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“Xeer: Traditional Mediation in Somalia”

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“If we are to teach peace in this world, and if we are to carry on a real war against war, we shall have to begin with the children”

Mahatma Gandhi

Table of Contents

Ch1: Introduction	3
Ch 2: Somali Traditional Structures and Practices	5
Islamic Sharia in Somalia.....	6
Somali Social Structure.....	7
Somali Customary Law “Xeer”.....	9
Traditional Authority: “Clan Elders”.....	12
Ch3: From the Colonial Era to the Current Situation in Somalia	13
Colonial Era.....	14
Current situation in Somalia.....	16
Prospects of Hope: Somaliland and Puntland.....	19
Ch4: A Literature Review -Western and Somali Traditional Mediation	25
Western-style Mediation.....	27
Traditional Mediation.....	28
Mediation Techniques, Restorative Justice, and Transformation.....	31
Analytical framework.....	34
Ch5: The Effectiveness of Xeer and the success of Somaliland and Puntland	36
Ch6: Characteristics of Xeer	46
Ch7: Conclusion and Recommendation	49
Appendix A	55
References	57

Abstract

In Somalia there is a great social divide created by civil war, which will take long and much work to reverse. The civil war has caused enormous destruction in the economic, social and political field of Somalia. After so much destruction and human sadness and suffering, Somalia's community is desperate for any solution that brings hope and peace.

This paper describes the traditional Somali conflict resolution system, and presents it as a grassroots, “bottom-up” approach to build peace and stability. Also this paper argues that the Xeer Somali traditional mediation based on customary law is the best tool to use for Somali conflict resolution. Therefore, the important questions are:

Why was Somali traditional mediation successful in Somaliland and Puntland, when all international reconciliation peace processes failed in the rest of Somalia? Does this suggest that we need to revive Somali Traditional Mediation for peace in the rest of Somalia?

Chapter One

Introduction

Certainly since recorded history and probably earlier, tribal and cultural elders have been instrumental in mediating and resolving a variety of disputes between diverse local groups, however named or classified. The role of elders (usually men) has consistently been a human resource used to great advantage (and ignored at great peril) throughout our planet.

Somali traditional mediation, called Xeer (customary law), existed before Somali people were introduced to the other categories of laws during the colonial period. Since then, many in the community believe that traditional mediation (Xeer) is the best justice system suited for Somalia under current circumstances, in a country where a high percent of the population is illiterate. The xeer's oral tradition and emphasis on long-lasting relationships make it effective in a different way. Traditional mediation is one way in which a stateless society uses customary law when there is no formal law system at work because no strong government functions. Criminals who break laws are not persecuted and punished with imprisonment or fair fine.

Given this flexibility, this paper argues that Xeer (customary law) is the most effective way to mediate and resolve the conflict in Somalia given how well it works within Somaliland and Puntland. This paper will also focus on the role and effectiveness of clan elders in confronting social, economic, and legal disputes. Finally, this study will describe the process and the mechanisms utilized by clan elders (traditional mediators) in resolving conflicts within the Somali community. I will explain the kinds of disputes, explore the ways elders interpret clan customs and demonstrate why certain approaches are effective, which may benefit international

actors as well. Xeer and clan elders have the power to put aside differences and grant peace back to the community, if empowered as in the example of Somaliland and Puntland.

The Somali traditional system of governance and conflict resolution has survived the civil war in many areas, in particular Somaliland and Puntland. I will demonstrate this paper the achievements of these regions.

Chapter Two

Somali Traditional Structures and Practices



Mediation under the tree...Somali Xeer

Ethnically and culturally, the Somali people form one of the most homogeneous countries in Africa. They share a common history, a common language (Somali), and a common religion (Sunni-Islam). Because of this, many scholars during the 1950s and 1960s believed that Somalia had an opportunity to become a strong nation state, perhaps one of the strongest on the African continent (Davidson, 1975). This chapter details the indigenous methods—still in practice in many parts of the country today—of conflict resolution among Somali clans and sub-clans. It shows the ways in which the clan, clan elders, and *Xeer* have influenced conflict resolution. Most importantly, I here explore why these traditional methods are often successful in avoiding or resolving disputes.

First, we require an understanding of traditional Somali societal structures. As British anthropologist I. M. Lewis illustrated, the Somali traditional structure can be divided into three core elements: (1) traditional social structures, or, the clan; (2) customary law (*Xeer*); and (3)

traditional authorities, or the clan elders (Lewis, 1999). This three-fold societal justice system pre-dates all contact with the West and continues to play a vital role in Somali life today. Before colonialism, Somali life was nomadic in nature and without complexity. Individuals and families belonged to a clan, which provided the only necessary government for survival in nomadic culture. “The Somali family is the ultimate source of both personal security and identity. The family is deeply valued and serves as a safety net—a sort of social welfare—for many Somalis; thus, it is important to protect family honor” (Putman and Noor, 1993).

Islamic Sharia in Somalia

Somalis have long been Sunni-Muslim, observing Islamic *sharia*. Religious education was most readily available in urban centers or wherever mosques existed. Some teachers traveled on foot from place to place with their disciples, depending on the generosity of others for their living. The teachers served the community by preaching, leading prayers, blessing the people and their livestock, counseling, arbitrating disputes, and performing marriages. Few teachers were deeply versed in Islam, and they rarely stayed with one village long enough to teach more than rudimentary religious principles. In the absence of a wandering teacher, nomads depended on a person associated with religious devotion, study, or leadership, called *wadad* (teacher).

