

“It is Chaotic But Not Chaos”
**Civil society, Local Governance and the Construction of Political
Order In and Around Mogadishu**

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Abstract

This article examines what constitutes civil society and local governance in a ‘stateless’ environment, and how political order has been constructed at the local level in and around the Somali capital of Mogadishu. It firstly develops a theoretical framework for understanding what constitutes civil society and civic participation in ‘stateless’ south Somalia, and then argues that, contrary to popular views that south Somalia is completely anarchic, there have been local governance initiatives which provide security and order for local communities. Some of these initiatives include Sharia courts, and the article examines their origins and why they have been popular with local communities. In the past 20 years the lack of centralised political authority in Somalia has given rise to a perception of the country as a completely anarchic and ‘Mad Max-like’ environment. However, what this article argues is that, given a closer look at south Somalia, it is possible to discern locally-based initiatives for managing risk and developing order, and simply because some of these initiatives are not popular with international aid donors does not mean that they are not popular with locals.

Introduction

Recent events in and around the Horn of Africa have again brought the political situation in Somalia to the forefront of media attention. The 2011 famine in the region has affected more than 11 million people and, although the worst predictions in terms of possible famine related deaths have been avoided, the food scarcity situation in large parts of south Somalia remains worrying.¹ Kenya and Ethiopia’s crossing of the Somali border in late 2011 and early 2012 to fight al-Shabaab militias, who were (and to a large extent still) are in control of most of south Somalia, has highlighted the dire security situation in the region. Add to this the

¹ For possible famine death estimates see “Somalia famine: UN warns of 750,000 deaths,” *BBC*, 5 September 2011, <http://www.bbc.co.uk/news/world-africa-14785304> (accessed 25 March 2012); for the current situation see “One year after famine declaration: Countless lives saved, but situation for children still grave in the Horn of Africa,” *Unicef United States Fund*, 20 July 2012, <http://www.unicefusa.org/news/releases/one-year-after-famine.html> (accessed 3 September 2012) .

ongoing pirate activities off the coast of Somalia and it is easy to understand Somalia's re-discovered popularity amongst international media outlets.

All of these issues have also brought attention to the lack of national political unity in Somalia or, better said, the omnipresent political anarchy. Over the past 20 years, Somalia has moved, or "slid" as journalists are fond of saying, in and out of anarchy.² Indeed, for anyone not well acquainted with Somali affairs, it is almost impossible to develop any idea of what the country must be like other than that of a hopeless, chaotic and anarchic place, the problems of which are compounded by recurrent famine.

However, notwithstanding all the problems people in Somalia have endured over the past 20 years (the seemingly endless civil strife, roaming militias, warlord politics, and drought and famine), life in the country still goes on. People still survive and live on in one of the most dangerous places on the planet, and all this leads to several questions. If this place is so anarchic, chaotic and un-livable, how is it that people still survive there? Who provides security in local communities, or is everyone prey to roaming bands of militias? How do people find food, and how do they conduct business?

When one digs beneath the surface of the matter, abandoning shallow journalistic analyses and news bulletins, one is faced with a far more complex and actually hope-inspiring image of Somalia.³ The guiding idea

² Chris Tomlinson, "10 years after U.S. battle, Somalia still in anarchy," *The Seattle Times* on the Web, 3 October 2003, <http://community.seattletimes.nwsources.com/archive/?date=20031003&slug=blackhawk03> (accessed 25 March 2012); "Somalia slides towards anarchy," *The Irish Times*, 27 February 2007.

³ This paper limits its focus to the region of stateless south Somalia, and will not discuss the northern and north-western areas of Somaliland and Puntland. This is mainly because the paper is concerned with life in a stateless environment, and because of the distinctively different dynamics of governance in Somaliland and Puntland. Somaliland is *de facto* an autonomous state without international recognition but which nevertheless enjoys a high degree of local and regional sovereignty, while Puntland is a relatively organised semi-autonomous state-like polity which claims to be part of a federal Somalia. As such, they both display characteristics of states, and fall beyond the scope of this inquiry. Temporally, and due to the general scarcity of sources on the topic, this article examines the timeframe from roughly 1991 (the fall of the Siyad Barre regime and complete collapse of the Somali state) to roughly 2007. Finally, because of its major importance for the political, security and economic situation in south and central Somalia, particular importance is given to the capital of Somalia, Mogadishu. Since most of the sourced

for this article is that when faced with state collapse, security chaos and political anarchy, people are more resilient and less passive than most of us give them credit for and they organise themselves in whichever way possible to bring about some order in their everyday lives. While the situation in much of Somalia is dangerous and often very violent, there is evidence that some form of order and governance has been constructed on the local level even in the most chaotic of places, and that in the mid-1990s, only a few years after the worst of the anarchic violence in the country had been seen, Menkhaus and Pendergast stated that Somalia was “chaotic, but not chaos. It is a society without a state, but not, as is so often reported, ‘anarchy.’”⁴

