Lifos REPORT

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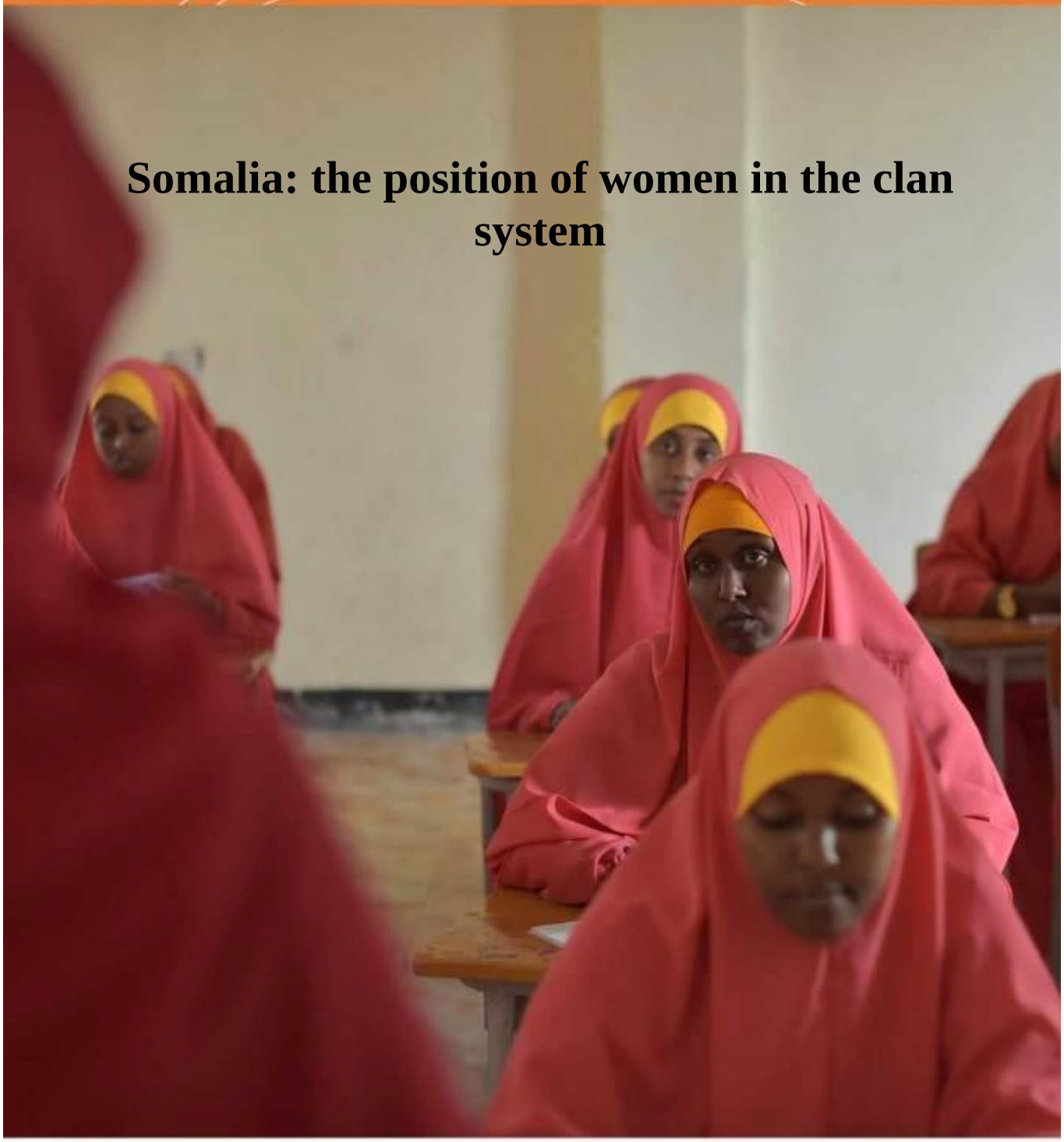
Somalia: the position of women in the clan system



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Country Analysis in the Migration Area

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Lifos Report: Somalia: the position of women in the clan system

27/4/2018, version 1.0

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1. English summary

This Lifos report broadly describes Somalia's clan system and the role that women play within the clan system. The report aims to clarify and describe the opportunities and challenges women face within the Somali clan structure in terms of clan protection and the traditional clan-based legal system known as *Xeer* (customary or clan law). This serves as relevant background information to understand the context of women's experiences in Somalia. The report is based mainly on information from open sources that were collected up until February 28, 2018.

Historically, Somalia's clan system and its origins are to some extent based on mythical beliefs, where a large proportion of Somalia's population is assumed to be connected to a single large family through kinship to the brothers *Samaale* and *Sab.* These brothers are believed to be lineal descendents of the Prophet Muhammad, with *Samaale* considered the ancestor of the nomadic clans, and *Sab* the ancestor of the so-called agricultural clans. In addition to the clans, there are a number of minority groups in the country. Each clan and minority group can further be divided into sub-clans or sub-groups of various numerical sizes and characters, depending on the clan/sub-group that is being considered. Defining and delimiting a Somali clan or minority group through a family tree, with its associated sub-grouping, is thus a very complex task.

Currently, there is limited governmental institutional capacity to ensure provision of basic security and legal services in Somalia. Hence, the population generally rely on their respective clans for support and protection. There are various legal systems that both contradict and overlap with *Xeer* (customary or clan law). These legal systems include the secular statutory law and the Sharia (Islamic law). Due to historical and political reasons, *Xeer* is the dominant system that governs social relations, disputes and serious crimes.

A major challenge is that the clan system in Somalia continues to change over time and space, which means that an individual's circumstances may vary depending on location and time. For this reason it appears to be difficult and precarious to live in Somalia without clan protection and *Xeer* as they both, in their traditional structures, provide basic rights, security, and to some extent financial security from other clan members.

An interesting observation is that the clan protection system seems to weaken in areas where the Somali state is able to take greater responsibility, but also in areas where Al-Shabaab holds a more prominent position. A consequence of clan protection, Xeer, the state and Al-Shabaab operating interchangeably within Somalia is that different legal principles and tools are available to people depending on when and where an individual is at the time, what clan or grouping they belong to, and whether they are male, female or child.

