly occur within countries and mainly revolve around issues related to public resources and power, identity and autonomy, or both. Constitutions are fundamental documents that provide the rules for governing governments. They define the limits of political power and access to resources, while also representing the connection between the citizens and the state. These issues may require a reassessment of the collaboration in order to find a solution. Consequently, debates regarding constitutional amendments are integrated into the peace process. The importance of constitutional issues and changes in peace processes is clearly shown by a large number of peace agreements and constitutions.⁵⁵

Nevertheless, it is feasible for the process of resolving conflicts to persist during the stage of drafting a constitution, even after the formalization of a peace deal. The potential substantial impact of constitutional change, especially during challenging transitions from war to peace, makes it a controversial process that allows post-conflict nations to modify the content of the Constitution as a peace treaty. Intense rivalry occurs when the upper class is unable to agree on the basic political agreement. Nepal saw a lengthy and controversial process of creating a constitution, which took place from 2007 to 2015. Yemen has been experiencing unrest since 2011, Zimbabwe faced a period of instability from 2008 to 2013, Libya has been dealing with turmoil since 2001, and Somalia has been facing challenges since 2000 in the state building

⁵⁴ Laurie Nathan, 'The Real Deal? The Post-Conflict Constitution as a Peace Agreement' (2020) 41(9) TWQ 1558.

⁵⁵ Christina Murray and others, 'Constitutions and Peace Processes' (2020) 11.

process.⁵⁶ Following prolonged periods of political turmoil and internal strife, Somalia is currently experiencing a lack of a permanent governing body controlling the whole country, resulting in the displacement of millions of individuals and the emergence of a severe humanitarian crisis. Considerable advancements have been achieved in the development of a democratic regime in Somalia since the Carta Reconciliation Conference in 2000. Significant advancements have been achieved in the development of democratic institutions in Somalia following the Carta Reconciliation Conference. The events listed include the establishment of a new parliament and president, the approval of a temporary constitution in 2012, and the usual discussions that took place during the creation of the Transitional Federal Government and the Transitional National Government in state building process.⁵⁷

2.4 The Constitutional history of Post-conflict Somalia

Somalia gained independence on July 1, 1960, and transformed into the Republic of Somalia through a combination of two regions: the British Somaliland Protectorate and the Italian-controlled Trusteeship Territory of Somalia. Following the attainment of independence, the Republic of Somalia successfully established itself as a democratic nation, complete with a constitution of 1961. The constitution, approved through a public vote, defines a structure of governance that is civilian and parliamentary in nature, while also ensuring the protection of human rights. between 1960 and 1969, Somalia was successively governed by two democratically elected administrations that were elected in conformity with the provisions of this constitution. In 1969, the nation underwent a nonviolent coup d'état. In 1969, the revolutionary regime of Major General Mohamed Siad Barre ordered the suspension of the constitution and its institutions during a coup d'état. A referendum was conducted to approve a modification of the constitution in 1979. The nation, previously known as the Democratic Republic of Somalia, has been governed by a presidential style of

⁵⁶ Laurie Nathan, 'The Post-Conflict Constitution as a Peace Agreement' in Roger Mac Ginty and Anthony Wanis-St. John (eds), *contemporary Peacemaking: Peace Processes, Peacebuilding and Conflict* (Springer International Publishing 2022) 447.

⁵⁷ Mr Abdinasir Abdullahi Mohamed Biyo, Mr Sharmarke Abdullahi Yusuf and Mr Burhan Hasan Warsame, 'Development of the Democratic System in Somalia Since the Carts Reconciliation 2000' (2023) 6(4) IJEHSS 260.

government since 1979, when its Constitution was officially approved through referendum of the people of the country.⁵⁸

the constitutional order of Somalia was toppled in 1991, leading to a series of detrimental consequences for the country and its people. These include civil war, inadequate political structures, famine, drought, and conflicts. Several reconciliation initiatives and peace conferences were conducted with the involvement of various parties such as the UN, the frontline states including Kenya, Ethiopia, and Djibouti, and the Islamic states of Egypt, Libya, and Yemen. However, these efforts failed to restore normality and the constitutional order.⁵⁹ However, following a period of twenty-one years under a military rule, a coalition of clan militias successfully deposed Siad Barre in 1991, resulting in the disintegration of the state. Following the downfall of the Barre administration, the Somali state experienced a breakdown, leading to the emergence of clan-based entities that took control of and governed certain areas of the country. The northwestern region, which was formerly under British protection, seceded and proclaimed itself as an independent entity, but it has not yet received international recognition as the Republic of Somaliland. Puntland, located in the northeastern region, proclaimed its autonomy as an autonomous State. In the ten years after the Barre administration was overthrown, Somalia lacked a central governing authority and was primarily governed by clan-based politics. This period was marked by internal civil wars between various clans and factions.⁶⁰

The fragmentation of Somalia and the resulting internal conflicts garnered substantial regional and international endeavors to terminate the war, reinstate peace, and reconstruct the state. The vast majority of these activities were primarily carried out under the supervision of the Intergovernmental Authority on Development (IGAD), a regional alliance consisting of eight countries: Djibouti, Ethiopia, Eritrea, Kenya, Somalia, South Sudan, Sudan, and Uganda. Furthermore, efforts were made to rebuild a constitutional framework, a task that had a substantial influence on peacekeeping operations and initiatives for state development. The most significant development among them was the endorsement of a Transitional National Charter (TNC) from 2000

⁵⁸ Aman HD Obsiye, 'Rethinking the Somali State' (Master's thesis, University of Minnesota 2017) 4.

⁵⁹ Antonios Kouroutakis, 'The Provisional Constitution of the Federal Republic of Somalia: Process, Architecture, and Perspectives' (2014) 3(4) CILJ 1196.

⁶⁰ International IDEA, "Constitutional history of Somalia", (constitutionnet.org 2018), <https://constitutionnet.org/country/somalia>, accessed 21 April 22, 2024.

to 2003. The Charter formulated during the Arta, Djibouti Peace Conference proposed the creation of a decentralized unitary state that would be governed by regional autonomy. Furthermore, a Transitional National Government (TNG) was established, along with the implementation of a power-sharing policy based on the 4.5 formula. This formula spatially categorizes the four primary clan lineages of Somalia—Rahanwein/Digil-Mirifle, Hawiye, Darood and Dir. each of these families receives an equal share, while the remaining minority clans collectively receive a 0.5 share. In addition, it acknowledged the practical and unofficial self-governance of entities like Puntland State of Somalia.⁶¹

In 2004, new peace negotiations took place in Kenya, resulting in Somali players reaching an agreement on a new constitutional framework. The authority of the central state had been diminished during the rule of the Transitional National Government (TNG); so, this initiative aimed to bolster and broaden that authority. Somalia adopted a federal system instead of the decentralized unitary administration of the Transitional National Authority, as specified in the Transitional Federal Charter (TFC). In addition, a Transitional Federal Government (TFG) and a Transitional Federal Parliament (TFP) were created. In addition, the Charter granted permission for the establishment of the Federal Constitutional Commission (FCC), which is responsible for creating a federal constitution that protects the ideals outlined in the Charter. The Federal Constitutional Commission was initially given a period of two and a half years to complete the drafting of the constitution.⁶²

In June 2006, the legislature enacted the legislation that regulates the process of formulating the constitution. The Somali Constitutional Commission Act (SCCA) was enacted to establish the Federal Constitutional Commission (FCC) consisting of fifteen members, in accordance with the 4.5 ratio. The SCCA also outlined the guiding principles for the FCC's activities. Pursuant to the Act, the Commission was assigned the responsibility of scrutinising the Charter, social justice, Islam, and democracy. In addition, the Commission was required to create a process that promotes public participation, openness, and citizen responsibility. Furthermore, the Act required that the method encompass the diverse conceptions and viewpoints held by Somalis and

⁶¹ Ted Dagne, 'Somalia: Current Conditions and Prospects for a Lasting Peace' (2011) CRS 26.

⁶² Antonios Kouroutakis, 'The Provisional Constitution of the Federal Republic of Somalia: Process, Architecture, and Perspectives' (2014) 3(4) CILJ 1197.

facilitate the progress of peace, stability, and reconstruction. In August 2006, during its first meeting, the Federal Constitutional Commission approved its procedural rules, defined a civic education effort, and set a timeline for the creation of the draft constitution. Afterwards, the organisation underwent a name change and became known as the Independent Federal Constitutional Commission (IFCC). The Federal Constitutional Commission was founded in mid-2006 and was given a mandate of two and a half years by the TFC. Therefore, it was expected to be completed by December 2008 in principle. Nevertheless, due to the increasing volatility and violence, the Commission did not commence its complete responsibilities until March 2010. The initial Consultation document Constitution (CDC), revealed in August 2010, consisted of ideas and choices designed to encourage public discussion and gather input in anticipation of a more comprehensive final document. In 2010 and 2011, during a time of political instability and uncertainty, the Commission held public discussions on the draft text and civic education. Consequently, there was a decrease in outreach activities and significant delays occurred. In August 2012, a National Constituent Assembly (NCA) consisting of 825 members from different sectors of Somali society provisionally approved a new constitution. This was done as an alternative to the originally planned but unfeasible referendum, which had been stopped due to security concerns. The ratification of the constitution marked the conclusion of 12 years of political turmoil, conflicts, instability, and the delay in the development of the constitution.⁶³ There are two potential methods for understanding the temporary nature of the 2012 Constitution in contrast to its lasting nature. The TFC's initial mission to conduct a referendum to adopt the final constitution was hindered by security concerns. Consequently, the NCA decided to provide temporary approval to the document until security situations improved enough to allow a constitutional referendum to take place across the entire country. The IFCC members perceived that their work remained unfinished as stakeholders failed to achieve a consensus on significant matters related to state-building. Consequently, they approved an extended period of transition to address any remaining issues before voting on the document. The most crucial problems revolved on the organization of the federal legislature, executive branch, and judiciary; the distribution of resources and authority between

⁶³ International IDEA, "Constitutional history of Somalia", (constitutionnet.org 2018), <https://constitutionnet.org/country/somalia>, accessed 21 April 22, 2024.

the federal and state governments; and the designation of Mogadishu as the capital of the country.⁶⁴

Chapter 15 of the Provisional Constitution focuses on two main aspects: the ongoing constitutional review process and thorough constitutional change. Systematic modifications can be begun by the federal government, state governments, the federal parliament, or a popular petition. Nevertheless, because of violations of the timeframe, the Provisional Constitution is ambiguous when it comes to determining the appropriate steps to take for substantial changes to the constitution. A joint committee, consisting of representatives from both chambers of parliament, scrutinizes every proposal. Once approval is obtained, ratification necessitates the backing of a majority of votes in a public referendum and a two-thirds majority in both houses of Parliament of Somalia.⁶⁵ In order to address the unsolved issues of the IFCC, the Constitution establishes two institutions with the specific aim of implementing changes. The Legislative Provisional Constitution Implementation and Oversight Committee (OC) and the Independent Provisional Constitutional Review and Implementation Commission (IC) are two instances of specialized bodies in this regard. In addition, the duration of this subsequent transition was compared to the length of the original Parliament's four-year mandate 2012-2016. By August 2016, it was expected that a constitutional referendum would have been carried out and all unresolved concerns that the IFCC had been unable to resolve would have been settled. Nevertheless, various hindrances, such as the time-consuming procedure of setting up the OC and the IC and defining their distinct duties, would have prevented the legislature from further discussing the controversial issues by the time these entities could start their work and propose solutions. Since assuming office in 2017, the leaders, along with a newly established parliament and government, have committed to finishing the process either by the end of 2018 or before the 2020 elections. However, this desired result was impeded by ongoing conflicts between the central government and the regional states. By 2022, the country undergone a process of electing a new parliament and administration. The process of revising the constitution has remained unchanged since then. The future progression of the procedure is uncertain. According to this

⁶⁴ Antonios E Kouroutakis, 'The Constitution of Somalia on Paper and the Constitutional Reality' (2018) SSRNEJ 5.