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

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

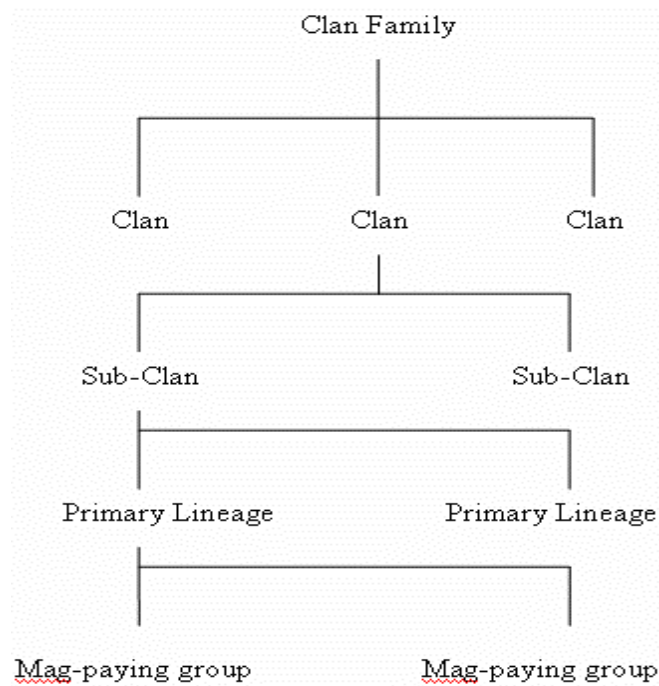
Somali Social Structure

The importance of the clan for daily living encourages individuals to live in close proximity to their families, and that is what creates the Somali village. The need to be safe from hostile clans is what obliges one to reside in the village of his forefathers, even as the nomadic elements of the culture maintain mobility in order to secure water and grazing lands. From time to time, such circumstances will force opposing clans to live in the same village. This trend can also be seen in big cities, such as Galkaio City, which is a hot-bed of conflict.

In the south of Somalia, however, society is different, as the communities there are farmers who tend to live in one village permanently. Clans do not mix, and the region as a result was historically more peaceful than the north and central, until the civil war started a new phase in South Somalia. Somali villages and nomadic communities have more open conflict than big cities, but the omnipresent clan structure provides for a more open style of conflict resolution as well. Clan elders and Somali *Xeer* were always an integral part of the Somali village, largely because *Xeer* was for centuries the only effective source of managing conflict and ensuring community cohesion and thus played a major role. The key, therefore, to understanding the political constitution of and current challenges to Somali society lies in a more detailed

understanding of the concept of the clan, its elders, and *Xeer*. This will enable us to grasp its importance and permanence for the nation.

According to “The predicament of the Odey,” a report by Joakim Gundel, the overarching family clan is the foundation for an agnatic lineage system, as pictured below (Gundel 2006). Somali society follows a system in which individuals trace their descent through the male line and take the name of their father (Lewis, 1961 and 1999). The clan subdivides itself into multiple columns of descending categories of clans, sub-clans, primary lineage, and Mag-paying group.



Social clan structure. Source: Gundel, 2006.

To the individual Somali, the most practical division of society, and the one with the most immediate relevance to his/her social and political needs, is the Magi-paying group. This group

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

Somali Customary Law “Xeer”

Menkhaus sums up the Somali lineage ethic with a well-known Somali saying: "My cousin and I against the clan; my brother and I against my cousin; I against my brother." Within this system, alliances among warring lineages can be formed, while kin who are supportive in one situation can be predatory in another (Menkhaus, 2005). Traditionally, disputes and conflicts in this agnatic society are resolved through *Xeer*. Clans in a specific area agree both within themselves and among themselves upon certain traditional laws. For example, rather than using written contracts, Somali clans practice intermarriage between different sub-clans as a legitimate

means for establishing and strengthening inter-clan relationship and *Xeer* agreements, especially concerning the usage of grazing and water resources (Gundel and Dharbaxo, 2006).

Such moral agreements, guided by *Xeer*, call upon sets of generalized cultural concepts and may be viewed as the due process in dispute management and settlement. To a larger extent, however, *Xeer* may be a specific contract entered into between individuals and between groups. These contracts are twofold: *Toll Xeer* (clanship, lineage) and the inter clan (Gundel, Lewis, 1962). Both types are activated at points of tension either between individuals or between clans as their individual or collective social, political, or economic pursuits collide.

In all cases whatsoever, the guiding principle of settlement for *Xeer* is the safeguard of social cohesion; litigation is carried out within the framework of this goal. In extreme cases in which a litigant argues his case outside this frame of reference, his or her legal standing may even be denied. Gundel stated that “While the *Xeer* is simultaneously a force for justice and social cohesion, it may also conflict with both international human rights standards and Islamic *sharia* law” (Gundel, 2006).

All immutable, fundamental aspects of *Xeer* are in fact directly related to the maintenance of basic social bonds necessary to human survival. According to Andre Le Sage, the principles include the following.