It is complex and difficult to determine women's status, opportunities and challenges within the context of Somalia's clan structure. However, it is clear that women are in a patriarchal system with a number of discriminatory structures against them. A number of factors affect the degree of discrimination, e.g. being a single woman belonging to a minority group and living in a refugee camp are all factors that entail a high level of discrimination and exclusion. In terms of clan protection, women are largely dependent on an existing male network that can represent them in *Xeer* negotiations since women lack decision-making in these negotiations. Women who live in their clan's geographical area usually have access to their clan's protection. However, the degree of protection varies depending on which clan you

belong to. Women from weak clans living in refugee camps are particularly vulnerable and lack protection against violence and sexual abuse.

2. Introduction

This report is based mainly on open written sources obtained up to 28 February 2018. The report has been triggered by the need to clarify and compile the challenges and opportunities for women within the Somali clan system. The purpose is therefore to summarise the clan system as well as the challenges and legal possibilities for women within it. This background is relevant for putting women's experiences in Somalia in the right context. The report focuses on Somalia's clan system, the *xeer*, and clan protection as well as the role of women within the clan system.

3. General overview of Somalia's clan system

For a richer and deeper understanding of the clan system in Somalia, including clan protection and customary law/*xeer*, reference is made initially to other reports, such as Joakim Gundel's *The Predicament of the Oday: The role of traditional structures in security, rights, law and development in Somalia.*

Historically, Somalia's clan system and its origins are to some extent based on mythical beliefs, in which a large proportion of Somalia's population is thought to be linked to a single large family through the relatives of the brothers *Samaale* and *Sab.* These brothers are reported to be related in the direct descending line to the Prophet Muhammad. Samaale is seen as the ancestor of the nomadic clans, while Sab is considered to be the ancestor of the so-called agricultural clans. There are also a number of minority groups in the country.[1] Each clan and minority group can also be divided into subclans or subgroups of varying numerical size and character, depending on the clan/subgroup in question. Defining and delineating a Somali clan or minority group by, for example, establishing a family tree, with its associated sub-grouping, is a very complex task. It is regarded by many researchers as almost impossible to accurately depict the true composition of the clan or minority group. Rather, many argue that clans and minority groups should instead be thought of as a living organism, in which dynamic changes occur over time.[2] However, some basic and interfacing factors are available to help to organise a structure's architecture:

- Clan affiliation is always linked to the individual's relations on the father's side[3];
- It is not entirely established how a clan family's members are interconnected, but one

[1] Home Office, *Country Policy and Information Note Somalia: Majority clans and minority groups in southern and central Somalia v. 2.0,* June 2017, p. 17, http://www.refworld.org/docid/59422bdc4.html (Taken 2017-11-28)
[2] Dr. Farah, *Letter background of the Somali traditional and kinship structure (patrilineal),* unpublished document, 2017-08-06, p. 3
[3] Lifos, *Kvinnor och barn i Somalia. Rapport från utredningsresa till Nairobi, Kenya och Mogadishu, Hargeisa och Boosaaso i Somalia i juni 2012* (*Women and children in Somalia. Report from a mission trip to Nairobi, Kenya and Mogadishu, Hargeisa and Bosaso in Somalia in June 2012),* 2013-06-05, https://lifos.migrationsverket.se/dokument?documentSummaryId=30432 (downloaded 2017-11-28)

source indicates that the clan family is interconnected through 15-40 generations back in time to a common ancestor. A clan member is expected to be able to name his clan's ancestor, the name of the clan and how he is related to this clan[4];

- Within each clan family or minority group there are a number of subclans or subgroups, down to what is called the *"diya*[5]-paying subclan", which consists of the relatives of a common ancestor about 4-8 generations back[6];

- Each clan family can most often be linked to one or more specific geographical areas;

- There are often linguistic, ethnic and traditional divisions between different clans and minority groups[7];

- A clan family leader is always a man, usually an elder, who represents the clan legally in customary law, *Xeer*[8];

- The diya-paying subclan leader is responsible for participating in negotiations related to conflicts within or between clans.[9]

Client affiliation in the Somali context is thus strongly linked to a person's identity in society, where the individual's relationship on the father's side determines which clan a person belongs to. The clan system has a major influence on Somali society and makes its mark on both the political and social arena. Clan affiliation is the source of both the rights and obligations of the individual and the collective.[10]

All clans in Somalia can be said to have some form of connection to a specific geographic area, albeit to varying degrees. In addition, the agricultural clans with the main clan family, the Rahanweyn, are considered to be more closely linked to their respective geographical areas than the nomadic clans. This relationship is most easily explained by how easily the respective clan can cross the geographic area.[11]

Knowledge of both a person's own and other clans is usually transmitted orally within the clan, which is expected to create a certain flexibility through the provision of different parallel interpretations of an individual's clan history. However, basic information is considered to include the name of the clan's ancestor, the name of the main clan and the way in which the

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[4] Dr. Farah, p. 2
[5] Diya is blood compensation paid from one diya-paying subclan to another. The diya-paying subclan is the subclan that is collectively responsible for the security of its subclan and is required to compensate other subclans for damage that the own subclan has inflicted on them.
[6] Ibid.
[7] Landinfo, *Somalia: Clan and Identity*, 2015-10-01, p. 9, https://landinfo.no/asset/3232 January 3232 1.pdf (downloaded 2017-11-28)
[8] International Training Program for Conflict Management (ITPCM), *ITPCM International Commentary:Somalia:Clan and State Politics*, Vol. IX, No. 34, December 2013, p.31, https://reliefweb.int/sites/reliefweb.int/files/resources/ COMMENTARY SOMALIA ISS UE DEC 2013.pdf (Taken 2017-11-28)
[9] Home Office, p. 11
[10] Austrian center for Country of Origin and Asylum Research and Documentation (ACCORD), *Clans in Somalia*, December 2009, p. 7, http://www.refworld.org/docid/4b29f5e82.html (Taken 2017-11-28)
[11] Landinfo p. 12-13

person is related to the clan.[12] Clan members are considered to have two things in common, both collecting funds jointly, for example, for the sick, poor or victims of natural disasters, and dividing the burden of payment within their *diya*-paying sub-clan linked to the law-creating parts of the *Xeer*. [13]