⁶⁵ *The Provisional Constitution of Federal Republic of Somalia, adopted on August, 2012.*

analysis, a more efficient system would need resolving legal consequences that may arise from ignoring constitutional deadlines. In May 2022 new parliament and government was elected and the issue of constitutional review through state building efforts is still undergoing process.

2.5 The importance of Participation in Constitutional making process

Since the later part of the 20th century, while developing constitutions after armed conflicts, the principles of transparency, citizen involvement, and inclusion have been considered of utmost importance. Experts contend that incorporating participatory constitution-making procedures in transitioning and post-conflict governments can effectively resolve long-standing conflicts by promoting agreement among various factions on national values and prioritizing the needs of marginalized communities.⁶⁶

Post-conflict and transitioning states, especially those that have experienced a political revolution or civil war, use participatory constitution-making to secure broad public backing for a new regime or constitutional order. This involves a series of transparent and inclusive drafting processes. The body of research on constitutional design is growing quickly, with many studies promoting the benefits of popular engagement in constitution-making and offering conjectures about its requirements, outcomes, and implications. These topics are just briefly touched upon in the current attempt. This section's main focus is on providing a brief overview of the most common kinds of public engagement and how they have appeared in various circumstances. However, a brief synopsis of the numerous assertions and rebuttals regarding public constitutional design will function as a helpful point of reference for the conversation that follows and highlight the inconsistency of several theories.⁶⁷

2.5.1 Justifying Participation process

The most often stated and logically most likely argument in favor of participation is that it strengthens constitutional legitimacy. Legitimacy gives stability to a constitutional order by lowering the possibility of dissent and subsequent renegotiation. Voigt goes on to say that the legitimacy-granting advantages of

⁶⁶ Angela Banks, 'Expanding Participation in Constitution Making: Challenges and Opportunities' (2008) 49(4) WMLR 1043.

⁶⁷ Rosalind Dixon and Tom Ginsburg, 'Comparative Constitutional Law in Asia', (Edward Elgar Publishing 2014) 28.

inclusive constitution-making can be fully realized just by considering the potential or impression of involvement. Furthermore, the idea behind participation is that it cultivates democratic principles, abilities, and habits, so producing better citizens. The effective operation of formal democratic institutions listed in a new constitution is then based on these newly attained or enhanced citizen qualities. Participation also has educational benefits; it educates citizens on important public issues, speeds up their political knowledge acquisition, and prepares them to evaluate their government more critically.⁶⁸

In the context of the constitution, these arguments contend that taking part in ratification, for instance, helps citizens develop democratic principles and teaches them about how democracies function as well as the provisions of the constitution. This could make democracy more likely to succeed at the regime level. As a result, once the constitution is ratified, involvement in its approval process will transfer to its governance. The previous reasons in favor of widespread participation in constitutional construction complement one another: participation strengthens a document's capacity to restrain government. In order for individuals to monitor government acts efficiently, there needs to be enough clarity over what defines a breach of the government's authority so that people may organize to stop it. Constitutions serve as a focal point for citizens to coordinate enforcement actions and assist solve this coordination issue by creating a clear understanding of the bounds of appropriate government behavior. The construction of focal points through popular approval of a constitutional design process will aid in the cooperation required to discourage possible constitutional infractions by the government officials.⁶⁹

In the best-case scenario, the written constitution's focal point combined with the stronger civil society that resulted from a participatory design process will guarantee that the constitution is upheld and not just a piece of parchment. Lastly, academics predict that greater rights provisions and improved rights enforcement mechanisms, such as super majoritarian institutions—as well as increased public participation in the

⁶⁸ Sujit Choudhry and Mark Tushnet, Sujit Choudhry and Mark Tushnet, 'Participatory Constitution-Making: Introduction' (2020) 18(1) *IJCL* 174.

⁶⁹ Amal Sethi, 'Reassessing Public Participation in Constitution-Making Processes' (2023) 32(1) *Dikaion* 7.

appointment of government officials would be features of participative processes.⁷⁰ A fundamental principle of democratic thought is the connection between legitimacy and public engagement. Political decisions made behind closed doors or forced by sheer power with little to no public input are often seen as less legitimate than those that reflect, or are perceived to reflect, the will of the people expressed through fair, free, and open participation. Creating a constitution is not an exception. According to popular belief, when the public is involved in the process of creating a new constitution, they are more inclined to view it as an official national charter.⁷¹

Participatory constitution-making emphasizes the need of involving citizens in the process of creating constitutions, which is a key aspect of ensuring the legitimacy of modern constitutions. Participatory methods have been widely employed as tools following political revolutions, violent civil conflicts, or in association with such occurrences. Before starting a successful participatory constitution-making process, it is crucial to achieve political reconciliation and end conflicts, following set guidelines. Both Tunisia and South Africa successfully developed participatory constitution-making processes during civil unrest during the apartheid era, which involved minority groups and the government. Transition leaders in various countries, including Kenya, South Africa, Thailand, Papua New Guinea, Uganda, and Brazil, have also implemented inclusive processes for creating a constitution. These processes aim to foster agreement on the structure of the government and its core principles, strengthen a collective sense of identity, national unity, and belonging, and acknowledge and incorporate the aspirations of historically marginalized citizens who were previously excluded under an authoritarian regime.⁷² These constitution-making methods were widely accepted by both local and international experts because they were transparent, gradual, deliberative, and inclusive. They also promoted public engagement, involvement, and approval either directly or through elected officials amid a diverse population distinguished by different ethnic, religious, and ideological associations. The concepts of internal and external participation systems help to define the organizational structures and procedures involved in the construction of participatory

⁷⁰ Ibid.

⁷¹ Ran Hirschl and Alexander Hudson, 'A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy'(2024) LSI 1.

⁷² Darin EW Johnson, Post-Conflict Constitution-Making' (2020) Elgoronline 7.

constitutions after a conflict. Citizens have the opportunity to participate in the drafting process either directly or through representatives, with the help of internal technology. Although individuals are allowed to participate in public meetings and submit written criticism through external means, they are legally forbidden from participating in government-appointed drafting groups.⁷³

2.5.2 Participative Constitution-Making: International Legal Basis

There are two justifications for advocating the notion that individuals possess the entitlement to participate in the formation of constitutions. The first principle is the inherent right to self-determination, as recognized in UN resolutions and treaties. The second principle is the notion of "international limitations on constitution-making, which is based on the Universal Declaration of Human Rights and other international human rights instruments."⁷⁴

The concept of internal self-determination entails that individuals possess the liberty to select their own political and economic framework. Thus, it is imperative for the governments to ensure the provision of the constitutional and political mechanisms that enable the exercise of this right. Essentially, this implies that individuals must, in accordance with the principles of public international law, determine the future political and constitutional structure of their nation. In other words, the principle of internal self-determination requires that the population participate in the formulation of the constitution. Through this type of engagement, individuals have the opportunity to engage in discussions, negotiations, and ultimately reach agreements on a wide range of process.⁷⁵ International constraints on constitution-making pertain to a collection of criteria that should be adhered to during the process of creating a constitution. Both procedural and substantive limitations are applicable. Essentially, they are the implementation of human rights principles outlined in many international treaties. The substance of the constitution is the focus of the restrictive provisions. The 1948 Universal Declaration of Human Rights is the inaugural document that delineates these limitations.⁷⁶

⁷³ Ibid.

⁷⁴ Ali Hirsi Ahmed, 'Constitution-Making In Somalia: A Critical Analysis, 1960 – 2013' (Ma Thesis, 2014) 41.

⁷⁵ Ibid.

⁷⁶ Brooke Simon, *Constitution-Making and Immutable Principles*, (Master's Thesis, Boston: The Fletcher School, 2005) 67.

2.6 The Arta Somali Peace Process

Since 1991, Somalia has faced numerous fruitless endeavors to restore stability and establish a centralized administration. In 2000, the Djibouti government hosted the Somali National Peace Conference in the district of Arta. In August 2000, a Transitional National Government (TNG) was established with support from both domestic and international organizations. The Arta process was the most extensive bottom-up peace endeavor since the beginning of the Somali civil war.⁷⁷ In September 1999, President Ismail Omar Guelleh of Djibouti voiced his concerns to the United Nations General Assembly about the continued infringement of human rights, a malfunctioning government, and the conflicts in Somalia. His allies included the Somali diaspora, the Inter-Governmental Authority on Development (IGAD), and the erstwhile Organization of African Unity. The Somali National Peace Conference was held in Arta, Djibouti, from May to August of 2000. This peace endeavour differed significantly from past peace conferences in several aspects. The participants consisted of women and minority groups, with Somalis exerting a more significant impact on the process in comparison to persons from other regions. This peace conference, held in 1991, marked the first instance of a comprehensive and inclusive gathering since the dissolution of the state.⁷⁸

Arta, a small municipality in the Republic of Djibouti, hosted an extended Somali peace conference from March to August 2000. The six-month peace conference, officially known as the Somali National Peace (SNP), led to the establishment of a Transitional National Assembly, a Transitional Constitution, and the selection of an Interim President. While many individuals perceived this as a source of instability and the resurgence of the Arta Group the previous autocratic government's loyalists, others regarded it as a means to restore the central state. The Somali National Peace Conference was the eleventh peace conference held after the breakdown of the Somali state in the early 1990s. This peace process consisted of the Technical Consultative Symposium, the Business Community Symposium, the Elders Consultative Meeting,

⁷⁷ Nicklas Svensson and Abdillahi Jama, 'horn of africa: transforming itself from a culture of war into culture of peace' (Somalia International Rehabilitation Centre, 2004) 122.

⁷⁸ Ibid.

and the Arta Conference, which was often called the Somali National Peace Conference (SNPC).⁷⁹

The Djibouti peace conference, held in the small town of Arta, garnered significant importance since it attracted almost 3,000 attendees and was considered the most significant assembly ever demanded by the Somali people. A coalition of scholars, corporations, indigenous leaders, and non-governmental organizations worked together to form a centralized government and promote the core value of forgiveness. The Transitional National Charter (TNC) received an overwhelmingly positive approval from the conference's almost 900 elected delegates. Furthermore, a Transitional National Assembly (TNA) consisting of 245 seats was established. Following his election, the president of the TNA designated a prime minister.⁸⁰

2.6.1 Power sharing: the 4.5 formula in Somalia

In response to the outbreak of the civil war in Somalia, the 4.5 formula was introduced in 1997 as an interim measure to address political and governance representation at the state level. Four prominent clans were granted an equal portion of influence under this power-sharing arrangement, while a group of lesser clans earned half as much.⁸¹ During the 2000 Arta Peace Conference in Djibouti, it was agreed to implement this model temporarily until a new constitution could be formulated. However, the Provisional Constitution implemented in 2012 did not consider this arrangement, and the formula continues to determine the distribution of legislative seats in the lower chamber of the federal legislature, known as the chamber of the People, as well as the makeup of the council of ministers.⁸²

Afyare Elmi asserts that Somalia chose this recipe out of necessity, as there were no alternative options available. Due to the prevailing belief that Somalis were divided by clan affiliations and could only be brought together through clans, political parties, factions, and regional alliances proved ineffective. Elmi identifies Mohamed Haji

⁷⁹ Abdisalam M Issa-Salwe, 'Somali peace concerns and outcome' na, 1, ><https://www.scribd.com/document/13250437/Somali-Peace-Concerns-and-Arta-Outcome>> accessed 4 May 2024.