Background on Somalia

Since the political history of Somalia, and especially its past 20 ‘stateless’ years have been amply documented, this paper will include only a very brief outline. In July 1960, after some 70 years of European overlordship, and upon the merger of British Somaliland and Italian Somalia, the new Republic of Somalia was proclaimed. However, some four million ethnic Somalis inhabited significant areas neighbouring Somalia’s formal borders.⁵

During the first nine years of Somali independence, the country was ruled by a civilian government which “proved to be experimental, inefficient, corrupt, and incapable of creating any kind of national political culture.”⁶ In October 1969, a coup led by General Mohamed Siyad Barre suspended the constitution and left the military in power. While Barre’s regime was initially mainly interested in consolidating its hold on power, in 1977 it attempted to realise its dream of the unification of Greater Somalia. Somali forces invaded ethnic Somali territories in Ethiopia’s Ogaden region, but Barre’s Soviet patrons switched sides in the midst of the war

information and literature available is to a large extent concerned with Mogadishu, particular attention will be given to examination of community initiatives in or around the city. While the focus on Mogadishu is merited by its importance for the security and economic prosperity of south and central Somalia, this focus is influenced by the available data and literature, not necessarily the desires of the author.

⁴ Ken Menkhaus and John Pendergast, “Somalia: The Stateless State,” *Africa Report* (May/June 1995): 22-25.

⁵ Martin Meredith, *The State of Africa* (London: The Free Press, 2006), 465.

⁶ Walter S. Clarke and Robert Gosende, “Somalia: Can a Collapsed State Reconstitute Itself?” in *State Failure and State Weakness in a Time of Terror*, ed. Robert I. Rotberg (Washington: Brookings Institute Press, 2003), 132; Ioan M. Lewis, “Visible and Invisible Differences: The Somali Paradox,” *Africa* 74:4 (2004): 133.

and by March 1978 Somali forces were forced to withdraw almost completely from the Ogaden.⁷

After its defeat in the Ogaden War and throughout the 1980s Barre's regime became more repressive and brutal and, because of his harsh rule, new liberation movements and rebellions sprang up. From the mid-1980s a large scale civil war was being waged in the north of the country against the Somali National Movement (SNM). Barre's horrendous repression of the SNM and the killing of many civilians became one of the main reasons why the north of Somalia seceded from the rest of the country in 1991.

From the end of the 1980s Barre's government fought several liberation movements in the south of Somalia, and in January 1991 the dictator was finally expelled from Mogadishu. However, Barre's overthrow was not followed by a replacement government, but a long period of violent warfare, looting and general anarchy. The post-Barre war, which may have begun as a struggle for control of the government, quickly turned into predatory looting and banditry on the part of various militias. Towards 1992 Somalia was affected by a massive famine, but the international food aid sent to alleviate the situation quickly became part of the war economy.⁸

In response to this widely media covered and significantly devastating famine, and the inability of food aid to reach its intended recipients safely, the United Nations (UN) and United States (US) intervened in Somalia with a view to protecting the food aid and helping the famine ravaged southern Somalia. However, after the infamous and highly publicised 1993 'Black Hawk Down' incident, in which Somali militias shot down two US helicopters and killed 18 soldiers, the US soon withdrew from the country and the UN followed suit.⁹

From 1995 to 2006 the majority of armed conflicts in Somalia occurred locally, pitting sub-clans against one another, but the duration and intensity of these conflicts was diverse, leaving the situation across the

⁷ Clarke and Gosende, "Somalia," 136.

⁸ However, in contrast to events unfolding in the south of Somalia, the northern regions of the country did not suffer such large-scale warfare and devastating plunder and famine.

⁹ Clarke and Gosende, "Somalia," 143-145.

country far from uniform.¹⁰ The most peaceful and relatively secure area was and remains the secessionist state of Somaliland in the north. In the north-east, Puntland has developed a semi-autonomous state-like structure which allows it to foster a more secure and peaceful environment than that in central and southern Somalia.