A clan family is identified by blood relationship about 30 generations back in time, while a clan is defined as about 20 generations, and a *diya*-paying subclan is defined as about 4-8 generations.[14] *Diya*-paying subclans usually consists of a few hundred to a few thousand men. The group should at least have the ability to pay the equivalent of one hundred camels, which is usually a fixed amount of penalties to the victim's family for a murder committed by any clan member. Clans and *diya*-paying subclans should not be regarded as static groups, as they can be both divided and recombined, in particular in connection with internal conflicts within the group.[15]

Decision-making within a clan is traditionally conducted by older men based on dialogue and consensus, focusing on the clan/collective's interest over the individual's interest. Women are excluded from this decision-making process.[16]

[12] Ibid., P. 10
[13] Norwegian organisation for Asylum Seekers (NOAS), *Persecution and Protection in Somalia,* 2014 p. 39, https://www.noas.no/wp-content/uploads/2017/07/Persecution-and- Protection-in-Somalia A-Fact-Finding-Report 2014.pdf (Taken 2017-11-28)
[14] ACCORD, p. 8
[15] Ibid., P. 9
[16] Ibid., P. 10

Nomadic clans (See attached map for geographical references)

The nomadic clans are often referred to in the literature as the "noble" clans, and consist of the four clan families Darood, Hawiye, Isaak and Dir.[17] The nomadic clans are said to represent about 75% (2011 estimate) of the Somali population.[18]

The Darood clan is usually divided into the three subgroups Ogaden, Marehan and Harti. Ogaden is the most prominent Somali clan in Ethiopian Ogaden, but it is also present in the Juba region. Marehan is found in central and southern Somalia. Harti consists of a federation of three clans: Majerteen, which is the majority clan in Puntland, Dulbahante and Warsangeli, living in the border area between Puntland and Somaliland.[19]

The Hawiye clan lives mainly in southern and central Somalia. The two most influential subgroups are Abgal and Habr Gedir, both of whom are considered influential clans with a strong presence in Mogadishu.[20]

The Isaak clan is the main clan family in Somaliland, and is divided into the subgroups Habar Yunis, Habar Jelo, Habar Awal and Edigale.[21]

The Dir clan is found mainly in western Somalia as well as in certain limited areas in central and southern parts of the country. The main subgroups are Issa and Gadabursi, which are found in Somaliland and in the border area with Ethiopia, as well as Biyomaal, which are found in southern Somalia.[22]

Agricultural clans (See attached map for geographical references)

The agricultural clans consist of the clan family Rahanweyn with its subgroups Digil and Mirifle and are reported to represent about 20 percent of the Somali population.[23] There are divided opinions about whether the agricultural clans have the same status as the nomadic clans. In general, however, experts consider that the agricultural clans are not subject to systematic discrimination, and the name "noble" may in some of the literature also include these clan families.[24] The majority of the Rahanweyn clan lives in the area around the fertile valleys in the region between the Shabelle and Juba Rivers.[25]

Minority groups (See attached map for geographical references) Somalia's minority groups are estimated to constitute between about 6 percent of the population and possibly up to about one third.[26] Such a wide variation shows the difficulty of mapping the Somali population and its clans and minority groups in a simple manner. In general, minority groups are divided into

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[17] Ibid., P. 11; European Asylum Support Office (EASO), *Country of Origin Information report, South and Central Somalia Country overview*, 2014, p. 43 https://www.easo.europa.eu/sites/default/files/public/COI-Report-Somalia.pdf (downloaded 2017-12-20)
[18] Civil Military Fusion centre, *Clan Structure in Somalia*, August 2011, p. 3, https://www.scribd.com/document/65338696/Clan-Structure-in-Somalia (downloaded 2017-12-10)
[19] Home Office, p. 11
[20] Ibid.
[21] ITPCM, p. 14
[22] Home Office, p. 12
[23] Civil Military Fusion centre, p. 3
[24] Home Office, p. 12
[25] Ibid., P. 12
[26] Ibid., P. 16

Bantu/Jare, Bravenese, Rerhamar, Bajuni, Eeyle, Jaaji/Reer Manyo, Barawani, Galgala, Tumaal, Yibir/Yibro and Midgan/Gaboye.[27] Bantu/Jareer is considered the largest minority group in Somalia and is mostly, like the Rahanweyn clan, settled around the fertile areas adjacent to the Juba and Shabelle Rivers.[28] Bantu/Jareer consists mainly of agricultural workers and other occupational workers traditionally deriving from the Arab slave trade, and it was not uncommon for them to fall victim to land confiscations in the past.[29]

As stated above, there is considerable uncertainty about the proportion of minority groups in Somalia. The UN Human Rights Assistance Office (UNOCHA) has stated that about a third of Somalia's population consists of minorities, while other sources claim that it is about 6 percent to 20 percent. However, it has been confirmed that minority groups usually lack both political and military organisation compared with the majority clans. Bantu/Jareer is listed as the largest minority group, with UNOCHA estimating that about 15% of the country's population was Bantu/Yarra in 2002, while other sources indicated that Bantu constitutes about 20 percent of the population. It is estimated that southern and central Somalia has a higher proportion of minority groups than Somaliland and Puntland.[30]

4. The significance of belonging to a majority or minority clan

To belong to a minority clan or minority group does not automatically imply discrimination or armed attacks. Minority clans or minority groups are also not necessarily numerically inferior to other clans. For example, the minority group of Bantu/Jareer is large in number of members but military inferior to the "noble" majority clans.[31] However, despite its lack of military capability, Bantu/Jareer are nevertheless considered to have some ability to defend themselves against the "noble" clans. [32]

A clan's geographical position is crucial for understanding what the power structures between different clans look like. A clan may be in the majority in a particular geographical area, while being in a minority in another geographical area. At the individual level, it is often not that easy to investigate whether or not a person belongs to a minority group, as the person's geographical position may vary over time. This also creates some difficulties in clarifying whether the individual has been exposed, or is at risk of being exposed, to abuse, threats or violence linked to the individual's clan affiliation.[33] More than one source agree that a clan member may alternately be in majority or minority depending on where he is located geographically.[34] This applies even for those belonging to one of the major majority clans. Everything depends on the geographical position and context in which the person is located.[35]