⁸⁰ Ibid.

⁸¹ Mohamed Sheikh Nor, 'Somalia: Hassan's push for universal suffrage stokes tensions' (the African report, 13 December, 2023)< <https://www.theafricareport.com/330212/somalia-rising-tension-due-to-proposed-constitutional-changes/>> Accessed 5 May 2024.

⁸² ibid

Mukhtar, a prominent Somali scholar, as a key advocate who supports the notion that the formula of 4.5 holds the key to resolving political and governance impasses in Somalia.

2.6.2 The provisional constitution of Somalia and the 4.5 power sharing Formula

This section of the investigation focused on the 2012 constitution and the ongoing control of the clans despite the elimination of the 4.5 system. The temporary constitution, enacted in 2012, outlines the federal power-sharing agreement among member states as the fundamental basis of the Somali government. The constitution not only governs the self-proclaimed autonomous state of Somaliland but also mandates that the rudimentary state of Somalia. The implementation of a comprehensive and progressive administrative structure, as outlined in the constitution, displays the state's dedication to democratic administration. The Somaliland government is legally bound by the constitution to promote and uphold human rights and inclusive governance. The legislative, executive, and independent judiciary, which are the three fundamental components of the government, collaborate harmoniously to uphold a state of equilibrium in power and guarantee responsibility.⁸³ According to Article 11 of the constitution, all citizens are entitled to the same rights and obligations as stated by the law, regardless of their family ties, place of birth, religion, social or economic status, political ideologies, or dialect. Currently, the Somali federal government encompasses several states, namely Somaliland, Jubbaland, Gamudug, Puntland, the South West State of Somalia, and Hir-Shabelle, the new interim administration of SSC-Khatumo and the regional administration of Banaadir.⁸⁴

In the Somalian constitution, the federal government and the member states are identified as the two levels of government. The several aspects of control have been customized to fluctuate, resembling those observed in other federal states. According to Article 54 of Somalia's provisional constitution, the federal government has authority over matters related to foreign policy, national defense, citizenship and immigration, and monetary policy. Local governments in federal states should be created within the States, a concept that is currently being developed. The removal of

⁸³ Nasteha Ahmed, '*Somalia's struggle to integrate traditional and modern governance: The 4.5 formula and 2012 provisional constitution*' (Master's Thesis, the American University in Cairo, 2019), 36.

⁸⁴ Ibid.

the 4.5 power-sharing model from the constitution led to a shift from clan-based governance to the notion of universal suffrage, allowing citizens to vote individually without relying on clan representatives.⁸⁵

2.6.3 Transitional national charter of Somalia 2000-2004

Politicians in Somalia have a strong inclination for crafting new constitutions or modifying current ones. In 2000, the delegates of the Djibouti Reconciliation Conference made the decision to begin anew and establish a fresh Transitional National Charter. The conference concluded that a unitary form of government would be established as the new political system in the country. At the Arta conference in Djibouti, Somali delegates appointed a committee to draft an interim charter, marking the initial step towards establishing the third Somali republic. The group, consisting of esteemed Somalis, had the choice to propose the adoption of the 1960 constitution with certain alterations. However, they preferred to establish a Transitional National Charter that was founded on the 1960 constitution of Somalia. It is noteworthy that the Transitional National Government was obligated to prepare a new constitution during its mandate, as stipulated by this charter.⁸⁶

The nation achieved major progress towards peace by establishing the Transitional National Assembly (TNG), the Transitional National Charter (TNC), and the Arta Declaration in 2000. The Transitional National Government (TNG) received significant international legitimacy from the United Nations (UN) and the Intergovernmental Authority on Development (IGAD). The TNC established the legal framework on which the new government operated. The Somali Reconciliation and Restoration Council (SRRC) strongly opposed holding another peace and reconciliation summit because they believed that the Transitional National Government (TNG) had not successfully established effective state institutions and sufficient security measures.⁸⁷

What distinguished the Arta peace conference were the individuals participating in the negotiations and the ultimate outcome. The procedure sidelined armed belligerents for the first time, treating those in attendance as mere observers in their individual

⁸⁵ Ibid.

⁸⁶ Dr. Afyare Elmi, 'on reviewing Somalia's provisional constitution, background, challenges, and future prospectives' (Heritage Institute, 2022) 8.

⁸⁷ Andrews Atta-Asamoah, 'Long walk to restoration: Lessons from Somalia's transition process' (Institute for Security Studies, 2013) 2.

capacities without any special recognition. The primary participants consisted of traditional clan elders, religious authorities, civil society organizations, neighborhood-based businesses, and, most importantly, female delegates. The establishment of the Transitional National Assembly and the Transitional National Government (TNG) in August 2000 was facilitated by the unique nature of the process. Despite the numerous deficiencies of the TNG, which led to a decline in its influence both nationally and internationally, it managed to achieve a certain level of peace during its initial stages. The Transitional National Government (TNG) revitalized Somalia's participation in international forums. The engagement of several international actors in the achievement of the TNG also reestablished Somalia's peace agenda on the global stage. In October 2003, the Inter-Governmental Authority on Development (IGAD) initiated its involvement in a peace process in Eldoret, Kenya. This was prompted by the impending conclusion of the TNG mandate and the recognition that the TNG was unable to completely restore peace and stability. The objective of the peace process led by IGAD and Kenya was to achieve reconciliation between the Transitional National Government (TNG) and other opposing factions in Somalia. Following a change in Kenya's administration in February 2003, the location of the peace process was shifted from Eldoret to Mbagathi and lastly to Nairobi the capital of Kenya.⁸⁸

2.7 Somali reconciliation conferences in Kenya

2.7.1 The 2001 Nakuru talks

In December 2001, President Moi facilitated efforts to negotiate a resolution between the Somali Reconciliation and Restoration Council (RRC) and the Transitional National Government (TNG) of Somalia. Mawlid Ma'ane served as the leader of the SRRC during the peace negotiations in Kenya, while Hassan Abshir Farah, the acting prime minister, led the TNG side. It is noteworthy that SRRC delegates participated in a concurrent meeting organized by Ethiopia in Godey. The Nakuru peace negotiations exposed the regional dynamics of the Somalia peace process, as the SRRC, supported by Djibouti and with a clear pro-Ethiopian stance, shown reluctance in engaging with the TNG. Ethiopia was undermining the Nakuru process, which aimed to enhance the

⁸⁸ Ibrahim Farah and Sekou Toure, 'Engineering Peace in Somalia: A Call for a Re-examination of the Somali Peace Processes' (Society for International Development, 2018) 184.

legitimacy of the Transitional National Government (TNG) by involving more actors from Somalia in the administration. They did this by organizing a similar event in Godey. Due to its pro-federalist stance, the SRRC opposed the TNG, which advocated for a strong, centralized Somali government for the country.⁸⁹

2.7.2 Eldoret peace process

On October 15, 2002, in Eldoret, Western Kenya, the Somali National Reconciliation Conference (SNRC) was officially opened under the direction of the Inter-Governmental Authority on Development (IGAD). A three-phase peace process was outlined in the talks: first, putting an end to hostilities and deciding on the objectives and framework of the process; second, setting up committees for reconciliation to address the main points of contention; and third, coming to an agreement on a transitional charter and creating a new government to replace the Transitional National Government, which was put in place during the Djibouti peace process in 2000. Furthermore, the establishment of the SNRC sought to target the root causes of Somalia's war, as opposed to past peace initiatives that concentrated mostly on power-sharing arrangements.⁹⁰

Approximately 300 Somali faction leaders, politicians, traditional and religious leaders, as well as representatives of civil society, took part in the conference held in Eldoret. A cease-fire was established as a result of the negotiations, and on October 27, 2002, delegates from 24 Somali nations affixed their signatures to the pact. The Declaration on Cessation of Hostilities and the Structures and Principles of the Somalia Reconciliation Process proposed the establishment of federal governance structures and the recognition of decentralization as a crucial element of Somalia's governance systems.⁹¹

Article 2 of the Declaration on Cessation of Hostilities Agreement (2002) stipulated that the conflicting parties in Somalia should stop fighting as of October 27, 2002, and maintain peace for the whole peace process and its implementation. According to UN Security Council Resolution 733 of 1992, all governmental, military, and other parties were required to fully implement the UN Arms Embargo for Somalia.⁹²

⁸⁹ Jerónimo Delgado-Caicedo, 'Handbook of Regional Conflict Resolution Initiatives in the Global South' (Routledge, 2023) 256.

⁹⁰ Ibid 257.

⁹¹ Ibid 258.

⁹² Ibid 259.

The 2002 Declaration on Cessation of Hostilities also encompassed combating terrorism, facilitating enhanced secure access to humanitarian assistance, and monitoring the implementation of the Declaration. However, the Eldoret process encountered numerous impediments, including inadequate governance, internal competition, absence of external political backing, and financial constraints. The TNG and Djibouti argued that clans should have the right to vote on representation, while the Somali Reconciliation and Rehabilitation Council (SRRC) and their partner Ethiopia advocated for factions to choose representation. Moreover, there was a lack of an efficient mechanism for ensuring compliance and oversight on the conflicting parties.⁹³

2.7.3 Mbagati peace process

The Somali National Reconciliation Conference began in Eldoret in October 2002 and then moved to Mbagathi, before concluding in Nairobi in February 2003. The second stage of the Somali National Reconciliation Conference, which began in late February 2003, established the groundwork for fulfilling all responsibilities pertaining to the formulation of the Transitional Federal Charter for Somalia and progressing to the third stage of the conference. The Somali government and the IGAD Technical Committee formally approved the draft Federal Charter in mid-September 2003. Conflicts arose between the Transitional National Government (TNG) and different factions and leaders within the Somali population. Additionally, there were disagreements between the Technical Committee and some of these leaders, despite the consensus among external observers and the Committee that the Somali people agreed to accept the Charter.⁹⁴

Due to the persistent deadlock in the peace process and the ongoing disputes between Djibouti and Ethiopia in the Technical Committee, IGAD decided to expand the committee's membership. This expansion included the inclusion of additional regional countries such as Eritrea, Sudan, Uganda, and the AU Special Envoy, in addition to the original three members, Kenya, Ethiopia, and Djibouti. Furthermore, the Facilitation Committee substituted the term Technical Committee of the third phase of

⁹³ Ibid 259.