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

- Resource-utilization rules regarding the use of water, pasture, and other natural resources. (Sage, 2005)

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



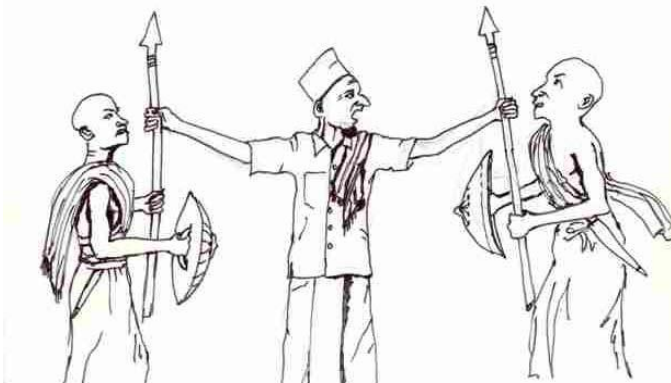
Order out of chaos: Somali customary law in Puntland and Somaliland
Abdurrahman A. Osman 'Shuke'

Collecting camels for diya (compensation payment) as part of a reconciliation process. © PDRC

Traditional Authority: “Clan Elders”

Decisions may be based on consensus within the elders’ or chiefs’ council and may be rendered immediately. Resolution may involve forgiveness, a mutual formal release of the problem, and, if necessary, the arrangement of restitution (Lewis, 1999). Before the collapse of the Somali state, power in the rural communities was mediated in this manner through traditional chieftains and elders, supported by western-style government security institutions. The effectiveness of customary law and codes of behavior was weakened by these “merchants of war,” who used tactics of divide-and-rule among the clan elders to pursue of their own agendas.

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



Clan-elders’ authority, by Joakim Gundel, “The predicament of the Odey”

Chapter Three:

From the Colonial Era to the Current Situation in Somalia

The Somali nation, called the Somali Democratic Republic, has also been called a virgin land as most of the resources have so far remained generally unexploited. The true histories of the Somali people and the current political situation of Somalia have been matters of intense debate to both the outside world and to the Somalis themselves.



Colonial Era

In the early 18th-century, after European expansion into the African continent, the Somali people lived under the rule of four foreign powers. The northwest was under British control, the southern region was under Italian power. To the north, in what is now Djibouti, France ruled, while the western Somali peoples were under Ethiopian authority (in the Ogaden Region).

The most significant influence of colonialism on Somalia was not only on the physical and geographical dismemberment of the people, but also on the traditional clan structure and culture as colonial powers used the “divide and rule” strategy to control the people. Before colonialism, for example, Somali shepherds were always mobile, moving from land to land in search of better grasses. Since colonialism, land ownership emerged as the western powers divided clans into geographic territories. This became the root of the continuing conflicts over limited natural resources in the resource-rich nation. Another dangerous influence was the colonialist appointment of new clan elders who were more in line the ruling power’s interests. This same movement also at times divided the clan itself into more sub clans.

In the 20th century, the fight for independence that gripped other African nations also occurred in Somalia. The British Somali territories became independent on June 26, 1960, and were joined by the southern regions within days. The new states became the Republic of Somalia. During the next decade, democracy was imperfect, but the population enjoyed freedom and continued to participate in political decisions. Somalia was first a presidential democracy, dominated by the Somali Youth League (SYL); Aden Abdullah Osman became the first Somali president. A second election was held, and Sharmake won the presidency.

After Sharmake was assassinated in 1969, however, the democracy failed. The army under dictator Siyaad Barre seized power. In October 1969, Barre took over the country. In the beginning, there was great improvement at both the social level and to infrastructure, as well as to healthcare, education, and the writing of the Somali language. However, authoritarianism, economic mismanagement, and corruption were already weakening the country. Barre thought that he could achieve his pan-Somali dream and regain popular support. He invaded Ethiopia in 1977; but this effort was quickly unsuccessful because the Soviet Union backed Ethiopia's regime in the conflict. The consequences of the war included the weakening of Somalia's economy and social structure. As the situation worsened, political instability resulted in widespread poverty and the almost complete collapse of the country.

In an attempt to save Somalia, Barre's government used an old tactic inherited from the colonialists: "divide and rule." They believed that if the government divided the society into clan fiefdoms that this would create tension between the clans, turning them against each other. Social oppression and brutality continued for more than 20 years. Barre led by fear and terrorized the people. If an individual was suspected of being discontented with the government, let alone of organizing an uprising, the government could make him or her disappear in the middle of the night. Entire villages were burned by militias loyal to the government; indigenous people were decimated in the thousands because of their clan affiliation or political beliefs.

This brutality resulted in the creation of armed opposition groups. The first was the Somali Salvation Democratic Front (SSDF) made up of Majeerteen clan officers, followed by the Somali National Movement (SNM) of Isaaq clan officers, and the United Somali Congress (USC) from the Southern Hawiye clan. There was considerable confusion as to who the main leaders were and what their political agenda was beyond the overthrow of Siyaad Barre's administration.

Instead of peace, Somalia experienced a power struggle among the various clans. During this period, the Somali people were also introduced to the AK-47, a lethal semi-automatic machine gun made in Russia, which has remained on the streets of the country for more than two decades of anarchy.

The country subsequently broke into tribal fiefdoms and factions led by warlords who led largely in their own personal interest. Most clan leaders started to play the same “divide and rule” strategy, decimating the country’s infrastructure and the government institutions. The warlords are not elected officials by their clans, but rather the leaders of ruthless gangs comprised of ignorant, young, nomadic tribesmen who support and would die for their leader.