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[27] Ibid., P. 17
[28] EASO, p. 46
[29] Home Office, p. 18
[30] Minority Rights Group International, *Looma Ooyaan - No One Cries for Them: The Predicament Facing Somalia's Minority Women*, 2015-01-30, p. 9, http://www.refworld.org/docid/556ea6db4.html (downloaded 2017-12-10)
[31] ACCORD, p. 14
[32] Ibid., P. 16
[33] Ibid., p. 14
[34] Home Office, p. 11; Landinfo, p.13
[35] *MOJ & Ors (Return to Mogadishu) Somalia CG v. Secretary of State for the Home Department*, (2014) UKUT 00442 (IAC), United Kingdom:Upper Tribunal (Immigration and Asylum Chamber), 2014-10-03, p. 53, http://www.refworld.org/cases,GBR UTIAC, 543438014.html (downloaded 2017-12-20)

Even though belonging to a minority group does not automatically imply discriminatory treatment or armed attacks, there are still plenty of reports of that happening. For example, minority groups are affected, to a greater extent than the rest of the population, by the current lack of access to public institutions and government structures, which in turn leads to the risk of discrimination on several levels, including in the labour market, healthcare, school system and legal system. It is common that minority groups do not have access to armed militia.. In the context of the armed conflict in Somalia, and in combination with other challenges, such as recurrent drought, this has in particular contributed to the fact that members of minority groups have been forced to flee, especially women and children, to a relatively large extent.[36]

Viewed from a political perspective, many experts consider that the "4.5 formula"[37] introduced by the Somali Transitional Government in 2000 has also contributed to the further marginalisation of Somali minority groups from political influence in the country.[38]

5. Clan protection and customary law (Xeer)

5.1. Clan protection

Currently, there are no functioning state protection mechanisms in Somalia. Generally, the population relies on their respective clans for support or protection. In Somalia there is a multi-legal system comprising customary law *(Xeer)*, religious law (sharia) and secular law in interplay with each other. For historical and political reasons, *Xeer* is the dominant system that governs social relations and serious crimes. [39]

The ability of the clan to provide protection is based, in particular, on its ability to use threats or the possibility of violence, its ability to respond to threats from other clans and its ability to pay damages in accordance with decisions in customary law/*Xeer*.[40]

Clan protection has been described in previous reports from Lifos as an individual's ability to protect himself against violence through the fact that he belongs to a clan which, by military force, can provide deterrence against any attacker. There is a collective punishment procedure within the clan system, in which the *diya*-paying subclan together with the victim's family has to be compensated economically when the victim is a member of the clan or the loss has occurred to the clan.[41] The *diya*-paying subclans can also assist clan members who are in financial difficulties.[42]

Clan protection can thus be described as including both financial protection and security

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[36] Civil Military Fusion centre, p. 4
[37] The 4.5 formula is a clan-based political power distribution where the four majority planes get as many places (4 places), and the minority groups get half of a place.
[38] Ibid., p. 5
[39] ACCORD, *Reinvigoration of Somali Traditional Justice through Inclusive Conflict Resolution Approaches*, 2017-10-12, http://www.accord.org.za/conflict- Trends/reinvigoration-Somali-traditional-iustice-inclusive conflict-resolution-Approaches (Taken 2017-11-28)
[40] Dr Farah, p. 5
[41] Lifos, 2014, p. 8
[42] Lifos, *Authorities and clan systems in Somalia. Report from a trip to Nairobi, Kenya, Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012*, 2012-11-30, p. 29, https://lifos.migrationsverket.se/dokument?documentSummaryId=29006 (downloaded 2017-1128)

protection.[43] The persons who are part of and can enjoy clan protection vary depending on the situation and the event. The following groupings and associations have been identified as important in this context: neighbours *(deris)*, relatives *(xidid)*, alliances and partnerships (*gaashaanbuur* or *isbahaysi)*, anyone who claims to belong to a clan that they do not belong to *(sheegad)* as well as "those spared from the spear" *(birimageydo)*. Birimageydo usually includes women, children, elderly, religious leaders, sick persons, travellers, prophets, the injured and prisoners of war.[44] Minority groups and smaller clans sometimes have the opportunity to conclude agreements with a stronger and larger clan, thus enjoying the stronger clan's protection.[45]

The importance of clan protection in Somalia can be illustrated by several examples. In particular, the following statement in 2010, from the then Mayor of Mogadishu, reflects the importance of clan protection: "that the only protection an individual can count on is his own weapons and clan protection."[46]

Contrary to the above, some information indicates that the significance of the clan decreases in certain contexts, at least in Mogadishu, in terms of clan protection. Other information also suggests that minority groups are suffering from limited clan protection to an increasingly lesser extent. The significance of clan protection may have been eroded in the context of a stronger African Union peacekeeping force (AMISOM), a more reliable military and police service that can provide greater protection for citizens' protection and security and Al-Shabaab, which has introduced sharia laws instead of *Xeer*.[47] However, it is believed that clan protection is an essential precondition for living and working in Somalia's major cities. In rural areas, there is less doubt that the importance of the clan and clan protection remains crucial. [48] *Xeer* in rural areas has been further strengthened in districts where Al-Shabaab has withdrawn, combined with the lack of a functioning state administration for legal processes.[49]

There are a number of limiting factors regarding the ability of the clan protection to protect the clan members. A clan leader is supposed once to have said that the clan does not have the ability to practice clan protection in areas controlled by Al-Shabaab. On the other hand, the clan can sometimes provide advice and information about Al-Shabaab's activities in a geographical area, as a source of intelligence. Even in areas controlled by the federal government, it may be difficult to provide protection in individual cases, for example to specific threatened individuals. In Mogadishu, it is also considered challenging to provide clan protection especially for women, unless she is a member of a majority clan, comes from Mogadishu and has a close relationship with both clan and family. The strongest clan protection is enjoyed by a clan leader when moving in the geographical area where his clan is strongest. The factors that determine the degree of protection that an individual can benefit include the clan's geographical position, how well the clan knows the person in question and whether or not he has maintained contact with his clan in the event that the person has been physically absent for a long time, which, for example, could be the case for diaspora groups.[50]

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[43] Rift Valley Institute, *The impact of war on Somali men and its effects on the family, women and children,* February 2016, p. 3, http://riftvalley.net/publication/impact-war- somali-but-and-its-effects-family-women-and-children (Taken 2017-12-10)
[44] Dr Farah, p. 5
[45] ACCORD, p. 22
[46] *MOJ & Ors (Return to Mogadishu) Somalia CG v. Secretary of State for the Home Department,* p. 53
[47] Home Office, p. 14
[48] *MOJ & Ors (Return to Mogadishu) Somalia CG v. Secretary of State for the Home Department,* p. 54
[49] Home Office, p. 14
[50] NOAS, p. 40

Generally speaking, individuals from minority groups enjoy poorer protection than individuals from any of the majority clans.[51] However, we should once again stress the importance of taking into account the geographical context of the individual.