⁹⁴ Ali Hirsi Ahmed, *Constitution-Making in Somalia: A Critical Analysis, 1960 – 2013*, (Masters Decertation, University of Nairobi, 2014) 82.

the peace process was launched by the foreign ministers of the IGAD on May 22, 2004 for further acceleration of the Somalia's state building process.⁹⁵

2.8 The Transitional Federal Charter of Somalia 2004-2012

From 2002 to 2004, influential political actors in Somalia, who owned land and militias or had the backing of clans, played a key role in facilitating peace talks in Kenya, organized by the Intergovernmental Authority on Development (IGAD). The Transitional Federal Charter (TFC), a framework agreement, was approved by participants during a meeting in 2004. The Transitional Federal Government (TFG) and Transitional Federal Parliament (TFP) were created based on the legislative framework established by the TFC. The 275 members of the TFP were selected using the 4.5 formula. The Charter granted the Transitional Federal Parliament a five-year term, which has been extended twice until the end of the Somalia transitional period in 2012.⁹⁶

According to the Charter, the Federal Constitution Commission (FCC) is to be constituted with complete autonomy. According to Article 71(9) of the Charter, a federal constitution draft that is based on the Charter needs to be completed within two and a half years. It must then be approved by the people in a referendum that takes place in the last year of the transitional period. The initiation of the drafting of the Somalian constitution was confronted with challenging circumstances.⁹⁷ At that moment, the nation had been without a functioning government for a duration of fifteen years. Somalia was severely affected by violence during that period, and the recently formed Transitional Federal Government had no control or power over the country.⁹⁸

⁹⁵ Ibid 257.

⁹⁶ Jaafar Mohamed Aman, 'post conflict constitutions and settlement of conflicts an analysis of public participation process and federal system of provisional constitution of Somalia 2012' (masters decertation, University of Nairobi, 2014) 76.

⁹⁷The federal charter of Somalia in 2004, <<https://webapps.ilo.org/dyn/travail/docs/2177/Transitional%20Federal%20charter-feb%202004-English.pdf>> accessed 18 May 2024.

⁹⁸ Ken Menkhaus, 'The Crisis in Somalia: Tragedy in Five Acts' (2007) 106(424) Oxford University Press 357.

2.9 The Constitution Making Process

2.9.1 The Work of Independent Federal Constitution Commission

The 4.5 method was employed to select the fifteen individuals who will serve as members of the Independent Federal Constitution Commission (IFCC). This commission was established in June 2006 according to the Somalia Constitutional Commission Act. The commission was established with the objective of formulating a new constitution for Somalia.⁹⁹

The Act defined the fundamental concepts of the Commission, which included the examination of the Charter, Islamic theology, social justice, and democracy. Moreover, it suggested a strategic plan that acknowledges the variety of viewpoints among Somalis, promotes harmony, stability, and rebuilding efforts, and advocates for active involvement, openness, and accountability to the public.¹⁰⁰ The first meeting of the Federal Communications Commission (FCC) took place in August 2006. The panel approved both a consultation strategy to launch a national discussion and a thorough civic education plan to inform the Somali people about the constitution-making process. Consequently, the IFCC aimed to create a constitution that would act as the essential framework for continuous civic education. With the emergence of the IFCC, the insecurity in Mogadishu escalated. Right after the initial IFCC session, the murder of the Minister of Constitutional Affairs suddenly brought the standstill to the constitutional making process.¹⁰¹

The IFCC's work resumed in March 2010. Upon the expiration of the TFP in August 2011, it is necessary to finish and obtain approval for a final draft. Due to the highly dangerous security conditions in south central Somalia, the International Force for Civilians (IFCC) carried out activities from a makeshift headquarters in Djibouti. In addition, the IFCC was unable to commence its planned public comment campaign due to security measures. On the other hand, they isolated themselves in Djibouti to

⁹⁹ Afyare Abdi Elmi, 'Revisiting the UN-Controlled Constitution-Making Process for Somalia' (2012), retrieved May 7, 2024.

¹⁰⁰ Ibid.

¹⁰¹ Shabelle Media Network, 'Somalia: Abdalla Derow Shot Dead in Baidoa' (Allafrica, 2006) <<https://allafrica.com/stories/200607280600.html>> accessed 7 May 2024.

begin writing a first version of their work for assessment. Given the lack of information provided by the IFCC about the drafting process, it is improbable that the Somali community as a whole was notified about the development of a constitution on their behalf. Furthermore, it is unclear that they were actively involved in discussions or had the opportunity to express their concerns. In August 2010, the IFCC released the Consultation document Constitution (CDC), which is a preliminary and incomplete document that presents many options and recommendations to encourage public discussion and thoughtful consideration when there is no definitive text available for a referendum. The Consultation Draft Constitution outlines various aspects, including as the possible adoption of either a presidential or parliamentary style of government and the naming of Mogadishu as the capital city. Although it does not provide a comprehensive explanation of the federal system, it does clearly outline the basic principles of federalism in details.¹⁰²

2.9.2 Public Consultations and Civic Education in Constitution Making Process

To increase public awareness of the Consultation Draft Constitution and the benefits of constitutionalism overall, the IFCC has selected civic education and public consultations as its two main objectives. Al Shabab's presence made the discussion of the proposal difficult since they were controlling large parts of the country. On the other hand, the IFCC published CDC t their website for the review of the Society. You can also use this website to provide feedback on the draft. In addition, serial programming and a text messaging service were developed to disseminate information about the proposed constitution and constitutionalism for the purpose of public participation. These platforms were created especially for television and radio podcasts. Focus groups were held by the National Democratic Institute for International Affairs (NDI) in Puntland and south-central Somalia, including areas under Shabab control. According to NDI research, a sizable fraction of Somalis is ignorant about the procedures involved in and significance of constitution drafting within the context of state building in the post conflict situation in the Country.

The IFCC conducted consultation sessions regarding the Consultation Draft Constitution in the vicinity of Somalia in late 2010 and early 2011. In Mogadishu, the leaders of Somalia's transitional institutions convened with IFCC representatives. In

¹⁰² Ali Hirsi Ahmed, *Constitution-Making in Somalia: A Critical Analysis, 1960 – 2013*, (Masters Decertation, University of Nairobi, 2014) 45.

addition, traditional leaders of Somalia, representatives of universities in Mogadishu, members and committees of the Transitional Federal Parliament, Somali security forces, and civil society organizations including women's, youth, and disability organizations were consulted by the IFCC. Workshops were conducted at the CDC by members of the IFCC, which included civil society organizations and officials from Puntland, Galmadug, and Somaliland states.¹⁰³

2.9.3 The Kampala Accord and end of Somalia's Transition Process

The decision made by the Transitional Federal Parliament on February 3, 2011, to prolong its own tenure by three years has caused a slight setback in the progress of public engagement and civic education related to the proposed Constitution. The TFP's self-extension has generated questions regarding the timeliness of the proposed constitution. The Kampala Accord was signed on June 9, 2011, by the President and Speaker of the TFP. This agreement obligates the parties involved to create a constitution by August 2012. Due to the contentious nature of the agreement, the outcome of the constitution adoption process remains unclear.¹⁰⁴

The Kampala Accord of 2011 was a significant milestone in concluding the transitional phase and expediting the formulation of a new constitution for Somalia. Nevertheless, the civil society in Somalia did not value or approve of this progress. Testimony presented to the House of Commons Foreign Affairs Committee reveals that a significant number of Somalis perceive that decisions affecting their lives are often decided at the international level without sufficient local involvement. The reaction to the Kampala Accord about Somalia's political transition provided evidence of this fact. However, this agreement was a step forward for Somalia's constitution making process.¹⁰⁵

2.9.4 The Garowe Constitutional Consultation Process

The Garowe Process, which outlined the constitution-making procedure in a comprehensive manner, was facilitated by the Kampala Accord. It is remarkable that

¹⁰³ Amilcar Schmidt, 'Mission impossible? Opportunities and limitations of public participation in Constitution making in failed state of Somalia' (Routledge, 2017) 194-209.

¹⁰⁴ Agreement between the President of the Transitional Federal Government of Somalia and the Speaker of the Transitional Federal Parliament of Somalia made in kampala on 9th june 2011 (The Kampala Accord) < <https://reliefweb.int/report/somalia/agreement-between-president-transitional-federal-government-somalia-and-speaker>> accessed 7 May 2024.

¹⁰⁵ Ibid.

an endeavor was undertaken, utilizing this approach, to expand the democratic process and enhance its level of representation. However, the Garowe Process faced criticism for its transnational nature.¹⁰⁶ In 2011, a sequence of meetings took place with representatives from the Transitional Federal Government (TFG), the regional states of Puntland and Galmudug, and Ahlu Sunna Wal Jama'a - a Sufi militia connected with the TFG. These events marked the conclusion of the transition period. The objective of the Garowe Process negotiations was to provide a structured framework for the successful conclusion of the transitional phase of Somalia. It set objectives to be achieved during the transition phase and laid the groundwork for the incoming administration. While it received acclaim for expanding the political process outside the TFG, it also faced criticism for its seeming heavy reliance on many western donors and the UN Political Office for Somalia (UNPOS). Moreover, many regional administrations expressed dissatisfaction with the insufficient representation of their interests in the process. The Garowe signatories opted to adhere to the controversial 4.5 formula in order to choose members for the coming governments.¹⁰⁷

however, perpetuated discrimination against Somalia's minority clans by granting them only half the representation rights compared to the majority clans and still discrimination in the Somali society.

2.10 Challenges facing the Completion of the Provisional Constitution of Somalia 2012

The process of writing a constitution in Somalia is exceptionally challenging. Somalia has not had a functional government controlling the whole country for more than thirty years. Perhaps the absence of exposure to official rule has rendered a generation of Somalis incapable of comprehending it. In addition, the interim constitution is being formulated during a time of conflict, when only a small number of Somalis have the freedom to move around without restrictions and civilians are unable to engage in constitutional processes safely. Through active participation in civic education projects and public consultations, members of civil society willingly expose their community outreach to potential risks.

¹⁰⁶ Laura Hammond, 'Somalia Rising: Things Are Starting to Change for the World's Longest Failed State' (2013) 7(1) JEAS 183, 184.

¹⁰⁷ Laura Hammond, 'Somalia rising: things are starting to change for the world's longest failed state' (2013) 7(1) JEAS 184.