Current situation in Somalia

Today, Somalia is officially classified as a failed state where warlords and Islamic extremists, suicide bombings and piracy, poverty and anarchy prevail. “Somalia is the longest-running instance of complete state collapse in the post-colonial era.” (Menkhaus, 2005)

The ongoing civil war has multiple complex causes, including political, economic, cultural, and psychological. Somalia has not had an effective government since the 1991 overthrow of Barre; since that time, various warlords have simply fought against one another. The Somali crisis is essentially a fight over how to share or control power and resources. In the past 51 years since its independence, Somalia has had only 9 years of multiparty democracy, 20 years of military dictatorship, and almost 21 years of anarchic civil war.

The long-standing Somali civil war entered a new phase with the growth of the Union of Islamic Court (UIC-Asmara Group), which many believe receives financial support from Arab countries. Furthermore, Ethiopia’s occupation of southern Somalia heralded a new and more

dangerous era in the horn of Africa. Also, the United States' open alliance with Ethiopia and its support for the Ethiopian invasion has plunged the country into the worst humanitarian crisis since the overthrow of Barre's government. Advocate Patrick Duplat visited Somalia, and his words clearly convey the position of many Somalis and how they perceive the role of the United States, and their growing anti-American sentiment: "Somalis perceive the United States as supporting the Ethiopian presence and the reprehensible behavior of Ethiopian troops in their country. The heavy-handed bombing of individual targets in Somalia and military actions fuels this anti-American sentiment," he said. "By condemning human rights abuses and holding the Ethiopian military accountable for their actions, the US can go a long way towards defusing tensions in the Horn of Africa. We hope that the US Congress will investigate the support that was provided to the Ethiopian forces."

Somalia and Ethiopia have had a long history of animosity and have fought several wars against one another. A good example of the age-old conflict between Ethiopia and Somalia occurred in 1908, when Sayid Mohamed Abdulla Hassan started a guerilla war against the British, Italians, and Ethiopians. After colonial rule ended, Somalia's post-independence leaders sought to unite all Somalis into "Greater Somalia," and this goal brought Somalia into nearly constant conflict with neighboring Ethiopia. The war of 1977 was the major conflict of the Cold War era. The Ogaden region is in Ethiopian territory because of colonial borders and remains a point of contention.

As mentioned above, the true history of the Somali people and the political situation of Somalia have not in general been available to the outside world. Because of this, the international community's lack of experience with Somali culture played a major role in the failure of past attempts at reconciliation among both Somali clansmen and Somalia and its

neighboring countries. As this brief history illustrates, the Somali conflict is largely based on the lack of a reliable power-sharing system. Until this point, the primary concern of every tribe or faction in each conflict has been to secure the highest and most powerful posts in whatever government is in place. Furthermore, the clans are heavily armed and are able to overthrow any government installed by the international community if they are unhappy with their share of power.

The situation in Somalia has also altered radically since the Transitional Federal Government was formed in Kenya in 2004. There are now two major players in Somalia, namely the internationally recognized Transitional Federal Government and the Union of Islamic Courts. Since 1994, Somalia has had a number of Transitional Federal Governments that have tried to initiate a reconciliation process among the various clans. Unfortunately, none of them have managed to succeed. The Union of Islamic Courts now controls the most part Mogadishu and continues to increase its sphere of influence. These hard-line Somali insurgents have refused to recognize the internationally-backed administration and have been continuing to battle to overthrow that government. The Al-Shabab group (Youths) has been described by Washington as a terrorist organization with strong links to Al-Qaida. Al-Shabab controls large portions of the capital, Mogadishu, as well as most of the southern part of the country.

Ahmedou Ould-Abdulah, the United Nations special representative for Somalia, says that “the violence we have now in Somalia, what violence is it? Is it political? Is it religious? Is it business? Because the conflict has been so long it is very difficult to define. Al-Shabab doesn’t know how to live in peace, but there are many others doing battle in Somalia (Ould-Abdulah, 2007).

The current government along with Somalia's president Sheik Sharif Sheik Ahmed came to prominence as one of the leaders of the Union of Islamic Courts, which controlled most of southern Somalia during the Ethiopian occupation for six months in 2006. Sharif's government was formulated in 2009 as part of a Djibouti peace deal backed by western powers. Sharif has always been seen by the international community as a moderate. American Secretary of State Hillary Clinton stated, "We believe that his government is the best hope we have had in quite some time for return to stability and possibility of progress in Somalia (Clinton, 2010)." He has also gained popularity within the Somali community. Unfortunately, Xisbul-Islam and Al-Shabab, both from the Union of Islamic Courts, have rejected his government. After almost two years, Sheik Sharif's government has not succeeded in any negotiation or gained an inch of land from insurgents. As of 2011, Sheik Sharif's administration has only six months left in office.