5.2. Customary law - Xeer

Xeer can most easily be likened to a conflict resolution solution within and between Somalia's clans. In parallel to *Xeer* there are also other legal tools used in Somalia, such as the Federal State's Provisional Constitution, the Somali Constitution, the Puntland Constitution and Sharia, which are used to varying degrees depending on where the person is in Somalia, as well as who or what group controls the relevant geographic area. The decision framework within *Xeer* is not necessarily within the same framework as found in, for example, Sharia law, the federal state's provisional constitution or international law.[52] There are a number of paragraphs in the Federal State's Provisional Constitution, the Puntland Constitution and the Somalian Constitution that show that sharia law is the basis of these constitutions, or rather, that the text contained in these constitutions may not breach sharia law.[53]

Xeer should be seen as a dynamic and changing tool that can largely be linked to clan affiliation and its power structures. The focus is on collective conflict resolution rather than any demand for justice at the individual level. Solving the conflict between the parties involved is given considerable scope in *Xeer*, a notion that does not necessarily mean that fair conclusions and penalties are imposed through anchoring in possible legislation. The rules within *Xeer* are to some extent flexible and context-dependent, and there is a certain latitude to adjust them.[54] *Xeer* is common in both rural and urban areas of Somalia, but there is information suggesting that *Xeer* plays its biggest role in northern Somalia, according to which 80-90 percent of all conflicts and crimes are solved by Xeer.[55] Within *Xeer* it is the *diya*-paying subclan that is responsible for providing political, legal and financial support to their respective clan members when they are accused of criminal acts against an individual from another clan.[56] Furthermore, *Xeer* can also be seen as an agreement between *diya*-paying subclans, which responsible for supporting each other, for example, through payment of compensation for criminal acts. [57]

Xeer is also seen in some cases as an important tool for regulating relations between majority and minority groups. From a historical perspective, it was not uncommon there were exchanges between a majority clan and a minority group in terms of services *(sheegad),* in exchange for clan protection. The service was provided by the minority group and the protection was provided by the majority clan. However, since the outbreak of Somalia's Civil War in the 1990s, the extent of sheegad has decreased significantly.[58]

Within *Xeer* is it the clan who can decide whether a legal case is to be dealt with in a federal

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[51] Ibid., P. 41
[52] ACCORD, p. 10
[53] *Norwegian Refugee Council (NRC),* Housing, Land and Property Rights for Somalia's urban displaced women, *2016, p. 28 & 31,* https://www.nrc.no/globalassets/pdf/reports/somalia-housing-land-and-property-rights-for-Somali-urban-displaced-women-2016.pdf (downloaded 2017-12-10)
[54] Dr Farah, p. 6
[55] ACCORD, p. 10
[56] Dr Farah, p. 6
[57] ACCORD, p. 8-9
[58] Minority Rights Group International, p. 9

court or by *Xeer*.[59] The mandate to negotiate and make decisions in a *Xeer* process is held by elderly clan members. Various roles are distributed among the elderly clan members, with one being appointed leader *(ugaasyo)*, another peace broker *(nabaddoono)* and yet another as a good Samaritan (*samadoon*).[60] A decision taken in a *Xeer* case for the benefit of a minority clan and to the disadvantage of a stronger clan can potentially be refuted by the stronger clan if it is financially and militarily stronger. In other words, there is a high risk that weaker clans and minority groups will be more likely to face potential legal uncertainty within a *Xeer* case.[61]

There is relatively large flexibility within *Xeer* in terms of interpretation and penalties. A telling example is how *Xeer* treats a murder or homicide, and the different ordering of *diya*-paying subclans to either pay fines or claim compensation in blood, i.e. that the accused offender is killed. However, in Somali culture it is considered that women, children and elderly cannot be sentenced to death through compensation in blood. There seems to be no clear definition of the age at which a boy turns into a man.[62] However, children are defined under the provisional federal constitution as persons under the age of 18.[63] Nevertheless, in Somali society, in practice, you are considered an adult when turning 15 years old.

At a national level, there is much to suggest that *Xeer* is the tool most commonly used in conflict resolution. *Xeer* also has an influence on the legal handling of criminal acts, even in courts under the federal state and its constitution.

6. Women and the clan system

6.1. Women's male networks

A woman's primary male network is usually linked to her husband.[64] Within *Xeer* the women's male network can vary from case to case.

How closely related the woman is with the man, and what relationship they have, affects the extent to which the man in question has the mandate to bring the woman's action within *Xeer*. The following male relatives can potentially represent the woman: father, husband, grandfather, uncle, brothers, sons and cousins. The man must, however, be in the same geographical place as the woman.[65]

In previous reports from Lifos, it has been stressed that women who lack male networks are in a highly insecure situation because they are unlikely to be adequately protected.[66]

6.2. Women's access to clan protection as well as their legal scope and rights

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[59] Lifos, *2012*, p. 26
[60] Dr Farah, p. 7
[61] ACCORD, p. 21
[62] Ibid., Pp. 21-22
[63] United States Department of State, *2016 Country Reports on Human Rights Practices - Somalia*, 2017-03-03, p. 1, http://www.refworld.org/cgi-bin /texis/vtx/rwmain? page=printdoc&docid= 58ec89ca13 (downloaded 2017-12-10)
[64] Anisa Dirie, Mogadishu, phone call 2017-12-11
[65] Lifos, 2014, p. 8
[66] Lifos, 2012, p. 31

The World Bank estimated in 2013 that Somalia's population consisted of women for about 10.5 million or 50.3 percent.[67] According to UNDP's gender equality index, Somalia is ranked fourth from bottom in the global perspective. In addition, approximately 98 percent of Somali girls undergo genital mutilation. It is also widespread for girls in Somalia to get married at an early age.[68] Childhood marriage occurs, even though federal law requires consent and that a "mature" age has been achieved. Children are defined according to the provisional federal constitution as persons under the age of 18. Child marriages are more common in rural areas and in Al-Shabaab controlled areas.[69]