Even in southern Somalia there have been slight improvements in local systems of governance. In certain areas local polities, united under the jurisdiction of a Sharia court, have sprung up, providing some amount of law and order. Some of these Sharia courts later became springboards for radical Islamist movements, and a cooperative of Sharia courts (the Union of Islamic Courts) temporarily controlled most of south and central Somalia throughout 2006, before the country was invaded by Ethiopia.¹¹ What emerged from the remnants of the Union of Islamic Courts, and is currently in control of large parts of southern Somalia, is the loosely affiliated terrorist-designated al-Shabaab group.¹²

Although Somalia remains without a functional central government, there are international efforts to create one. For the past six or so years the Transitional Federal Government (TFG) of Somalia was the internationally backed and recognised government of Somalia. However, the TFG's mandate expired in August 2012, and as of the writing of this article (early September 2012) it is yet unclear who or what will supersede this body. So far, the UN backed political process in Somalia has resulted in an election of new parliamentarians (but the composition of the new parliament is far from concluded), and the presidential elections are set to take place in mid-September 2012.¹³

Somalia and State Collapse

Over the past two decades the study of failing states or centralised regimes of power has received significant attention. According to Robert

¹⁰ Ken Menkhaus, "Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping." *International Security* 31:3 (2006): 74-106.

¹¹ Menkhaus, "Governance without Government," 86.

¹² "Who are al-Shabab?" *Al-Jazeera*, 31 October 2011, <http://www.aljazeera.com/news/africa/2009/08/20098432032479714.html> (accessed 25 March 2012); "Somalia's al-Shabab join al-Qaeda," *BBC*, 10 February 2012, <http://www.bbc.co.uk/news/world-africa-16979440> (accessed 25 March 2012).

¹³ "Somalia - Electoral Commission Releases Criteria for Candidates Running for President," *AllAfrica*, 1 September 2012, <http://allafrica.com/stories/201209030050.html> (accessed 4 September 2012); "Somalia postpones presidential election," *France24*, 20 August 2012, <http://www.france24.com/en/20120820-somalia-moga-dishu-postpones-landmark-presidential-election-un> (accessed 4 September 2012).

I. Rotberg, “Nation-States fail when they are consumed by internal violence and cease delivering positive political goods to their inhabitants.”¹⁴ As Rotberg argues,

A *collapsed* [original emphasis] state is a rare and extreme version of a failed state. Political goods are obtained through private or ad hoc means. Security is equated with the rule of the strong. A collapsed state exhibits a vacuum of authority. It is a mere geographical expression, a black hole into which a failed polity has fallen.¹⁵

A state can be failing for quite some time; ‘failing state’ simply means that the state is failing to provide political goods, security, education, an environment conducive to economic activity, or health and social services to its population. In this regard, Somalia was a failing state for many years before its collapse in 1991. A collapsed state, on the other hand, has ceased to function and exist in any shape or form, and there are no state structures left.

While there may be academic dissent on the issue of failed versus collapsed states, or whether it is at all useful to define a state as failed or collapsed, this will not be debated here. No matter which ideological or theoretical framework one accepts in dealing with a polity that has lost all of its state-like characteristics and cannot fund itself, provide security for the majority of its population, exert political influence over much its territory, engage in diplomacy with other states, or keep its borders and therefore its sovereignty protected, one should accept that such a political entity no longer exists as a state. Therefore, this article argues that Somalia as a state-like political entity with national and international sovereignty no longer exists.

There are certain factors which make life in failing or collapsed states extremely difficult. As the political, security and economic situation in the state significantly deteriorates, life itself becomes less predictable; there is great internal displacement of people influencing the availability of resources; markets are disrupted and infrastructure decays; money supply balloons causing inflation and distortions in the fiscal system; state institutions are weakened or completely non-functional and crime levels rise considerably; and while all of this leads to massive human

¹⁴ Robert I. Rotberg, ed., *When States Fail: Causes and Consequences* (Princeton: Princeton University Press, 2004), 1.

¹⁵ Rotberg, *When States Fail*, 9.

capital depletion and migration, the population of the country generally keeps growing, causing even greater stress on already limited resources.¹⁶ Usually, the Gross Domestic Product of failing states declines as well, which can be either a cause or effect of the above mentioned issues.