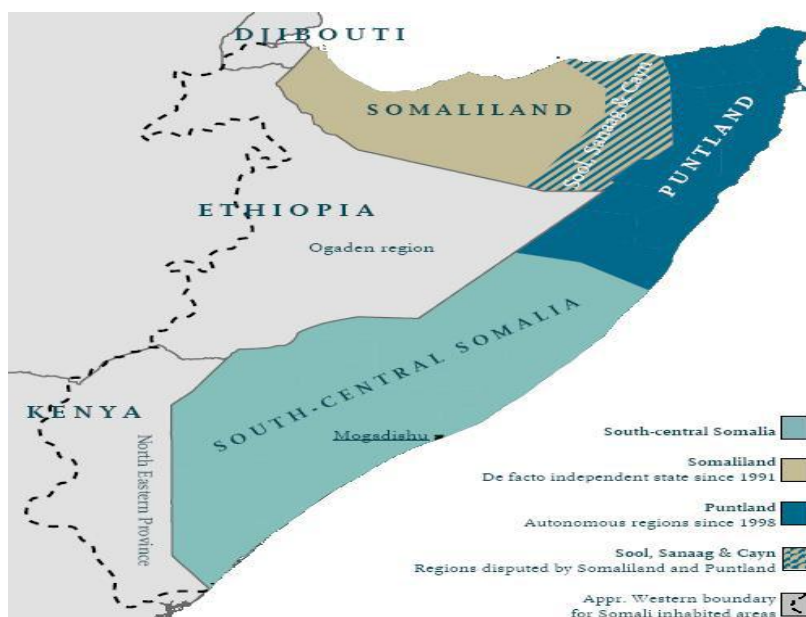
Prospects of Hope: Somaliland and Puntland

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

When compared with the southern regions of the country, these two states have displayed a remarkable social cohesion. Their stability and more peaceful atmosphere have attracted thousands of people from outside its original indigenous groups; Puntland and Somaliland have,

in fact, doubled the socio-economic and security burdens of this area. These two regions have broken away from the rest of the country and now operate independently, while rival warlords and Islamist factions continue to rule the rest. Therefore, a more careful examination of these two regions may shed some insight on creating a sustainable peace in the rest of the country.

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



Peace Research Institute Oslo (PRIO, 2010)

This remarkable development in Somaliland may stem in part from a 1993 conference that began to provide for a sustainable peace in the region. The Borama Conference did not end conflict in Somaliland region, but it did result in an interim constitution that eventually led to a more lasting peace. The constitution ensured popular elections for the local government, a president, and a lower house of parliament. Michael Walls argues that “the success of the 1991-1993 process was built on a set of deeply embedded social norms that emphasized the importance of dialogue between antagonists; a willingness to accept that the most complex grievances would be set aside indefinitely to avoid the contentious process of negotiating compensation payments; the opening of space for the intervention of mediators; and a sustained commitment to consensus building in preference to divisive voting. In short, local resources have been employed effectively in the cause of achieving a lasting peace and what appears to be an able system of democracy (Walls, 2009). Therefore, the methods used in the Borama conference recall and honor the long-standing Somali traditions of the clan-centered society, the role of *xeer* in conflict resolution, and the authority of elders



Photo by: Bradbury and Halley (2010). Erigavo reconciliation conference 1993© APD

Puntland, which was declared an autonomous state in 1998, lies in the northeast corner of Somalia. Majerteen (2010) explains how Puntland avoided the spiral into war that engulfed the south:

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

Today, Puntland is less stable than Somaliland, but nevertheless carried out a peaceful transition of government through democratic elections in 2005. Another peaceful political transition was achieved in late 2008: A new parliament was sworn in, and a new president was chosen by that parliament. Furthermore, the office of the minister was created to oversee the ongoing democratization process.

In that same year, the Puntland Regional State was formed with its three branches of government: the legislative, the judiciary, and the executive. The creation of the Puntland state was a by-product of the instability and confusion of the greater Somali political arena and of the failure of so many efforts in the national reconciliation process. The people of the region, who share a common ancestry, decisively agreed to move forward to form their own Puntland State of Somalia.

¹ http://majerteen.blogspot.com/2007_08_01_archive.html. Accessed May 1, 2011.

Therefore, the two northern regions of Somalia, drawing on their common ancestry and heritage, have been able to bring a certain measure of stability out of the chaos of civil war. The same cannot, however, be said of the central and southern areas of the country. “Despite the abundance of local, village-level peace processes, there has been no establishment of a more durable government structure of the types that have emerged in Puntland and Somaliland. Certainly, traditional elders have played a critically important role in mediating and regulating the interactions within and between local communities. However, a number of factors have made their quest for peace at a national level more difficult” (Amber, 2007).

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

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

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

Chapter Four

Western and Somali Traditional Mediation: A Literature Review

Conflict and attempts at its resolution are a universal human phenomenon. In order to better understand Somalia's situation and possibilities for its recovery, we require a broader view of mediation. In this chapter, through a review of current mediation literature, I will describe both the Western and traditional African approaches to conflict. Through this broad approach, I hope to make possible an analysis and evaluation of Somalia's particular circumstances.

Conflict exists whenever incompatible activities occur (Deutsch, 1973). An activity that is incompatible with another is one that prevents, blocks, or interferes with the occurrence or effectiveness of the second activity. A conflict can be as small as a disagreement or as large as a war. It can originate in one person, between two or more people, or between two or more groups. Conflicts are abundant in schools.