The security situation exacerbates and divides civil society along clan lines. Security concerns will hinder the scrutiny and approval of the interim Federal constitution through voting in the foreseeable future. Currently, there are ongoing discussions about considering alternative approaches for the interim implementation of a constitution, such as approval by a constituent assembly. The main goal is to inspire hope among the whole Somali population by proposing that this constitutional process may provide a basic and generally acknowledged framework for the country's efforts in nation-building and state-building efforts. Successive Somali governments have been struggling to transform the provisional constitution into a permanent and legitimate supreme law for more than ten years. The kind of governance to be used and the different roles that the federal government and the federal states would play are two of the clauses that are absent in the constitution. It must also specify the number of federal states that Somalia ought to have. There are now five federal states in the federal system: Puntland, Jubbaland, Hirshabelle, South West, and Galmudug states. Somaliland, which has declared independence during the civil war in the country, is another case that challenges the completion of the constitution. Certain local communities have been pushing for the creation of a new state without a cap on the number of states, particularly along the border between Puntland and the breakaway province of Somaliland. The relationship between Somaliland, which is regarded as a part of Somalia but refuses to be a part of the federal system, must also be made clear in the country's constitution.¹⁰⁸

Somalia has a track record of rewriting its constitution. In fact, the events have been ongoing for over two decades, starting from the 2000 Reconciliation Conference in Arta town, Djibouti, where the parties involved agreed upon the initial Transitional National Charter (TNC). A multitude of Somali delegates were in attendance. The TNC received the majority of its funding from individuals who are part of the civil society. The primary factor for its lack of success was the absence of substantial contributions from key participants. Subsequently, the organizers of the 2004 Mbagathi peace conference in Nairobi would invite the leaders of the armed militias and fiefdoms to attend. The Transitional Federal Charter (TFC) was formulated by

¹⁰⁸ Abdikadir Khalif, 'Somali constitution review generates heated debate among leaders' (the east African much 21, 2024) <<https://www.theeastafrican.co.ke/tea/news/east-africa/constitutional-review-generates-heat-and-light-in-somalia-4563966>> accessed 7 May 2024.

enhancing the Transitional National charter (TNC). However, recognizing the inadequacy of the TFC as a full constitution, subsequent governments made greater efforts to enhance it. In 2012, a total of over 800 delegates from around Somalia decided to elevate it to the status of a Provisional Constitution of Somalia.¹⁰⁹ Since 2012, Somalia has been functioning under a provisional constitution, which the Federal Parliament intended to officially approve in 2016. Due to security concerns, the National Constituent Assembly, including 825 members representing diverse organizations, accepted the constitution as a temporary document since a referendum could not be conducted.¹¹⁰ In May 2023, the present Somali government initiated the process of amending and officially endorsing the constitution, after two unsuccessful endeavors by previous federal governments to finalize it. The new constitutional revisions were passed by both the upper and lower houses of Parliament on March 30, 2024 with a majority vote.¹¹¹ The initial wave of suggested amendments focuses on four out of the fifteen chapters in the constitution. The clauses in question aim to strengthen the president's authority, abolish the role of the prime minister, and establish a vice president instead. Additionally, they seek to replace the current clan-based indirect voting system with universal suffrage.¹¹²

Unlike the provisional constitution, which bestowed this power upon Parliament, the revised version now empowers the president to dismiss the prime minister prior to the appointment of a vice president in the upcoming presidential election. The authorized amendments also extend the term of the federal president and Parliament from four to five years, and introduce direct voting for the federal president, vice president, and state leaders. Nevertheless, specific legislators from adjacent areas and the Puntland government have raised doubts over these modifications.¹¹³ Former presidents Sharif

¹⁰⁹ *Ibid.*

¹¹⁰ ACLED, Somalia: 'Dispute Over Constitutional Amendment and Increased al-Shabaab Attacks' (ACLED, April 26, 2024) < <https://acleddata.com/2024/04/26/somalia-situation-update-april-2024-dispute-over-constitutional-amendment-and-increased-al-shabaab-attacks/>> accessed 7 May 2024.

¹¹¹ Mohamed Olad Hassan, 'Somalia's Parliament Approves Historic Constitutional Amendments' (VOA, March 30, 2024) < <https://www.voanews.com/a/somalia-s-parliament-approves-historic-constitutional-amendments/7549916.html>> accessed 7 May 2024.

¹¹² *Ibid.*

¹¹³ Salma Ben Mariem, 'Somalia state of Puntland rejects constitutional amendments and withdraws from federal government' (Juristnews, April 1, 2024) < <https://www.jurist.org/news/2024/04/somalia-state-of-puntland-rejects-constitutional-amendments-and-withdraws-from-federal-government/>> accessed 7 May 2024.

Sheikh Ahmed and Mohamed Abdullahi Mohamed, better known as Farmajo, have cautioned that the alterations made to the provisional constitution could impact the power-sharing structure based on clans. Meanwhile, two ex-prime ministers expressed their unhappiness of the lack of consultation and stressed the necessity of a vote to implement legally binding changes. Approximately seventy members of Parliament opposed the additional amendments, arguing that the ongoing amendment process involves crafting a new constitution rather than revising the existing provisional constitution of country.¹¹⁴

¹¹⁴ Ibid.

CHAPTER III

STATE BUILDING IN POST-CONFLICT SOCIETIES: THE CASE OF SOMALIA

3.1 Introduction

Building post-conflict states is a significant challenge for many developing countries. There is immense potential here, a well-informed institutional decision can be made by comparing a range of experiences from different historical, cultural, geopolitical, and geographic contexts in post conflict societies. Thus, experiences from developed countries' failures could inform institutional decisions in post-conflict impoverished countries. the process of establishing democratic nations following a conflict presents an extremely difficult obstacle. There is more to the relationship between sustainable states and sustainable peace, than just how political institutions are constructed and how they affect society.¹¹⁵

The formation of a functioning system of law and order, including issues of redress for past crimes, the return and reintegration of refugees and internally displaced persons (IDPs), education reform, the inclusion of local and civil society actors, security sector reform (SSR), which includes the issues of disarmament, demobilization, and reintegration of former combatants (DDR), are all aspects of state-building and have an impact on the nature of the state that is being built as well as the sustainability of peace in post conflict states.¹¹⁶

there is recognition in the literature on state-building and conflict management of the clear limitations of constitutional engineering on its own to bring about peace after conflict situations. The foundation of post-conflict state construction continues to be the institutions. The focus on formal institutions as a tool for post-conflict state building is largely due to their adaptability to specific needs and circumstances. These factors, which include economic development and the cultural and ethnic composition of societies, can influence the risk of resurgent conflict in post conflict societies.¹¹⁷

¹¹⁵ Stefan Wolff, *'Post-Conflict State Building: the debate on institutional choice'* (2011) 32(10) *TWQ* 1777.

¹¹⁶ *Ibid.* 1778.

¹¹⁷ *Ibid.* 1779.

The issues of peacebuilding, which involve the process of establishing peace in order to provide stability and security for the state and society, are increasingly hindering state development in a post-conflict environment as efforts are made to reconstruct state institutions and establish effective governance systems in post-conflict countries. discussing post-conflict state-building is a challenging endeavor, particularly in conflict-affected nations such as Afghanistan and Iraq after the American influenced conflicts.¹¹⁸

According to a Perilous States for Conversation on Culture, Politics, and Nation of Marcus, the discussions centered around cultural and political perspectives have the potential to offer fresh solutions to previously unidentified and troubling political issues. In order to offer a rationally ordered account of the circumstances that occur after the breakdown of a state, we included the notion of dialogue into the broader framework of Somalia's endeavors to establish a functioning government and promote peace and rebuild its institutions.¹¹⁹ Conversation is an important to achieve a shared comprehension of the subject under discussion, rather than merely compromising or imposing one's own perspective upon another. The concept of state building is currently prevalent in public debate and is not only linked to academia. State building refers to the process of establishing centralized state organizations in accordance with legal frameworks. This expression is related to post-conflict environments.¹²⁰

Most state-building programs after the end of the Cold War have focused on improving governance, enforcing the rule of law, promoting development, and providing humanitarian aid in local settings. Some activities that fall under this category include helping with economic development and regulation, promoting and facilitating democratic practices, strengthening legal systems and public service delivery, supporting civil society, advancing human rights and reconciliation, resolving land reform claims, and, in certain situations, assisting with constitutional reform in post-conflict settings.¹²¹

¹¹⁸ Mohamed Haji Ingiriis, 'Being and becoming a state: the state-building and peacebuilding conversations in southern Somalia and Somaliland' (2020) 39(1) *JCAS* 6.

¹¹⁹ Ibid.

¹²⁰ Edward Newman, 'The violence of state-building in historical perspective: implications for peacebuilding' (2013) 1(1) *Peacebuilding* 142.

¹²¹ Ibid.

In addition to prominent global instances like Cambodia, Bosnia, Liberia, and Kosovo, domestic endeavors for foreign development aim to enhance state institutions and governance in post conflict and less developed nations. These projects exemplify the liberal peacebuilding and state building agenda, which prioritizes the advancement of democracy, market-oriented economic reforms, and various other contemporary state-related institutions as drivers for fostering peace in post conflict societies.

3.2 The overview of conflict and state building in Somalia

Somalia holds the record for the longest period of complete state collapse, as it has been without a functioning government since 1991.¹²² The Horn of Africa is widely recognized as one of the most volatile regions, with Somalia serving as the focal point of this instability. Identifying the exact factors behind prolonged hostilities in Somalia is a difficult undertaking. The conflict in Somalia has been perpetuated by a multitude of variables, some of which have historical roots and continue to manifest in various ways in present-day society.¹²³

An absence of legitimacy has emerged as a result of the prolonged conflict. Therefore, the opposing groups in Somalia have faced significant challenges in achieving a settlement that would enable the creation of a long-lasting peace and strong government institutions in the country.¹²⁴ The intricate complexities of the conflict and the involvement of various entities have greatly hindered efforts to establish lasting peace in Somalia. Clan-based conflicts persist as an ongoing and widespread cause of violent dissension in Somalia. The persistent disputes, primarily centered on the distribution and exploitation of limited resources, continue to be a major cause of doubt among the Somali politicians. Al-Shabaab, a terrorist organization, capitalizes on these regional conflicts to further its agenda. It has been involved in hostilities in Somalia for almost ten years. Thus, the process of reconciliation is hindered by long-lasting grievances and recollections of previous exclusion hostilities.¹²⁵

¹²² Temesgen Thomas Halabo²¹ and Tadesse Berisso, 'Conflict Dynamics Behind the State Failure and The Challenges to Peace-Building: The Case of Somalia' (2022) 38(1) EASSRR 107.

¹²³ Ibid 108.

¹²⁴ Ibid 109.

¹²⁵ Mathieu Cloutier, Hodan Hassan, Deborah Isser and Gaël Raballand, '*Understanding Somalia's social contract and state-building efforts: Consequences for donor interventions*' (2022) WIDER

Somalia has faced considerable challenges in attaining a political settlement that allows for the formation of a secure and unified government in the country. Although the Transitional National Government (TNG) was established in 2000, it faced difficulties in creating trustworthy institutions and implementing efficient security measures. In 2004, the Inter-Governmental Authority on Development (IGAD) issued instructions for the creation of the Transitional Federal Government (TFG), in Kenya. The primary source of support for the TFG was the African Union's deployment of the peacekeeping force to Somalia which named the African Mission to Somalia (AMISOM) in 2007. This happened as Al-Shabaab started to play a more prominent role in Somalia. The permanent Federal Government of Somalia (FGS) was established, using the Provisional Constitution that was agreed upon in 2012.¹²⁶

Since 2012, federalism has made some progress. The establishment of the Federal Member States (FMS) of Galmudug, Hirshabelle, Jubbaland, Puntland, and South West has facilitated the development of federal institutions and advanced the process of state formation. However, Somalia's endeavors of state building are perpetually jeopardized by protracted political instability and the ongoing insurgency led by the extremist group Al-Shabaab. Prolonged disagreements have emerged between the FGS and FMS regarding security architecture and revenue-sharing arrangements due to the federal government's failure to advance the delineation of functions and responsibilities among the different tiers of government. After being elected on May 15, 2022, President Hassan Sheikh Mohamud declared his commitment to prioritizing the fundamental issues of inclusive politics, including but not limited to the Constitution, federalism, and security architecture to complete the state building process after prolonged conflicts.¹²⁷

3.3 The factors causing the conflicts in Somalia

Currently, there is no other political or legal occurrence that can be compared to the division of the former Somali Democratic Republic into various self-governing entities. The remarkable aspect lies in the resilience demonstrated of Somaliland,

Working Paper, No. 2022/123, 1, <<https://doi.org/10.35188/UNU-WIDER/2022/256-0>> accessed 8 May 2024.

¹²⁶ Ibid.

¹²⁷ Ibid.