Generally speaking, men have higher status than women in the Somali clan system. For example, the status of a man is motivated by the fact that it is the man who will contribute to the maintenance of the family and clan. The man is also considered to contribute to the clan's strength by acting as a "soldier" in the event of any conflicts. The more men a clan consists of, the stronger the clan is considered to be.[70] The role of women within the clan is, in particular, in the run-up to clan meetings, to make sure the husband is comfortable and well-dressed, as well as consulting with her husband and giving her opinion on important issues to be discussed at the meeting.[71] Even in cases where women account for the financial stability of a family, many still believe that it is the man who dominates decision-making both inside and outside the family.[72]

Other sources, on the other hand, highlight the value of women in Somali society, for example citing nomadic women who, in contrast to the above picture, are considered to be the main contributors to the family's financial provision, primarily through the sale of products derived from camels, sheep and goats. Nomadic women are in some cases also said to be those who both build and own the family's house and ensure that the household works by collecting water and cooking as well as cooking. Even within the agricultural clans there is some information about more equal conditions, under which responsibility for agriculture is sometimes said to be shared between the man and the woman. In urban environments, the role and status of women varies, ranging from living as an independent businesswoman to being the person who is expected to take care of the household.[73]

Women who live in their clan's geographic area usually have access to its clan protection. However, the degree of protection varies depending on which clan a person belongs to.[74] Women from weak clans living in refugee camps are generally thought to be particularly vulnerable, and lack of protection against violence and sexual abuse, for example, is not uncommon. A woman can lose protection from her clan if she marries a man from another clan, especially if the man belongs to a minority group.[75] Even marriages between an individual from a so-called "noble" clan with an individual from an agricultural clan from Sab are not considered permissible, and could cause the individual from the "noble" clan to lose his clan protection.[76] If it appears that an individual has collaborated with Al-Shabaab, that

[67] Minority Rights Group International, p. 9
[68] Ibid., P. 11
[69] United States Department of State, p. 1
[70] Anisa Dirie, Mogadishu, phone call 2017-12-11
[71] Rift Valley Institute, p.3
[72] Ibid., P. 6
[73] Anisa Dirie, Mogadishu, phone call 2017-12-11
[74] NOAS, p.43
[75] Anisa Dirie, Mogadishu, phone call 2017-12-11
[76] ACCORD, p. 15

could also affect the possibilities of his access to clan protection.[77]

Under *Xeer* women have no mandate to participate in decision making.[78] A woman is always represented by a man when decisions have to be made under *Xeer*. Decisions concerning the woman are thus always taken by the man. Normally, it is the father who decides for girls and unmarried adult women, while the husband usually decides on matters concerning his wife. In circumstances where the father or husband is missing, an uncle or other elderly male relative may instead represent the woman and decide for her.[79] The husband of a marriage has the mandate to make decisions on behalf of the woman, but there is evidence that it is usually the woman who is in charge of family households, which also includes a mandate for decision-making at the household level.[80] However, the fact remains that a woman's legal scope in *Xeer* and clan negotiations is very limited. Compared to sharia law, many judges consider *Xeer* to be more legally restrictive for women. There are also data to be found that within *Xeer* conscious or unconscious misinterpretation of Islam occurs, often to the disadvantage of women.[81]

The Provisional Law of the Somali Federal Republic is implemented extremely weakly, thus giving no or very limited scope for women to use alternative legal tools instead of *Xeer*. For example, rape is prohibited under federal law, a crime which, in the opinion of the law, should lead to prison sentences, but this rarely happens in reality from a historical perspective. In addition, there is no law in Somalia that prohibits domestic violence. Previously, Lifos reported that it is very rare for a woman to report her husband in the event of violence at home. The man may, however, be convicted if the woman chooses to report, but it is common for the convicting sentence to be cancelled by the fact that a clan parent intervenes and ensures that the man is released.[82] Rape attacks are more frequent against women belonging to minority groups, especially if they live in refugee camps. There is also evidence that the perpetrators are frequently "men in uniform". The raped women rarely dare to report the abuse to the authorities.[83] In earlier reports, Lifos has highlighted the problem of lack of working legal tools when a woman has been raped. The chain of command within the police is very rarely maintained, and the physician who assists the police in medical investigations of rape victims often finds that any injury cannot be attributed to the rape itself. In addition to the legal uncertainty, there is also stigmatisation of the rape victim, which further contributes to the fact that rape is not reported to the police.[84]

Under *Xeer* it is normal to deal with rape incidents through customary negotiations, with compensatory fines being paid by the *diya*-paying subclan. There is also information that the raped woman may be forced to marry the perpetrator. In addition to the legal uncertainty that exists under *Xeer* in connection with rape, stigmatising factors also present the risk that the raped woman will be perceived as a "impure" in the future.[85]

In line with previous reports from Lifos, most commentators indicate that the clan system and *Xeer* is detrimental to women, as the system as a whole is based on patriarchal structures and

[77] NOAS, p. 41
[78] Dr Farah, p. 7
[79] Lifos, 2014, p. 8
[80] Anisa Dirie, Mogadishu, phone call 2017-12-11
[81] Ibid.
[82] Lifos, 2012, p. 16
[83] United States Department of State, p. 1
[84] Lifos, 2012, p. 15
[85] United States Department of State, p. 1

conditions, and that the system benefits men at the expense of women.[86] For example, penalty rates stipulate that the diya-paying subclan will offer the victim's clan about 100 camels as well as a bride. Note that penalty rates within *Xeer* may vary depending on how bilateral agreements between clans are structured. Thus, the perpetrator's sister may be forced to marry someone in the victim's clan.[87] Another illustrative example of inequality in *Xeer* and the clan system is highlighted by current penalty rates and the standard compensation applicable to violent crime. To kill a man is compensated according to one source by 100 camels, while the same crime against a woman is compensated by 50 camels.[88] The punishment for rape varies depending on who is the perpetrator and who is the victim. Traditionally, victims are offered compensation, often in the form of camels or cattle, as well as a compensation system where the victim is often forced to marry the perpetrator.[89] Additional examples of discriminatory practices within *Xeer* are demonstrated, in particular, by *dumaal*, where a widow can be forced to marry a male relative of her deceased husband. *Higsiian* is another situation where a widower is entitled to marry his deceased wife's sister. *Godobtiir* also means that a young girl/woman can be given as compensation for *Xeer* convictions between clans or clan members who have had a dispute.[90]