The collapsed state of Somalia went through a prolonged period of state failure going back to at least the mid-1980s. As Menkhaus argues, with the exception of the security apparatus, most Somali government institutions began to atrophy following the disastrous Ogaden War (1977-78)—the public school system crumbled, production in state-run facilities such as farms and factories plummeted, and the massive state bureaucracy became not much more than a dysfunctional structure of cronyism.¹⁷ Internally the state was mostly concerned with repression and expropriation, the domination of political opponents, and security for the regime. Externally it was quickly losing its international military backing, and from the 1990s onwards became a major international aid destination. Indeed, the Somali state towards the end of the 1980s did not provide much for the majority of its citizens, significant numbers of whom were internally displaced, fighting in anti-government militias or actively looking to migrate to safer countries.

Currently, there is no central government in Somalia, and this has been the case for the past 20 years. What this means in practice is that the majority of the Somali population have had to develop strategies and ways to obtain the necessities needed for survival. People in Somalia can generally not count on anyone but themselves to find and deliver essential economic and political goods and, as will be argued later, this has given rise to a multiplicity of local initiatives aimed at restoring some degree of economic and political order in much of the country.

How to Understand Civic Participation and Civil Society¹⁸

The term ‘civil society’ means different things to different people and its conceptual universality is far from settled. One of the world’s largest

¹⁶ Donald A. Snodgrass, “Restoring Economic Functioning in Failed States,” in *When States Fail, Causes and Consequences*, ed. Robert I. Rotberg (Princeton: Princeton University Press, 2004), 257-259.

¹⁷ Ken Menkhaus, “Governance without Government,” 80.

¹⁸ I use the terms ‘civic’ and ‘civil’ interchangeably because for the purposes of this paper they denote the same thing—participation by individuals or groups of people who are not members of state structures such as the military or police, and whose activities are aimed at developing economic or political order in a country. These people can, amongst others, include businessmen, voluntary groups of professionals, religious- or clan-based militias, or community-based groups.

multilateral donors to civil society, the World Bank, uses the term to “refer to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.”¹⁹

However, what the World Bank has adopted as its definition of civil society need not represent all aspects of civil society. In fact, the above outlined definition is highly selective because it explicitly talks about ‘organisations’ and, therefore, a rather formal and institutionalised type of civil society. While the World Bank’s definition and explicit emphasis on organised civil society is understandable from a funding point of view, not all civil society movements, including civic participation initiatives, are formal and highly institutionalised. Indeed, not all civic participatory initiatives have administrative backing or an organised structure.

As narrow definitions of civil society (highlighted by the World Bank’s example) do not capture all forms of civic participation this article is not primarily concerned with highly organised, formal, and institutionalised civil society movements, but rather with civil participation and security and political initiatives undertaken by individuals and groups aimed at restoring some sort of order in a community. In line with this argument we turn to an examination of more informal and, in the context of Somalia, more applicable forms of civil participation.

As Howell and Lind, writing on civil society in Afghanistan argue, “civil society is a contested concept, not least because of its diverse normative meanings, its vast empirical scope and its ideological appropriation by various actors.”²⁰ Howell and Lind use the term to refer to the arena of collective action around shared interests and values that is distinct from the state, family and market, while at the same time noting that the boundaries between these three areas are in practice often blurred and complex.²¹ Although this is a very broad and relatively neutral definition of civil society, it does allow us to include various forms of civic participation within the theoretical framework of civil society.

¹⁹ The World Bank, *Defining Civil Society*, 8 April 2010, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html> (accessed 25 March 2012).

²⁰ Jude Howell and Jeremy Lind, “Manufacturing Civil Society and the Limits of Legitimacy: Aid, Security and Civil Society after 9/11 in Afghanistan,” *European Journal of Development Research* 21:5 (2009): 718-736.

²¹ Howell and Lind, “Manufacturing Civil Society,” 719.

In order to understand how Somali people overcome everyday political, security, and economic impediments we must allow for an informal, loosely structured, and not necessarily highly organised civil society. This is not to say that there are no formal or organised and institutionalised civil society organisations operating in Somalia, but rather that if we do not adopt a wider focus for examining civil society we will fail to recognise and benefit from an understanding of the complex, loosely organised and highly localised networks within civil society. As Ottaway points out, “[p]aradoxically, in the countries where civil society is deemed at its weakest, for example in war-torn African countries, the population relies for survival on civil society networks that go well beyond the family and reveal a high degree of sophistication and organization.”²² She argues that, in addition to the formal, NGO-type of civil society, there is also ‘traditional’ civil society. Traditional civil society “is organized more informally, often through networks rather than formally structured organizations, and often following patterns that existed in earlier times”; for example along clan, ethnic, religious, or community lines.²³ This informal and network-based civil participation is exactly the kind of civil society operating in many parts of Somalia.