Puntland, the new interim administration of SSC-Khatumo and the Mogadishu based Federal Government of Somalia (FGS), and some other regional states including; Jubbaland, South west, Galmudug and Hirshabelle in the south and central of Somalia. The intricate political enigma surrounding their origin and enduring existence for more than three decades has sparked a substantial amount of literature. However, there are significant historical influences that enable us to place the many viewpoints about the root causes of conflict in Somalia, current news on Somali political conflicts, the resilience of al-Shabaab, humanitarian issues, and international interventions into their appropriate context of the conflict situations.¹²⁸

Prior to exploring the modern history of Somali conflicts, the study demonstrates a comprehensive understanding of the long-standing clan system, namely its conventional self-governing element in Somalia. The Somalis had a significant challenge in creating a functional political system, given their unique identity and the absence of a centralized government in their culture for thousands of years.¹²⁹ The complex and extensive Somali clan system, along with its associated culture, has been extensively studied and documented over time. The intricate interconnections of clan and kinship alliances, the complexities of the genealogy tree, the profound importance of Somali oral history and poetry, and the distinctions and commonalities between sedentary farmers, pastoralists, and urban versus rural dwellers, among numerous other factors, collectively form a dynamic and ever-evolving network of conflicts. While clan split is an important societal divide, it is not the only one. However, for the sake of this discussion, I will provide a summary of what is more immediately relevant, focusing on root causes of conflicts in Somalia.

The Horn of Africa is severely afflicted by violence, making it one of the most devastated places in Africa. In the realm of African politics, the region has gained notoriety for its precariousness, animosity, and destitution, stemming from several conflicts, wars, and divisions based on race. The local inhabitants have observed numerous instances of military warfare, occurring both internally between societies and externally between states. The conflicts in the region are interconnected, taking

¹²⁸ M. J. Fox, *The Roots of Somali Political Culture* (First Forum Press, 2015) 1.

¹²⁹ Ibid 5.

place on various fronts such as direct military confrontations and battles between nations, intra-state civil wars and conflicts, and communal disputes.¹³⁰

Conflict is the state of active disagreement between individuals who possess divergent viewpoints or ideals. It occurs when multiple individuals intentionally harm another party to further their own goals, or when they believe their interests are conflicting. These parties may consist of individuals, nations, or both large and small groups. Divergent interests can be associated with power, identity, status, or principles, among various other aspects. Conflict on the other hand is characterized by paradoxes that arise from power dynamics that are evident in interactions among individuals and groups, as well as in their relationship with the natural environment, as they compete for scarce resources or opportunities. Conflict, regardless of its nature, serves as a catalyst for transformation. It has the potential to be exploited in a harmful manner to create intense feelings of uncertainty or in a productive one to guarantee fairness, development, and unity.¹³¹

The prolonged civil conflict in Somalia is mostly caused by ecological and cultural disparities among families, as well as their different historical interpretations. A number of tribes in Somalia are engaged in a prolonged civil war as a result of their deep-rooted hostility and mutual distrust. The absence of reciprocal confidence is a significant element that contributes to the prolonged strife in the whole country.¹³²

To discuss the local factors contributing the conflict in Somalia, essentially, the Somalia conflict was initiated due to three interconnected internal circumstances that not only affected Somalia but also triggered internal conflicts in other Sub-Saharan African nations. according to the study published by Abdi M.A. Social inequality, the economic downturn in the mid-1980s and the availability of firearms to civilians were the three contributing factors of conflict in Somalia.¹³³ Social inequality initially emerged as a result of the unequal distribution of resources or as an indirect outcome of the economic supremacy exerted by colonial and post-colonial powers over the nation. The successive Somali governments implemented a system of favoritism in the

¹³⁰ Kidane Mengisteab, 'Critical Factors in The Horn of Africa's Raging Conflicts' (Nordiska Afrikainstitutet, Uppsala, 2011) 7.

¹³¹ Muhabie Mekonnen Mengistu, 'The Root Causes of Conflicts in the Horn of Africa' (2015) 4(2) AJAP 28, 29.

¹³² Mohamoud Abdirizak Abdi, 'Analysing Somalia Conflict: Involving Actors, Causes, Triggering and Possible Solutions' (2023) 9(2) ASH, 29, 31.

¹³³ Ibid.

distribution of state benefits, while also intentionally creating and perpetuating social inequality in the region. Social grievances arise from the unfair allocation of state advantages in Somalia, which favors some individuals based on regionalism, tribalism, and clannism. Another factor contributing to the situation was the economic downturn in the mid-1980s, which was partly caused by the discontinuation of financial assistance from the international community. The availability of firearms to civilians, which is the third component, arises from the promotion of their acquisition and use for self-defense and survival in the midst of many social and economic challenges. The proliferation of weapons in Somalia can be linked to the excessive militarization of the country since gaining independence, as well as the destitute condition of the military forces, which is a consequence of social and economic inequality in the country.¹³⁴

The Somali civil strife was influenced by a wide range of intricate political, economic, cultural, and psychological factors. Throughout the various stages of the conflict, both internal and outsider actors have taken on a wide range of roles. According to a 2006 analysis by Elmi and Barise, the main causes of the Somali conflict are resource and power competition, an authoritarian administration, and the lingering effects of colonialism.¹³⁵ Furthermore, we consider the politicization of clan affiliation, the availability of weaponry, the high percentage of youth unemployment, and specific elements of Somali culture that allow violence as contributing factors to the entire issue. The primary cause for the creation and continuation of wars among clan-based militias is the battle for resources and authority. Prior to Somalia's independence, Somali factions engaged in regular conflicts over resources such as livestock, water, and grazing. This is supported by regional literature and the collective memory of the Somali people. Traditionally, disputes in Somalia have been resolved using the Heer system of customary law, which is widely recognized. However, the means of obtaining the required resources and the specific sorts of resources needed have been altered as a result of the significant increase in the number of Somalis migrating to urban areas following their independence. Political leaders recognized that the occupant of the state would wield power over the country's resources. Prioritizing the

¹³⁴Ibid 33.

¹³⁵ Afyare Abdi Elmi & Dr Abdullahi Barise, 'The Somali Conflict: Root causes, obstacles, and peace-building strategies' (2006) 15(1) ASS, 33.

regulation of foreign aid, access to government resources, and the employment of civil officials gained precedence over the control of water wells and cattle in rural areas.¹³⁶

3.4 State Building Process in the Traditional Period of Somalia

The first attempt to rebuild state institutions for Somalia took place in the 2000 reconciliation conference held in Arta, Djibouti, following the dissolution of the Somali state in 1991. In the year 2000, the Transitional National Government (TNG) in Mogadishu, Somalia, has had challenges in establishing its presence due to the warlords. Despite the emergence of a Transitional National Government resulting from this peace process, the bulk of the international world failed to recognize its usefulness. It was the first Transitional National Government of Somalia established, after the central government of the country was dissolved in 1991. Typically, the Arta peace reconciliation conference was considered the first to produce concrete results for rebuilding state institutions. The concept of legitimacy is of utmost importance as it allows for government without the use of coercion and has the ability to transform power into authority. In challenging situations, a lack of credibility, weakens the constructive interaction between the government and the people, therefore reducing the government abilities and worsening its susceptibility. Many unstable nations are characterized by their widespread internal conflict and ineffective government institutions in fragile situations.¹³⁷

The Mbagathi peace settlement of 2002-2004 might be seen as a continuation of Arta's accomplishments, as it played a role in establishing the Transitional Federal Government (TFG). This agreement enabled the fragile and temporary peace that currently persists in Somalia. The responsibility of establishing the basis of a national government was given to the Transitional Federal Government (TFG), which was established in 2004 and given a five-year mandate to carry out this task. The shift from a centralized system to federalism began with the peaceful transfer of power from the Transitional National Government (TNG) to the Transitional Federal Government (TFG). The ongoing argument revolves around the question of whether Somaliland should sustain its independence or amalgamate with the larger Somalia. Prior to the

¹³⁶ Ibid 34.

¹³⁷ Mohamed Mohamud Hussein, 'Local Governance: Concepts and Roles of the Contemporary Society in Somalia' (2023) 2(1) IJGG 29.

Mbagathi agreement of 2004, Somalia had an internationally recognised transitional government and was characterised by utter failure. Although significant efforts were made from outside sources to enhance administrative capability, the seven-year transitional administration ultimately failed to achieve success in building strong and stable state institutions. It was in operation from 2004 to 2012. The ineffectiveness of the administration and the lack of success of state-building measures may be potentially attributed to the inappropriate selection of clan representatives for political office of the country.¹³⁸

3.5 State Building Process After the Transitional Period of Somalia

On August 1, 2012, a constitutional assembly, consisting of clan elders acting as delegates, officially approved a new constitution for Somalia. This paved the way for the subsequent election of the permanent not transitional federal parliament and president of the Federal Republic of Somalia.¹³⁹ Efforts have been undertaken in recent years to establish stability and state building in Somalia. After 2012, when transition ended in Somalia multiple federal member states were established and a new federal administration was installed in Mogadishu the capital of Somalia. However, these efforts have faced some obstacles, such as continued conflicts with the terrorist group al-Shabab, conflicts between clans, and incidents of corruption in the different levels of the government. The political landscape in Somalia is complex and constantly evolving. The traditional clan structure has a substantial influence on national politics, as clan elders frequently hold powerful positions. The exercise of federal jurisdiction over the constituent states of the federal government has been hindered by the government's lack of power and internal fragmentation. The enduring obstacles that Somalia encounters in its journey towards becoming an independent and strong nation-state, as well as its tumultuous political past, have been widely recognized. The country's efforts to construct a stable and functional nation-state have been impeded by prolonged warfare, rivalry within tribes, and a weak central authority.¹⁴⁰

¹³⁸ Ibid 30.

¹³⁹ Stephen Burgess, 'A Lost Cause Recouped: Peace Enforcement and State-Building in Somalia' (2013) 34(2) CSP 302.

¹⁴⁰ Mohamed Hassan Dhoore, Abdinasir Abdullahi Mohamed, Sharmarke Abdullahi Yusuf, 'Political Dynamics and State-Building In Somalia' (2023) 6(5) IJEHSS 15.

3.6 Federalism and state building in Somalia

Foedus, the Latin term for federalism, denotes the commencement of the procedure to unite two or more political entities. Academics do not agree on the exact meaning of federalism. For a state to be deemed federal, its general and regional administrations must work autonomously and successfully within their specified areas of authority, in accordance with the federal principle.¹⁴¹

The federal principle has several constitutional consequences, including the establishment of a written constitution that explicitly delegates power to both the national and local governments, the implementation of direct elections for both levels of government, the guarantee of freedom for each level of government to act autonomously, and the presence of an independent high court responsible for adjudicating matters related to federalism. It is a political system where the powers and duties of regional and central governments are split in a way that each government has ultimate authority over certain matters.¹⁴²

Furthermore, there is a growing global movement advocating for the use of federalism as a strategic approach to tackle ethnic conflicts. It has been proposed as a potential solution to the ethnic conflicts in Nepal, Pakistan, and Sri Lanka in South Asia in their state building endeavors. Federalism has been suggested as a possible solution to the ongoing conflicts involving Nagorno Karabakh, Armenia, Azerbaijan, Georgia, Abkhazia, and South Ossetia in the former Soviet Union states. In the context of post-war constitutional development, it has been considered a solution for conflicts related to secession. Several emerging nations, including Sudan, Ethiopia, Iraq, and Nigeria, have implemented federal strategies to tackle ethnic conflicts. These methods are frequently incorporated into post-conflict constitutional frameworks when reestablishing the state institutions after conflicts.¹⁴³

The concepts of state reorganization and federalism gained substantial momentum in Somalia, particularly after the year 2000, when the state building process began its progresses. During the anti-colonial struggle in the 1960s, there was an initial effort to

¹⁴¹ Marco Zoppi, 'Somalia: federating citizens or clans? Dilemmas in the quest for stability' (2018) 36(1) *JCAS* 55.