Whenever two or more people come together in community, conflict often arises when differences come to light. Conflict also occurs at a more primitive level when human communities experience a scarcity of resources, such as in the case of Somalia. This is an example of what John Burton argues: One of the main sources of conflict and violence is the "denial of human needs (Burton, 1997)." In other words, in a polity or state, sometimes violent conflict occurs when social contracts fail to meet the needs of all, do not provide justice to each, and deny equal opportunities to certain members of society. Elaborating on this basic definition, Galtung proposes a triangular model of conflict. Its three points are: attitude (A), behavior (B),

and contradiction (C) (Cf. figure below: Galtung 2004). “Contradiction” refers to the underlying conflict situation, which includes the actual or perceived “incompatibility of goals” between the conflict parties. This contradiction is generated by what Mitchel calls a “mis-match between social values and social structure” (Mitchel 1981). “Attitude” includes the parties’ perceptions and misperceptions of each other and of themselves. Attitudes are often influenced by emotions such as fear, anger, bitterness, and hatred. Third, “behavior” may include cooperation or coercion, and gestures signifying either conciliation or hostility. Violent behavior is characterized by threats, coercion, and destructive attacks.

Elaborating on Mitchel’s analysis, Galtung argues that all three components are present together in a full conflict. Conflict, he says, is a dynamic process in which the contradiction, attitudes, and behaviors are all constantly changing and influencing one another.

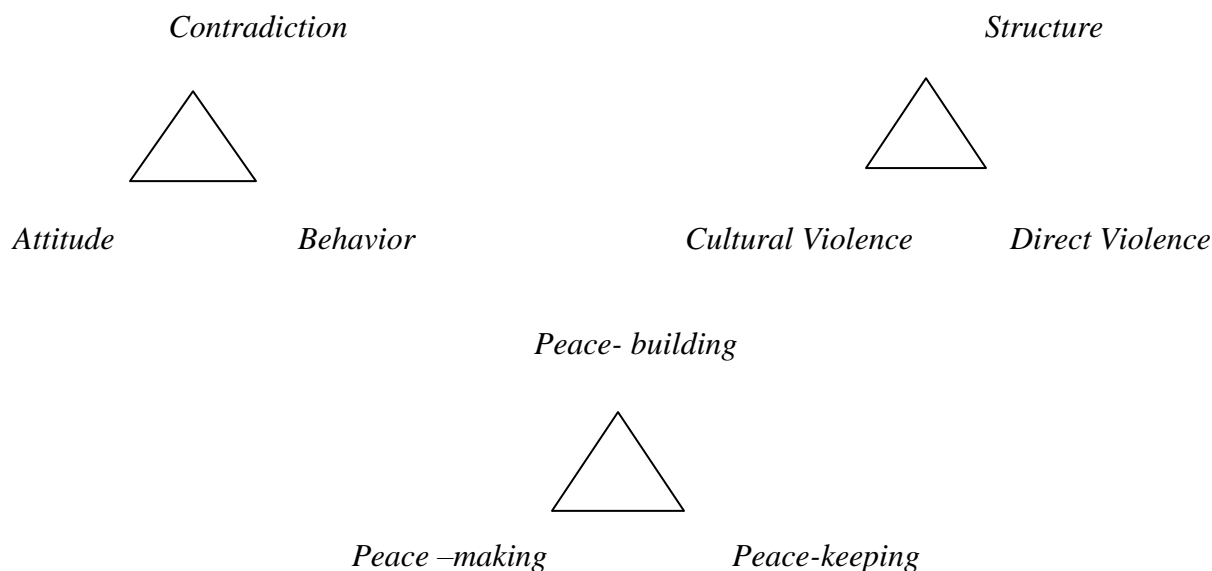


Figure 1.1 ----Galtung’s models of conflict, violence, and peace

Conflicts may happen anywhere and at any time within different circumstances. Many countries use this Western-style mediation approach to solve their various conflicts. For example, for many years the United States has been attempting to mediate the profound conflict between Palestine and Israel, demonstrating the limits of the Western approach to conflict resolution. In the same way, some mediators have applied the Western approach in Somalia, yet after 21 years the conflicts remain. In order to understand why, we must review in detail what this Western approach is.

Western-style Mediation

Western mediation is first and foremost a voluntary, confidential process to which a neutral third party is invited or accepted as the adversaries dispute issues of mutual concern. As Kew (2002) points out, “Typically in the Western approach to establishing triangulation, the mediator has some distance from the parties within the context of the conflict and is subordinate to them, in the sense that the mediator plays a service role.” The adversaries, along with this mediator, together explore various solutions and develop a settlement that is mutually acceptable. The basic principles of mediation include voluntariness, self-determination, impartiality (or neutrality), and confidentiality (Mediation Training Manual: CDSC; 2010).

Fisher and Ury (1981) provide some additional characteristics of the Western approach. This focus is not on the adversaries’ social standing or relative power, but rather on each one’s particular interests or goals. Second, the role of the mediator is to separate the adversaries from

their problem by insisting on using objective criteria to analyze their conflict. Finally, the mediator and adversaries together try to explore and create new options based on mutual gain.

This process is based on modern, Western cultural assumptions, which Augsburger (1992) enumerates. First, Western cultures after the Enlightenment tend to be individualistic; that is, they assume the human person to be ego-centric rather than other-centric. Second, it is based on the assumption that power and status are earned by individuals rather than received due to one's family or birth. Third, conflict and mediation are seen as rational and formal processes; structure is crucial to resolution, which is achieved as a sort of business agreement. Therefore, leadership roles (i.e., the mediators) are highly specialized: technical, impersonal, and professional expertise in mediation is valued as criteria for trust. Finally, time is seen as a commodity to be used efficiently in order to effect a resolution as quickly as possible (Augsburger 1992).