In Al-Shabaab-controlled areas, different penalties apply to crimes (not *Xeer*). For example, in the event of rape, it is common for the perpetrator to be sentenced to death.[91]

In matters of equality and rights, the Somali Federal Government introduced a series of new paragraphs in the Provisional Constitution of Somalia in 2012 aimed at counteracting discriminatory practices. The Constitution stated that women must be effectively included in all national institutions, especially in elected and appointed positions. In addition, it is stressed that all citizens, irrespective of sex, religion, social and economic status, political opinion, clan, disability, work, place of birth or dialect, must enjoy the same rights and obligations under the law. In addition, it was stipulated that every person has the right to personal security, which prohibits illegal detention, all forms of violence, including violence against women, torture or inhuman treatment. Every person must also have the right to own, use, enjoy, sell and transfer property and land. Finally, it was also established that women, the elderly, disabled persons and minority groups who had suffered discrimination for a long time should be given the necessary support to exercise their socio-economic rights.[92] A woman is also entitled to divorce both once and several times without being judged or stigmatised in Somali culture [93] and it is not uncommon for both the husband and wife to marry new partners after a divorce.[94]

6.3. Women who do not live in their clan's geographic area

[86] Lifos, 2012, p. 32 & 37
[87] Ibid., P. 36
[88] Human Rights Watch, *"Lord, Rape is Normal" - A Five-Point Plan to Curtail Sexual Violence in Somalia*, 2014-02-13, p. 35, https://www.hrw.org/sites/default/files/reports/somalia0214 ForUpload.pdf (downloaded 2018-01-20)
[89] Galkayo centre for Peace and Development (GECPD), *Somalia: Its 36 years of imprisonment and 700 lashes for 5 teenagers in Galdogob gang rape case*, 2017-01-29, https://gecpdsomalia.org/36-years-imprisonment-700-lashes-5-teenagers-galdogob-gang-rape case/(Taken 2017-12-10)
[90] NRC, p. 34
[91] United States Department of State, p. 1
[92] NRC, pp. 28-29
[93] Anisa Dirie, Mogadishu, phone call 2017-12-11
[94] Refugee Documentation centre (Ireland), *Country Marriage Pack Somalia*, April 2015 https://www.ecoi.net/en/file/local/1122864/1930_1430825948_somalia-marriage-pack-April 2015.pdf (downloaded 2018-02-24)

A woman belongs to her father's clan world. Even if the woman marries a man from another clan and moves to the other clan's territory, the woman remains a member of her father's clan.[95] A positive consequence of this is that there are good conditions for women to participate in any peace settlement if it comes to a conflict between the spouses' clans.[96] Marriage ceremonies can act as conflict-resolution tools, both when the marriage takes place within a clan and when it happens between clans.[97] On the other hand, there are those who consider that a woman's loyalty to her clan is often perceived as unpredictable, that is, loyalty can switch to her husband's clan. This is said to be one of the reasons why women cannot participate in negotiations between clans. At the same time, the woman is seen as a potential mediator between two different clans in negotiations. There are also opinions that the woman's qualification for acting as mediator increases further if she is wealthy, related to any clan parent or from a generally highly respected family.[98]

Marriage arrangements can therefore be a reason why women do not live with their clan, but this may also happen to unmarried women, usually younger, living with their mother's clan family in the event of, for example, the divorce of the parents.[99]

6.4. Women belonging to minority groups

Women belonging to a minority group are generally considered to be very vulnerable, especially when they live in refugee camps where they are constantly under threat of rape, slavery, extortion, etc.[100]

Women belonging to minority groups are double victims in the male-dominated, patriarchal and hierarchical clan system. These women are largely excluded from, in particular, political dialogue and the peace processes. In addition, it is stressed that the marginalisation of these women affects them in all aspects of life, from access to humanitarian aid, health care and education to the supply of basic necessities. This marginalisation often leads to these women living their lives in poverty and exclusion. In general, it can be argued that women in Somalia have poorer access to basic rights than men, especially women belonging to any minority group. It is not uncommon for these women to suffer sexual abuse, rape and other forms of exploitation. Women belonging to minority groups often have a secondary social status, a fact that is reinforced by a weak state institution with inadequate legal structures and unable to provide these women with legal and social protection. These women are often subjected to assault from a variety of groups, including armed groups, security forces, AMISOM, clan members from majority clans and clan members from minority groups.[101] The *Xeer* system often fails to assist women belonging to minority groups with impartial and effective justice. Women belonging to minority groups are virtually excluded from political decision making. For example, these women have a non-existent representation in the Somali Parliament, where there is generally a resistance to quoting women in parliamentary places, despite previous commitments on quotas.[102]

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[95] Landinfo, pp. 13-14
[96] Anisa Dirie, Mogadishu, phone call 2017-12-11
[97] ACCORD, p. 8
[98] Anisa Dirie, Mogadishu, phone call 2017-12-11
[99] Ibid.
[100] ACCORD, p. 23
[101] Minority Rights Group International, p. 5
[102] Ibid., P. 5

7. Lifos analysis

The complexity of the areas discussed in the report is high, which means that no clear and certain conclusions can be reached. A prominent challenge has been and is that the clan system in Somalia is changing over time and space, which means that an individual's circumstances may vary depending on location and time. In addition, reliable statistics on population and distribution of population between different clans and minority groups are lacking, which further complicates the possibility of establishing any clear conclusions. The major discrepancies in the population data can be seen as an indication that belonging to a clan or minority group and its size are politically important. That clan protection and *Xeer* play a significant role in Somalia, however, is an important conclusion that cannot be ignored. The lack of ability of the Somali state to meet basic rights, security and the protection of its citizens means that both clan protection and *Xeer* perform a significant function in the absence of other options. It seems difficult and from a safety perspective risky to live in Somalia without clan protection and *Xeer,* which, through its historical structures, satisfies both security and, in part, financial needs for its clan members. Another interesting observation is that the clan seems to weaken in areas where the Somali state is able to take greater responsibility, but also in areas where Al-Shabaab has a more prominent position. A consequence of the fact that clan protection, *Xeer,* state and Al-Shabaab all operate in Somalia is that different legal principles and tools are available depending on where the person is and when, what clan or grouping a person belongs to, even whether the person is male, female or a child. *Xeer* still seems to have legal capacity to interact with, supplement and in some cases challenge the Constitution of the Somali Federal Government, the Puntland Constitution, the Somali Constitution and Sharia Law. All these institutions and legal tools interact in one way or another in any legal settlement. Sometimes *Xeer* is combined with Sharia law and on other occasions with the constitution, where *Xeer* at times also seems to be able to overturn already taken legal decisions in federal courts. Sometimes the different legal systems are applied independently. The result of this flexibility is that a high degree of legal uncertainty prevails in the country.