¹⁴² Sujit Choudhry and Nathan Hume, 'Federalism, devolution and secession: from classical to post-conflict federalism' in GinsburgTom and Rosalind Dixon (ed) *Comparative Constitutional Law* (Edward Elgar Publishing 2011) 357.

¹⁴³ *Ibid.*

unite Somalia into a single governmental entity. Following the attainment of independence, efforts were undertaken to amalgamate five regions inhabited by Somali ethnic groups into a unified state referred to as Greater Somalia. The internationally-sponsored Somali reconciliation conference in 2004 supported the Federal Charter, which indicated the recognition of federalism as a feasible method for rebuilding the nation after a protracted period of civil conflict. The concept of federalism was firmly established by elections and a subsequent transitional federal accord in 2012. From 2012 to 2016, the process of state formation resulted in the creation of four Federal Member States (FMS).¹⁴⁴ Like other post-conflict African nations, Somalia was given with the opportunity of federalism, which offered a secure, coherent, and stable future. This instilled optimism about the possibility of resolving the nation's issues. The concept of federalism has a longstanding presence in Somali history. The Amministrazione Fiduciaria Italiana della Somalia–(AFIS), an Italian Trusteeship Administration, initiated the inaugural discussion on federalism as part of a decade-long project (1950–1960) supported by the United Nations to prepare southern Somalia for independence.¹⁴⁵ A number of influential individuals from Hazbiya Digil Mirifle (HDM), later known as Xisbiga Dastuur Mustaqil Soomaaliya (HDMS), had a vision of establishing an independent federal Somalia with autonomous regions. Two individuals included in this group were Abdulkadir Mohamed Sobe and Sheikh Abdullahi Mohamed Bogedi. The HDMS party supports the establishment of a federal nation that would include the Maay and Maxaa tiri Somali linguistic variations. On the other hand, the Somali Youth League (SYL), which was the main group supporting independence and opposing colonial rule, viewed federalism as a strategy to hinder the unification of the Somali people while the country was still under occupation. As a result, the SYL strongly opposed the idea of federalism and accused HDMS leaders of being responsible for promoting radicalization and intolerance among Somalis and disintegration of the Country.¹⁴⁶ Prior to the conflict, James Keough Bishop, the last American ambassador to Somalia, put out an unconventional and somewhat unknown federal proposal to Somalia.

¹⁴⁴ Bizuneh Yimenu, 'Federalism and State Restructuring in Africa: A Comparative Analysis of Origins, Rationales, and Challenges' (2023) 54(1) *Publius: JF* 7.

¹⁴⁵ Mohamed H. Mukhtar, 'The Emergence and Role of Political Parties in the Inter-River Region of Somalia from 1947-1960' (1989) 17(2) *Ufahamu: JAS* 85.

¹⁴⁶ *Ibid.*

According to reports, Bishop delivered a lecture on December 17, 1990, regarding federalism in the Horn of Africa. The address was given to a group of Somali elites and traditional clan elders at the American embassy in Mogadishu, Somalia. In a subsequent cable dispatched to Washington, he advocated for Somalia to adopt federalism as a means of preventing disorder and the ultimate disintegration of the Somali nation. To his surprise, however, the entire audience appeared to link federalism with division—a scenario they are unwilling to witness in Somalia.¹⁴⁷ Over the course of the last thirty years, Somalia has been synonymous with a state that has failed to function effectively. In January 1991, after the removal of General Siad Barre by armed formations organized by clans, the government disintegrated and conflict between clans followed. Despite several international humanitarian and political interventions during the 1990s, the country's spiral into anarchy could not be prevented. The nation has primarily been governed by warlords, with the exception of a few parts that have successfully avoided widespread and pervasive tribal warfare caused by competing factions seeking control and resources. Subsequently, Somalia has remained fragmented. Somalia adopted federalism as its system of governance following a series of reconciliation conferences inside and outside of the country.¹⁴⁸

3.7 The lessons learned from Rwanda in post-conflict state building and constitution making process

The formal institutional design of Rwanda after the conflict was influenced by the coercive balance of power that existed during the nation's conflict and efforts to construct a stable government in the country. The Rwandan Patriotic Front (RPF), which achieved success on July 17, 1994, issued a definitive and succinct declaration concerning the initial allocation of power in Rwanda. It did not achieve absolute authority. It formed partnerships with other parties on functions. However, the RPF firmly advocated for decision-making through a two-thirds majority and maintained control over eight out of the twenty-one cabinet positions. To clarify, the veto power

¹⁴⁷ WikiLeaks, 'Cable from U.S. Embassy in Mogadishu, Sub: Discussion with Manifesto Signers' (WikiLeaks.org, 18 December 1990) <https://wikileaks.org/plusd/cables/90MOGADISHU11003_a.html> accessed 16 May 2024.

¹⁴⁸ Abdinor Dahir & Ali Yassin Sheikh Ali, 'Federalism in post-conflict Somalia: A critical review of its reception and governance challenges' (2022) 34(1) RFS 87.

was upheld, meaning that if the cabinet failed to reach an agreement, the president, who is chosen from the RPF and acts as the head of state, would settle the matter.¹⁴⁹ Moreover, it imposed a strong prohibition on the formal ruling party, the National Republican Movement for Democracy and Development (MRNDD), from engaging in any political activities in Rwanda in the coming years. Access was limited to moderate elements or representatives of the opposing political parties. Following a military loss, the radical forces sought shelter among the exiled members of the MRNDD, whom they had previously backed during the civil war. The leadership of the Rwandan Armed Forces was also forced into exile. A significant number of key army and gendarmerie jobs were given to RPF officers. Furthermore, Paul Kagame, the military leader of the RPF, was named as Minister of defense, in addition to his role as vice-president. In essence, the RPF guaranteed that national programs were subject to its authoritative military and political veto. Furthermore, the RPF set the duration of the transition process. The initial duration of operation for the state building process was planned to be five years, spanning from 1994 to 1999. However, it was later extended by an additional four years, until 2003. The constitutional order was established during the transition era with the issuance of the RPF proclamation in July 1994, the implementation of the Arusha Accord in 1993, the utilization of the 1991 constitution, and the signing of the November 1994 Protocol of Agreement between the RPF and seven political factions. The Fundamental Law was promulgated in May 1995.¹⁵⁰

In 2003, Rwanda approved a new constitution through a referendum, and afterwards, the country conducted its first elections following the transition process. The new constitutional order, similar to the transitional legal system, refrained from requiring the sharing of power among different ethnic groups in the main governmental institutions. Any individual or political party can potentially hold positions in the government, legislature, court, and the three security services. It was mandatory for the speaker of the Chamber of Deputies, which is the lower house of parliament of Rwanda, to belong to a different political party than the president. In addition, it was mandated that no individual party may have control over more than 50% of the cabinet

¹⁴⁹ Philip Reyntjens, *Political Governance in Post-Genocide Rwanda*, (Cambridge University Press, 2013) 1.

¹⁵⁰ Omar Shahabudin McDoom, *Power, institutions, and state-building after war* (United Nations University, 2023) 18.

slots. Rwanda did not have an official mandate to divide power based on ethnic or political affiliations. Attaining political and ethnic concentrations of formal authority is possible. In conclusion that was the Rwanda's state building process in post conflict situation process.¹⁵¹

3.8 Findings and discussions

The study used a Somalia case study in an attempt to understand the role of constitutional design in state building on post-conflict societies. These implications of constitutional design to the process of state building can be drawn closer to scrutiny for the complexity and interrelation among the processes of governance, conflict, and societal structures. The study aims at giving a comprehensive analysis on how constitutional frameworks have been able to contribute to the stabilization and development of post-conflict societies.

This study, therefore, established that constitutional design in state-building on post-conflict is most crucial since it sets a structured framework for governance that ensures protection of rights and is a cradle for democratic principles. In fact, the making of a constitution is the opportunity to negotiate and come up with a legally binding document that can address the needs of all parties involved. It can, therefore, come up with fundamental issues and lead to effective political institutions that breed peace, stability, and justice after conflicts.

The research discusses the Somali experience and traces the history and challenges inside the process of constitution-making. The Somali state has undergone several attempts to rebuild state institutions since the collapse of the central government in 1991. This started with the Transitional National Government (TNG) of 2000, and the study noted that the TNG was based on Transnational charters, followed by the Provisional Constitution adopted in 2012. However, these efforts were marred by numerous challenges, which include political instability, warfare, and delays in the constitution-making state building process.

The conclusion reached from the study was that the new federal Constitution of Somalia was a provisional document meant to come to an end once security conditions favoured a nationwide referendum. Serious issues of the nature of the federal structure,

¹⁵¹ Ibid 19.

the sharing of power between the Federal government and the States, and the status of the city of Mogadishu, the capital of the country was all remaining outstanding. These unaddressed issues have created the gap between constitutional design and the reality of application and are major challenges to state-building in Somalia.

Another overarching theme of the study was public participation and inclusivity within constitution-making and state-building processes among post-conflict societies. In fact, public participation would help in giving legitimacy as well as acceptability to the constitutional framework among all marginal groups, and hence, it is most important. As such, the study finds that broad-based civic education campaigns and sustained public sensitization were necessary to realize collective awareness and acceptance of democratic principles and constitutionalism after the prolonged conflict and the absence of state institutions.

The research established that in Somalia, a satisfactory exercise of public involvement and civic education was not carried out, and this has hampered the advancement of an all-inclusive and representative constitution as well as building the state institutions in the post-conflict state building and constitutional designing process. In addition, traditional leaders have been unwilling to include women in political leadership positions, and inadequate allocation of financial resources for constitution-making efforts has also been a constraint in the process. Such challenges point towards the need for an even more inclusive approach in order to ensure that the constitution reflects the interest and diverse aspirations of each and every sector of society.

The study also looked into the role of international actors in constitutional design and state-building in the country and found out that international organizations and donor countries have highly supported Somalia in its process of state-building. However, overreliance on external pressure and demands risks undermining the legitimacy of the constitution-making process and sovereignty itself. The study points out the need to take a balanced approach that respects local contexts and, at the same time, ensures the involvement of national actors in the decision-making processes.

The study therefore, used comparative case studies from other post-conflict countries, including Rwanda, in order to get a broader understanding of the obstacles and successions that come with the tool of constitutional design in state-building situations arising from post-conflict states. The Rwandan experience, characterized by strong decision-making through a two-thirds majority and controlled involvement of political

parties, provides useful insights into the complexities of state-building in post-conflict settings. The success of the Rwandan model foregrounds the aspect of a well-structured constitutional framework toward the attainment of stability and development in post-conflict societies.

One of the most important findings of this research was the gap between the theoretical constitutional frameworks and practical realities on the ground in Somalia. The difficulties of constitutional designs cut across dimensions: political, social, and economic aspects. The ineffective implementation of the Provisional Constitution in Somalia was attributed to the absence of consensus among the political stakeholders, the lack of enough financial allocations, and continuous conflicts. These challenges confirm the urgency with which the gap between constitutional theory and constitutional practice should be continually bridged to realize sustainable state-building within the country.