Traditional Mediation

Now we turn to Somali traditional forms of conflict resolution. In contrast to the Western-style of mediation, traditional mediation dates much farther back in human history and can be found in almost every culture. Because it pre-dates the modern state, traditional mediation often appears in the aftermath of widespread conflict where no other mechanisms for social regulation exist. This is evident in the case of failed states such as Somalia, in which indigenous mechanisms provide order when external influences have only promoted chaos (Pkalya, Adan, and Masinde 2004). Thus, a review of traditional mediation as an alternative to Western techniques will foster a deeper understanding of Somali processes involving the clan, elders, and *Xeer*.

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

Gulliver explains that there are several fundamental characteristics of traditional mediation. These characteristics are universal to traditional non-Western resolution processes. First, the community follows a mode of negotiation or arbitration rather than resolve the conflict or issue in the court room. Second, tribal norms preclude violence and coercion as a means to resolution, since serious violence destroys the possibility of living together in a single community. Instead, the tribe itself enforces the terms of the resolution. In order to avoid the breakdown of the community, conflicting parties always attempt to find a compromise between their claims rather than fulfilling the demands of each. Finally, the tribe requires that not only the antagonists but also their neighbors and relations take sides in the conflict. No conflict occurs in isolation, and therefore mediation draws in the entire community (Gulliver 1963).

Traditional mediation is, as we see, typically a communal process conducted in the open with the aid of the community, rather than through neutral third-party leaders. For example, through her anthropological studies of the Bakongo tribe in then-Zaire, Joan Burke (1998) found that in Bakongo traditional society conflicts are experienced as a group crisis or as threats to the community rather than as an individual or interpersonal issue. The Bakongo, who are mostly

subsistence farmers, are dependent on maintaining functional social and economic relationships required to sustain such a lifestyle. The Bakongo illustrate the situation in which many African tribes find themselves; their need to maintain community requires them to depend on traditional mediation forms.

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

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

At first glance, the village elder model might appear to be a form of arbitration rather than mediation (Kew 2002). The elder, however, does not simply adjudicate a decision. Rather, he seeks to achieve a resolution through the process of mediation itself by striving to address its primary, or root, causes as opposed to simply negotiating a limited settlement to the immediate

crisis. He passes judgment on actions that transgressed community standards and were committed by either one or both parties. Thus, he points out what each party must do to rectify the situation and restore their good standing in the community (Kew 2002).

In sum, traditional mediation provides a stark alternative to more prevalent Western-style mediation techniques. Rather than catering to individualistic goals, traditional processes demand a more community-centered resolution to conflicts. In order to preserve the clan—and, in so doing, to preserve individual members—antagonists must openly discuss their differences and come to a compromise that their neighbors and family members will enforce. Their discussion is mediated, not by the neutral and alien third-party, but by the tribe's or clan's elders who seek to heal the wounds of the community.

Mediation Techniques, Restorative Justice, and Transformation:

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

Restorative justice theory takes many shapes but carries several universal themes, examining the phenomena of victimization, encounters, reconciliation and reparation, as well as

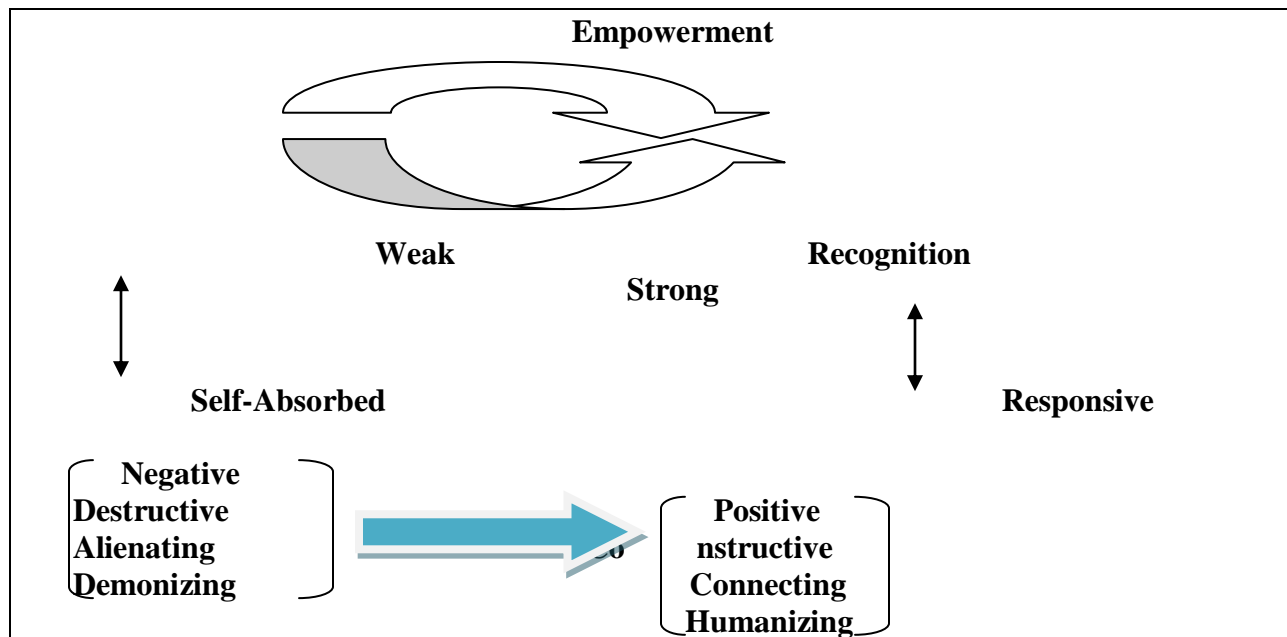
collaborative decision-making. This theory provides a creative response to the trauma of crime, recognizing that victims have many needs that transcend the capabilities of current criminal justice systems.