Writing on civil society and the reconstruction of failed states, Daniel Posner has distinguished two models of civil society activity: ‘advocacy’ and ‘substitution.’²⁴ While the former model is concerned with keeping state activities in check, the latter basically provides services the state is incapable of providing. As Posner argues, in situations where civil society substitutes for state services “neighborhood watch groups compensate for the absence of police protection...rotating credit associations make up for the lack of state-sponsored credit...clan elders substitute for weak or corrupt courts...[and] community organizations compensate for the lack of state-provided public services.”²⁵ Posner’s exposition is very relevant in understanding the activities of civil participation in Somalia. In the words of Marina Ottaway “[i]n countries where the state is strong, traditional civil society is weak and modern civil society is strong...[i]f

²² Marina Ottaway, “Civil Society,” in *Politics in the Developing World*, 2nd ed., ed. Peter Burnell and Vicky Randall (Oxford: Oxford University Press, 2008), 171.

²³ Ottaway, “Civil Society,” 171.

²⁴ Daniel N. Posner, “Civil Society and the Reconstruction of Failed States,” in *When States Fail, Causes and Consequences*, ed. Robert I. Rotberg (Princeton: Princeton University Press, 2004), 238.

²⁵ Posner, “Civil Society and the Reconstruction of Failed States,” 239.

the state is weak, so is modern civil society but traditional civil society is strong.”²⁶

In the context of Somalia we can argue that the activities of the people of Somalia aimed at developing political order are the actions of a less formal but nevertheless strong civil society movement. After all, some scholars have argued that “there is little support for arguments that the civil society concept is culturally alien to non-Western societies” and that “both the concept and the actually existing forms of civil society are evolving and adapting in ways that are both diverse and unpredictable.”²⁷ This unpredictability with regard to the evolution of civil society means that we cannot judge civil society movements according to only one format or pattern.

Somalia has, in the past two decades, witnessed the development of numerous community, religious, or clan-led initiatives aimed at peace negotiations, establishing local or regional governance structures, and/or protecting property and people’s lives, which have ultimately led to the establishment of some sort of governance and order. In line with the arguments presented above, this article sees civil society as any form of civilian or non-state actor participation in society aimed at overcoming economic, security and political anarchy. This does not necessarily imply that all civil society initiatives are benign or positive for the majority of the population, as militias and organised crime groups also form a component of civic participation and civil society. However, such components of civil society are only one arm of civic activity and, in the context of this article, will be examined only when acting as a form of community-led initiative aimed at providing security and order for the local population.

Civil Society as a Governance Structure: Constructing political order and maintaining local security around Mogadishu

In an often cited article titled *The Coming Anarchy*, journalist Robert D. Kaplan clearly and forcefully argued that the coming collapse of central state authority in West Africa, and much of the developing world, would inevitably give rise to anarchy, societal breakdown, crime and violence.²⁸

²⁶ Ottaway, “Civil Society,” 171-172.

²⁷ Marlies Glasius, David Lewis and Hakan Seckinelgin, *Exploring Civil Society, Political and Cultural Contexts* (London and New York: Routledge, 2004), 7.

²⁸ Robert D. Kaplan, “The Coming Anarchy,” *The Atlantic Magazine* (Feb 1994), <http://www.theatlantic.com/magazine/archive/1994/02/the-coming-anarchy/4670> (accessed 25 March 2012).

Although Kaplan's alarmist and fatalist views of the apocalyptic 'Mad Max-like' future have not, for the most part, come true, his ideas of state collapse inevitably leading to anarchy, chaos and unprecedented levels of crime and violence are still highly influential for many who view states as the ultimate and only legitimate socio-political structure available to humans.