CHAPTER IV

CONCLUSION AND RECOMMENDATIONS

The study analysed a comprehensive examination of the role of constitutional design in state-building within post-conflict societies, focusing on Somalia as a critical case study. It explores various dimensions of constitutional design, its implications on state-building efforts, and the complex interplay between governance, conflict, and societal structures. Here, I present a synthesized conclusion drawing from the main ideas and arguments discussed throughout the study. The research begins by establishing the importance of constitutional design in post-conflict state-building. It emphasizes the systematic approach required in formulating constitutions that stage by contextualizing the challenges faced by Somalia following decades of conflict, highlighting the absence of a consensual constitution since the military coup of 1969 and the consequent issues of governance and instability. The earlier parts trace the history and theoretical underpinnings of constitutional design, drawing parallels with global practices and the specific needs of Somalia. It discusses how constitutionalism can tackle fragmentation in post-conflict states by promoting inclusive governance and decentralization. The challenges are profound, involving the reconciliation of diverse political, social, and clan-based interests within a fragmented society in the state building process in post conflict societies.

Midway through the study, there is an extensive examination of other post-conflict environments and constitutional reforms, comparing them with the Somali experience. The case of Rwanda was discussed in These case studies provide a broader understanding of the obstacles and successes in constitutional design, emphasizing participatory processes and the inclusion of marginalized groups as crucial elements for sustainable peace and governance in constitutional design and state building processes in the post conflict states. Later parts of the research focused on the implementation of constitutional frameworks in Somalia, analysing the effectiveness of various international and local initiatives aimed at state reconstruction and peacebuilding the country. The discussion critically assesses the outcomes of these efforts, highlighting the gaps between constitutional design and practical application, particularly the struggles in achieving a balance between central authority and regional states, the completions of the constitution the achievement of direct elections and most importantly the security.

The study concludes by reflecting on the lessons learned from the Somali experience, proposing strategies for future constitutional reforms in similar contexts. It stresses the importance of legitimacy, public participation, and adaptability of constitutional designs to local conditions as key factors for successful state-building. The conclusion calls for continued international support and a committed, inclusive approach to addressing the root causes of conflict through constitutional means.

Constitutional Design as a Foundation for Peace The study argues that a well-designed constitution is crucial for laying the foundation for lasting peace and governance in post-conflict societies.

Inclusivity and Participation the study emphasizes the need for inclusive constitutional processes that involve broad segments of society, including historically marginalized groups, to ensure the legitimacy and acceptance of the constitutional framework in Somalia's post conflict state building endeavours.

Adaptability and Contextual Relevance: The adaptability of constitutional provisions to the specific political, social, and cultural contexts of post-conflict societies is critical for the success of state-building efforts.

Challenges of Implementation: The study highlights the challenges in implementing constitutional designs, pointing to the gap between theoretical frameworks and practical realities on the ground. This conclusion synthesizes the thematic explorations and case studies presented throughout the research, offering a critical and comprehensive analysis of the intricate relationship between constitutional design and state-building in post-conflict environments. The insights provided not only contribute to academic discourse but also offer practical guidelines for policymakers engaged in similar reconstructive efforts globally specially in post conflict societies.

The significance of constitutional design on state building in post-conflict cultures is a delicate and challenging task. It is possible, but it depends on the careful and skilled use of knowledge and caution. A new constitution was drafted whenever it becomes evident that the current arrangement is illegitimate as seen in Eastern Europe, ineffective as observed in the United States, or both as in the case of Indonesia. It is also formulated when there were issues of discrimination and exclusion as in Nepal, South Africa, designing new constitution is a tool for state building after the after the civil was as the of Rwanda peacebuilding and state building process, and many other post-conflict countries. Constitutions are typically written either hastily during times of instability, upheaval, mistrust, and external pressure, or during periods when state

institutions are dysfunctional and there are no opportune moments for constitutional deliberation. This study was examined how designing a constitution contributed in the state building in Somalia after the prolonged civil conflicts in country. Therefore, the study proposes the following recommendations; -

In order to promote inclusivity and enable extensive public involvement in state building efforts, it is crucial for the Somali government to completely incorporate the public into the processes of revising the provisional constitution adopted in 2012. At the national level, it is necessary to conduct a comprehensive civic education campaign that is honest, inclusive, and easily understood. It is crucial that the constitution and its state-building procedures include representation from all age groups, ranging from young children to the elderly, as well as members from every potentially significant group in the community. This principle remains valid regardless of any other factor, such as social class, culture, tribe, religion, or any other differentiation. The primary aim should be to actively include persons who are seldom represented in national politics, such as marginalized groups and minorities.

The study suggests that governments should give priority to the functions of the committees responsible for evaluating constitution making and state building in order to encourage public involvement in the official process. Merely planning a single event or workshop is inadequate to sufficiently provide the general public with this knowledge. Instead, a continuous endeavor is necessary to foster a collective awareness that accepts democratic principles and practices, constitutionalism, and the legitimacy of the Constitution. In order to foster public involvement, these efforts encompass enlightening the general public about civic participation and executing public information initiatives. Furthermore, they involve seeking public feedback on matters such as the requirement to follow a specific process and the material that should be included in the constitution, particularly with the principle of federalism and its implementation in the country.

The research suggests enhancing the tradition of representation and increasing media involvement in constitution reviews to allow the people to listen to constitutional arguments without explicitly engaging in the official process. A governing body that creates a constitution and promotes positive relationships with the media and civil society, while also implementing a useful civic education program, sets a standard for future democratic and transparent involvement in the establishment and empowerment

of the state institutions of the country. Furthermore, it has the potential to facilitate a referendum, which is crucial for ensuring the document's legitimacy.

In addition, the study suggests that the mechanisms involved in the constitution-making process should steer clear of populism, the ethnicization of opinion, the manipulation of the public by interest groups, and other such dangers. If this is not done, the process of creating a constitution will turn into another round of meaningless political discussion, rather than a thoughtful and friendly one that encourages agreement. It should encourage discussion and dialogue not only among the general people but also between them and the institutions responsible for creating the constitution, such as constituent assemblies, constitutional commissions, and similar bodies. Consequently, individuals may acquire a deeper comprehension of the historical events, contributions, worries, and goals of others. This can be beneficial in fostering national cohesion, resolving conflicts, and promoting peace and building sustainable federal and state level institutions. The Opponents must recognize that modifying the core elements of the constitution based on party ideology is essentially akin to a process of nation-reconstruction efforts. This process involves both establishing and dismantling the current interim constitution. In contrast to other post-conflict nations, our political body interprets the constitution's extremely stringent amendment provisions in a manner that renders constitutional redemption highly improbable. As a consequence, it is the preeminent responsibility of the reigning party to cultivate a sense of nationalistic fervour towards the state building and the constitutional order.

In order to promote political harmony and solidarity among the Somali population, while also guaranteeing the legitimacy of the constitution and the trust of the public in government institutions, the study suggests that governments should incorporate the reestablishment of democratic principles when creating new state constitutions. This will ensure the genuineness and clarity of the procedure. Additional focus is required on security growth, political reconciliation, and public participation due to the complexities involved in the state creation process. At last, the new constitution was provisionally approved, with the understanding that it would undergo a national evaluation and be subject to a referendum if the country's security situation improved. The Parliament will have the authority to make future decisions about certain aspects of the constitution. These encompass matters pertaining to citizenship, the function of

Sharia, and the demarcation of national borders. The federal government exercises a division of power and allocation of resources with its constituent states. The question of whether sharia is considered the primary source of law or one of the sources of law remains unresolved. The issue of the structure and extent of federalism in the nation remains unresolved. In order to achieve peace, it is imperative to reinitiate the discussion on the constitution, with the aim of resolving outstanding issues, addressing current concerns, and establishing a framework for state development following the nation building process.

So that the study suggests that Continuous efforts are needed to address the gap between constitutional design and practical realities. This involves building consensus among political stakeholders, securing adequate financial resources, and ensuring security and stability for the effective implementation of the constitution. the study also suggests that the role of international actors should be balanced to ensure that constitutional processes are not overly influenced by external demands. This involves respecting local contexts and ensuring meaningful involvement of national actors.

Additionally, the study proposes that governments integrate the restoration of democracy into the constitutional formulation and state formation processes to ensure their authenticity and transparency. To promote constitutional legitimacy and public confidence in state institutions, as well as political unity and consensus among Somali citizens, this can be accomplished through the implementation of direct elections of the federal and state level officials and referendum of the constitution. Greater emphasis must be placed on the dynamics of public engagement, political reconciliation, and security expansion during the process of constructing the state. finally, a provisional approval was granted for the new constitution, accompanied by the stipulation that a nationwide examination and referendum would be undertaken once security conditions within the country had significantly improved. In the future, the parliament will also be required to render decisions on several aspects pertaining to the constitution. Concerns regarding citizenship, the role of sharia, Sharing of resources and authority between the federal government and its constituent states. Further clarification is required regarding whether sharia is a source of law in the country. The nature and structure of federalism remain an unresolved matter. A revision of the constitution is necessary to uphold peace by addressing unresolved issues, dispelling pre-existing criticisms of the document, and addressing state

construction in the wake of the national conflict to achieve stability and development in the country. While the study makes substantial contributions, it also opens up several avenues for future research. One important area for further investigation is the implementation of constitutional provisions. Understanding the gap between constitutional design and practical application is critical for assessing the real-world impact of constitutional frameworks state building process in post conflict countries. the research that might follow on now would be the one exploring the factors that make the constitutional provisions implemented or hard to realize effectively in post-conflict societies.

Another promising direction for future research is the role of international actors in the For both the countries themselves and international advisors working within post conflict contexts, it is important to understand how international involvement adds to the outcomes of constitutional design and state building processes. This implies reflection on the advantages and disadvantages of international support and how these can be optimized in the future. Moreover, comparative studies involving multiple post-conflict societies are more capable of yielding rich insights into the diverse ways in which constitutional design influences the process of state-building. From the study of a large number of cases, researchers can realize some patterns and variations within the respective post-conflict societies that can be related to different conditions under which these approaches to constitution have been successful or not in state building processes.

Finally, the study recommends that more Research should be carried out to establish whether federalism makes sense socio-political context in Somalia, it is important to evaluate whether federalism can effectively handle the comprehensive, inclusive, and relevant to the specific environment, drawing on lessons from Somalia and other post conflict nation states. Future research could explore the factors that facilitate or hinder the effective implementation of constitutional provisions in post-conflict societies.

Another promising direction for future research is the role of international actors in the constitutional design process. Given the significant influence of international organizations, donor countries, and external advisors in post-conflict settings, it is important to examine how their involvement shapes the outcomes of constitutional design efforts. This includes assessing the benefits and drawbacks of international assistance and identifying ways to enhance its effectiveness.

Additionally, comparative studies involving multiple post-conflict societies could provide deeper insights into the diverse ways in which constitutional design influences state-building. By examining a broader range of cases, researchers can identify patterns and variations that shed light on the conditions under which different constitutional approaches are more or less successful in the post conflict societies. Lastly, the study recommends that further Research is needed on whether federalism makes sense in the Somali context of the post conflict situation. With Somalia's intricate historical, cultural, and socio-political context, it is critical to evaluate whether federalism can successfully handle the nation's particular problems and support long-term state building and stability. This study should be thorough, inclusive, and tailored to the particular environment, using knowledge from Somalia and other post-conflict nation states.

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