As for women's opportunities and challenges in Somalia, with its clan structure, the situation is not just black or white. It is nevertheless clear that women are living in a patriarchal system with a number of discriminatory structures. A number of factors affect the degree of discrimination, with being a single woman belonging to a minority group and living in internment camps both being factors that cause a high level of discrimination and exclusion. Particularly difficult situations for many women arise in connection with rape, forced marriage and genital mutilation.

To a large extent, women are also dependent on an existing male network that can represent them in *Xeer* negotiations because women do not have decision-making powers in these negotiations.

Existing penalty scales within *Xeer,* for example for violent crime, also show major built-in inequalities between the sexes. However, it is important to bear in mind that several parallel realities exist and that it is not always clear what the degree of discrimination is. For example, there seems to be a greater degree of equality in urban environments, where women in certain cases can, in principle, live and conduct business without support or influence from either clan or *Xeer.* Some equality seems to be present in both the nomadic and agricultural clans. However, from a protection point of view, it is important to point out that a woman may be

privileged in one respect but that does not necessarily mean that she will also be in other areas. For example, a wealthy businesswoman can be economically privileged and gain respect and status in society, but she is still not entitled to take action within *Xeer* and in this context is dependent on a man to bring forward her case. Other factors worth highlighting are that a woman is entitled to divorce both once and many times and without being judged or stigmatised. Another important aspect is the role a woman can play as a broker within the *Xeer* system. A woman who has married a man from another clan, through her dual clan perspective, acts as an indirect mediator in negotiations between clans in conflict. For example, the woman can be consulted outside the *Xeer* hearing, for example, at home, thus sending messages to the original clan. Finally, it is important to take into account a woman's socioeconomic position and clan affiliation to understand the degree to which she is exposed to discrimination.

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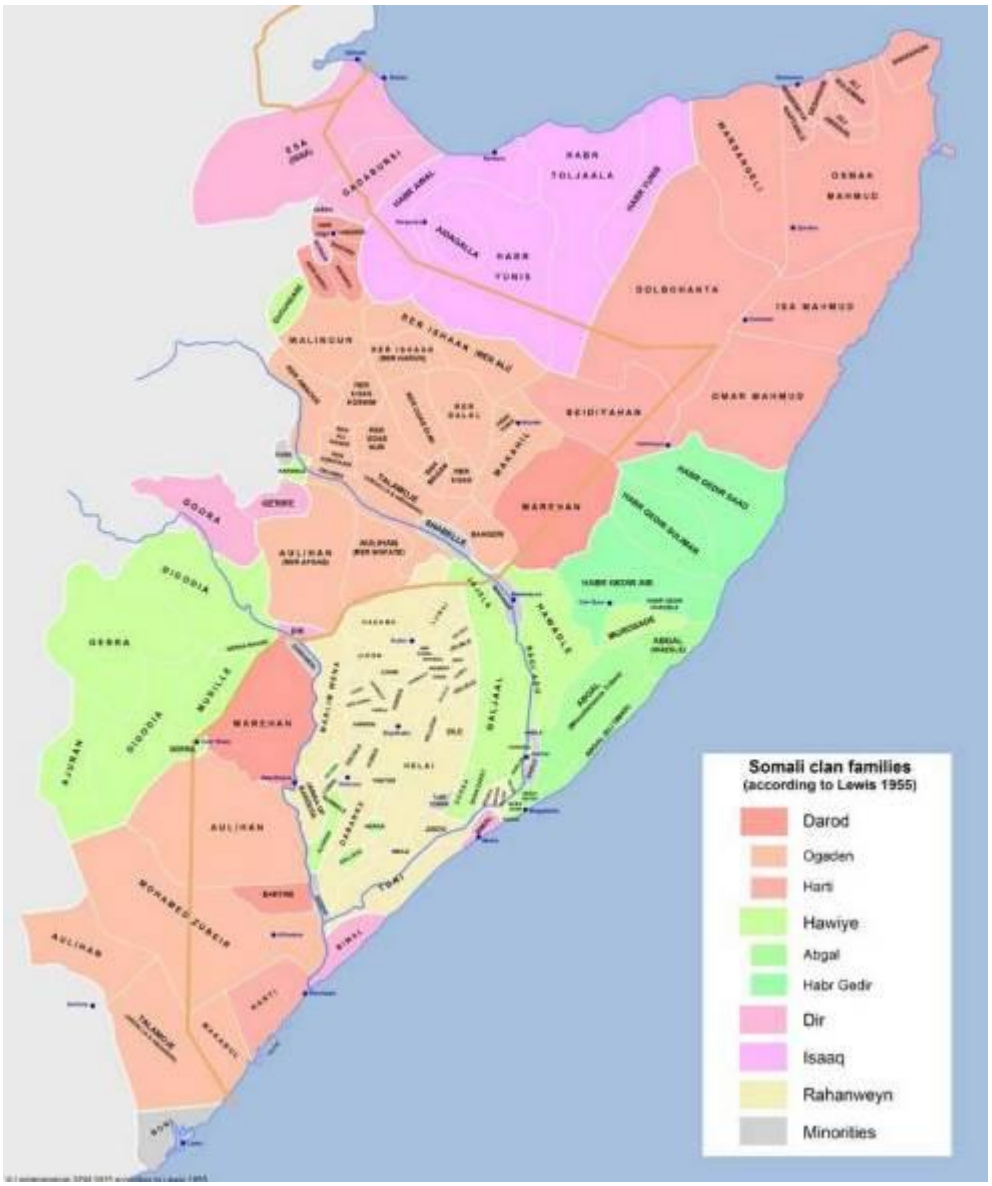
Somali clan families
(according to Lewis 1955)
Darod
Ogaden
Harti
Hawiye
Abgal
Habr Gedir
Dir
Isaaq
Rahanweyn
Minorities