Somalia is a case of a collapsed state that does not necessarily fit into Kaplan's clear-cut presentation of anarchic and orderless black spots where society has completely broken down. In fact, Somalia exhibits strong aspects of local community activity and bottom-up societal development, where local people have managed to devise structures of governance (even if with only local and limited jurisdiction). Somalia is, in the words of one observer "without government but not without governance."²⁹

Since the collapse of the state in 1991, and perhaps even earlier than this, there have been two main foundations for local governance (or any kind of governance for that matter) in Somalia: Somali customary law (Xeer) and Sharia law.³⁰ Xeer is based on Somali customs and while it was replaced with Somali state legislation during the life of the Somali state, since the state's collapse it has again become the predominant legal system.³¹ Xeer is a customary law which outlaws crimes such as homicide, assault, rape, torture, kidnapping, robbery, theft, arson, property damage and other similar offences, and focuses on restitution (in kind) for victims rather than the punishment of criminals. If individuals are unable to pay the prescribed compensation, their extended family must cover the amount. This is another key reason why clan affiliation is so important in Somalia. Xeer is administered by clan elders, chosen for their knowledge of customs, but they only serve to interpret the community law and cannot invent legal precedents.

Sharia, on the other hand, is Islamic law and it guides many aspects of Muslim life, including daily routines, familial and religious obligations,

²⁹ Ken Menkhaus, "Governance without Government," 82.

³⁰ This classification does not necessarily include Somaliland and Puntland, where state structures may exist in stronger forms than in south Somalia, and as such may allow for a third legal basis for governance, namely state legislation. However, even such state legislation may be influenced by local customs, Xeer or Sharia.

³¹ Benjamin Powell, Ryan Ford and Alex Nowrasteh, "Somalia after state collapse: Chaos or improvement?" *Journal of Economic Behavior & Organization* 67 (2008): 657-670.

and financial dealings. It is derived primarily from the Quran and the Sunna (the sayings, practices and teachings of the Prophet Mohammed). Precedents and analogy applied by Muslim scholars and clerics are used to address new issues and, importantly, the consensus of the Muslim community also plays a role in defining this theological manual.³² This last point is quite important in the Somali context, where Sharia courts are a major source of local governance but where there also exists a tension between a fundamentalist and radical interpretation of Sharia and a more moderate one.

As a result of these two systems of governance, those mostly found at the pinnacle of local governance are clan elders and Muslim clerics. Since Xeer is based on local custom, and the enforcement of Sharia law varies in different regions of Somalia, these two legal systems allow great flexibility for local Somali governance. For example, while Xeer outlaws certain crimes and focuses on restitution for victims, its interpretation varies according to clan elders and local courts.³³ Similarly, Sharia courts are often set up by local communities with the help of local Muslim clergy, and different clerics may interpret certain aspects of Sharia differently and with varying degrees of dogmatic zeal.

With regard to the role played by clan elders and neighbourhood community groups in maintaining order, it should be said that it is difficult to disentangle such initiatives from those under the umbrella of Sharia courts. That is to say, often clan elders and neighbourhood communities work with Sharia courts in maintaining order, rather than working independently of them.

The Nexus of Sharia Courts, Militias and Business-people

One of the most successful civil society initiatives aimed at developing political order and stability in local communities has been the introduction of Sharia courts. As Menkhaus argues, during the second half of the 1990s, “different types of local polities have emerged in Somalia, but the most common manifestation has been a coalition of clan elders, intellectuals, businesspeople, and Muslim clergy to oversee, finance, and administer a sharia court.”³⁴ Although to citizens of liberal democratic regimes the idea of Sharia courts might seem repugnant

³² Toni Johnson and Lauren Vriens, “Islam: Governing under Sharia,” *Council on Foreign Relations*, 24 October 2011, <http://www.cfr.org/religion/islam-governing-under-sharia/p8034#p2> (accessed 25 March 2012).

³³ Powell, Ford and Nowrasteh, “Somalia after state collapse,” 667.

³⁴ Menkhaus, “Governance without Government,” 85.

(amongst other things due to the perceived harshness of crime punishment), in the Somali context these courts have had significant success in providing order in a stateless society. What is key for understanding the success of Sharia courts as local governance initiatives is that “they have the added advantage of enjoying a high degree of legitimacy and local ownership,” something that cannot always be said of top-down, foreign-backed state building and governance structures such as the Transitional Federal Government of Somalia.³⁵

Sharia courts first emerged in northern Mogadishu in August 1994.³⁶ These courts were local, clan-based initiatives funded by local Muslim clerics or businesspeople and aimed at providing a degree of law, order and security in a stateless and anarchic situation. A typical court was composed of three elements: a shura (council), a chair, and a military commander. The shura included respected political, traditional, business and religious leaders from the clan, while the chair was appointed by the shura and the military commander was, in turn, appointed by the chair, subject to the shura’s approval.³⁷ The resources of these courts were usually derived from a combination of private contributions and taxation of various business and militia activities.

The first generation of Sharia courts was widely popular. After years of protracted and bloody fighting in which families and clans suffered, local populations were displaced, and local businesses were held hostage to militia tax-levies and protection money, Somali communities welcomed Sharia courts and supported them as a means of restoring the rule of law. Since these courts were very local in jurisdiction and served specific sub-clans or local neighbourhoods, they offered local communities a strong and legitimate governance mechanism. Controlled by a coalition of clan elders, Islamic clerics, and local business-people, these Islamic courts allowed the parties to choose between the application of Sharia or Xeer, and were moderate in nature and generally opposed to radical Islam.³⁸ In fact, in some towns, such as Hargeisa, Borama, Luuq and Merka, local polities have done more than just keep peace via a Sharia court. Some local municipalities have been able to provide certain basic services such as piped water, regulated marketplaces, and even to levy small taxes. As

³⁵ Menkhaus, “Governance without Government,” 82.

³⁶ Oscar Gauko Mwangi, “The Union of Islamic Courts and security governance in Somalia,” *African Security Review* 19:1 (2010): 88-94.

³⁷ Mwangi, “The Union of Islamic Courts,” 89.

³⁸ Menkhaus, “Governance without Government,” 85-86.

with Sharia courts, such successful and effective local municipalities enjoy enormous popularity with local communities.³⁹

In order to understand the full extent of Somali civil society as an alternative governance structure, we must also examine the role played by the Union of Islamic Courts (UIC). Since the mid-1990s Sharia courts have been springing up all across Somalia and, by late 2005, 11 clan-based Islamic courts had been established in Mogadishu alone; some favouring radical Islam, others embodying a more traditional character.⁴⁰ Most of these courts were primarily concerned with security in their own areas of the capital and, even though local in character, these courts did contribute troops and equipment to a combined UIC militia force of 400 members.⁴¹ What is important to remember with regard to the popularity of the Islamic courts within local communities is that their militias were formed by very religious and highly disciplined young men. They were a far cry from the parasitical and ill-disciplined groups of youngsters, first controlled in the early 1990s by Mogadishu's warlords and then left to develop their own exploitative and criminal groups. As a more disciplined and often better equipped force, the Islamic court militias were able to successfully deal with security issues in their local spheres of influence and, when united under the UIC, formed an impressive fighting force.

In June 2006, the UIC defeated the various clan-based warlords who had effectively reigned over Mogadishu since the early 1990s, and restored a high degree of peace to the capital; a feat that neither the warlords nor the internationally backed Transitional Federal Government had been capable of achieving. For the first time since the collapse of the Somali state, an organisation managed to unite Mogadishu and deliver peace and security to its population. Furthermore, as Mwangi states,

The courts undertook significant and highly symbolic public actions aimed at restoring peace, security and public confidence. These included, among others, the removal of unnecessary roadblocks, the removal of garbage that posed an environmental threat to the city, and the reopening and rehabilitation of Mogadishu's main airport and seaport. Other actions included the removal of squatters from government buildings, curbing illegal land grabbing, the provision of militias for policing duties, and

³⁹ Ken Menkhaus, "Vicious circles and the security development nexus in Somalia," *Conflict, Security & Development* 4:2 (2004): 149-165.

⁴⁰ Mwangi, "The Union of Islamic Courts," 90.

⁴¹ Mwangi, "The Union of Islamic Courts," 90.

opening special courts to deal with the numerous claims for the restitution of property.⁴²

In the example of the UIC, we can see a process through which a civil society governance initiative (that of the local business-people, clergy, and clan elders) at the local level, was transformed into a regional governance structure reminiscent of the state. In effect, the role the UIC played in establishing and maintaining security and order in much of south and central Somalia in 2006 highlights Posner's assertion regarding the dual role of civil society. As outlined above, Posner argued that civil society activity fits into two models; that of advocacy (keeping the state in check) and substitution (providing services the state is incapable of providing).⁴³ By defeating Mogadishu's warlords and establishing security in the capital, the UIC basically provided services usually expected from the state. The UIC was effective in its activities, and enjoyed legitimacy and popularity with local populations for three main reasons: it improved security and law governance at the local level; it proved to be an effective conflict resolution mechanism for factional clan leaders; and it provided a secure environment for local businesses to operate profitably and for economic activity to strengthen.⁴⁴

Conclusion

What this article has highlighted is that "in zones of war, criminal violence, and state collapse, the individuals and communities caught in these crises actively seek to reduce and manage risk, and are quick to fashion informal systems providing a modicum of security and predictability in their lives."⁴⁵ It was argued that there is indeed, at the local level in south Somalia, a somewhat complex system of governance without the presence of a government. An argument was made that one of the components of such systems of governance are Sharia courts. These courts have enjoyed a great degree of legitimacy and popularity with local populations, and we should remember that they were primarily a civil society initiative, both founded and funded by local communities. In this light, we can see the Union of Islamic Courts as a successful macrocosm of local Sharia courts. The UIC was highly successful and effective in establishing and maintaining order and security in large parts of Somalia, and its success should be seen as a result of the movement being a bottom-up initiative of local Somalis.

⁴² Mwangi, "The Union of Islamic Courts," 91.

⁴³ Posner, "Civil Society and the Reconstruction of Failed States," 239.

⁴⁴ Mwangi, "The Union of Islamic Courts," 92.

⁴⁵ Menkhaus, "Vicious circles," 163.

Although some may be reluctant to credit the UIC with a positive role in developing order in south Somalia, it is important to keep in mind that “armed non-state actors play both a negative and positive role in security governance in collapsed states.”⁴⁶ For the purpose of examining the role civil society initiatives play in developing order in the absence of any state structures, it is not so important whether the UIC’s later Islamic radicalisation may have made life more difficult for local Somalis. What is important for the present discussion is that the UIC originated as a local civil society initiative aimed at restoring order and providing security in local Somali communities, and that it enjoyed significant legitimacy and popularity in those communities. Just because the state-centric international community is unable or unwilling to understand that in Somalia there exists a multitude of bottom-up, locally initiated political and security governance structures, it does not necessarily imply that such initiatives hold no significance in the daily lives of the Somali people.

To highlight the societal development of Somalia in the past 20 ‘stateless’ years (which has to a large extent been influenced by local governance initiatives such as Sharia courts) we can state that there is evidence that local governance initiatives, coupled with the lack of malignant state control, have brought some benefits to Somalis. When examining 18 development indicators by comparing the results from 1985-1990 and 2000-2005, Peter T. Leeson found that 14 showed unambiguous improvement:

Life expectancy is higher today than it was in the last years of government’s existence; infant mortality has improved 24 percent; maternal mortality has fallen over 30 percent; infants with low birth weight has fallen more than 15 percentage points; access to health facilities has increased more than 25 percentage points; access to sanitation has risen eight percentage points; extreme poverty has plummeted nearly 20 percentage points; one year olds fully immunized for TB has grown nearly 20 percentage points, and for measles has increased ten; fatalities due to measles have dropped 30 percent; and the prevalence of TVs, radios, and telephones has jumped between 3 and 25 times.⁴⁷

While we should keep in mind that Leeson’s assessment of the developmental situation in Somalia is five years old and does not consider

⁴⁶ Mwangi, “The Union of Islamic Courts,” 93.

⁴⁷ Peter T. Leeson, “Better off stateless: Somalia before and after government collapse.” *Journal of Comparative Economics* 35 (2007): 696.

the impacts of subsequent political destabilization and famine, his examination attests to the positive developmental situation in the country in the timeframe examined by this article. One should question whether such achievements would be possible in an environment of complete political and security anarchy no matter how much aid was pumped into the country, and we should at least acknowledge that locally driven systems of governance are to an extent responsible for Somalia's beneficial societal development in a stateless environment. In view of the arguments presented in this article, we should reassess the popular version of what Somalia is like (anarchic, apocalyptic, without a state and therefore without a hope), and supplant it with a view rooted in evidence on the ground. Somalia is no doubt still a dangerous place, but the local populations have negotiated different mechanisms for successful local governance and order, and this has (in addition to large levels of aid) resulted in some improvements in the lives of the Somali population. Somalia today is not politically anarchic, but rather home to different forms of local polities which govern local areas with strong support from local populations. It is not an anarchic black hole on the African continent, but a politically fragmented troubled area where local communities have been more effective than the internationally backed Transitional Federal Government in devising local governance structures which restore order in society and foster economic activity.

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