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

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

Bush and Folger note that mediation’s transformative potential stems from its capacity to generate two important effects in the opposing parties: empowerment and recognition.

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



These goals go well beyond conflict resolution: Lederach (1995) even suggests that professional mediators stop focusing on “resolution,” because resolution often involves the continuation of an injustice. He also rejects the notion of “conflict management,” because it is

too narrow a goal. Management, he asserts, tends to focus on the technical and practical side of peacemaking, while ignoring the cultural and relational issues underlying the conflict. Lederach prefers the term “conflict transformation” to describe his approach to peace-building. He focuses on the dialectic nature of conflict, which is caused by and itself causes changes in relationships. In order to build peace, he continues, negative or destructive interaction patterns need to be transformed into positive or constructive relationships and interactions. This occurs through personal and systemic change that encourages and allows the parties to pursue truth, justice, and mercy simultaneously with peace. Like Bush and Folger, Lederach focuses on the development of empowerment and mutual recognition, along with interdependence, justice, forgiveness, and reconciliation.

Thus, according to transformation theory, a productive response to conflict must do more than bring an end to violence or disagreement: Mediation must intend to change and transform the parties as human beings. In this way, the response to conflict “can transform individuals from fearful, defensive, or self-centered to confident, responsive, and caring, ultimately transforming society as well (Bush and Folger, 1994, 2005).”

Analytical framework.

With this deeper understanding of the transformative goals that ought to inform mediation processes, we are poised to evaluate both the use of Western methods and the successes of traditional methods to resolve conflicts and change entire societies. Modern scholarship on transformation theory will provide the analytical framework within which we can define the way forward for Somalia. We will assess the potential of the clan, the tribal elder, and *Xeer*—as alternatives to Western techniques—to transform native societies based on their ability to build

consensus and inspire a lasting forgiveness between warring parties. The village elders or chiefs are usually seeking to develop theoretical and practical foundations for building peace within the community by using the models of conflict transformation mediation and restorative justice, so that conflicts can actually strengthen both parties themselves and the society they are part of.

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

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

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

Forgiveness: the process leaves the disputants with good will toward each other.

Somali traditional Mediation (Xeer) has the potential to lead to a lasting peace in Somalia, as the clan elders have the power to encourage peace in their respective regions. In the absence of government, the Somali people have engaged their own resources and culture based on traditional mediation to restore security in many areas.

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

Chapter Five

Analysis: The Effectiveness of Xeer and the success of Somaliland and Puntland

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

“Mostly, (if is not all) external actors have approached the Somali crisis from the perspective of their own national security interests and there has been very little disinterested mediation” (Menkhaus, 1988).

Figuratively speaking, this Somali malady of violence will not be cured by western medicine. The medicine is not a western style, free and fair elections; not now or even in the immediate future. Nor is the answer the western ways of institution building. The cure is with the Somali institutions that still exist; especially in conflict resolution. One thing all Somalis need is for the violence to cease: if your house is on fire, your first task is to save lives in it and put the fire out; only then will you be able to assess the damage and the cost to rebuild it. I believe no other institution is more suited than Somali elders to affect a ceasefire throughout Somalia. Elders are heads of sub-clans; they have a tremendous weight with their respective people and areas. If you study ancient Greek democracy, you will find people led by their elders who, out of necessity, developed a system to keep order in their society.

Somalis have not been different, and they perfected their own process, complete with judges (elders-odeyal), jurists (xeer beegayal), investigators (guurtayaal), attorneys (gar-xajiyaal),

witnesses (markhaatiyaal), verdict (gar), and policeman (waranle) to enforce it to all, assembled on a need basis, under a tree or in open sky courts. “The more things change, the more they stay the same,” as a wise Somali man once said; the Somali traditional and customary law system still is often applied successfully, even in difficult times. Somaliland and Puntland regions have already employed the wisdom of Somali elders. Right after the Somali government ceased, the people of these regions were on the edge of violence. However, true to their old Somali ways, the Somali clan elders intervened to prevent conflict and promote peace and justice. “Good settlements should not only bridge the interests, but also represent norms and values that are public goods for the wider community in which the conflict is situated. Quite clearly, justice and fairness are crucial attributes for negotiations” (Albin, 2001).

Somali traditional mechanisms work well in these regions. They created a house of elders, and they set the right tone from the beginning. There is a high level of mutual respect in everyday life, and most importantly, there are traditional institutions like religious, elders and other mediators that people can turn to in order to find a just solution in case of conflict.

A good example of the wisdom of Somali traditional mediation is that of the sub-clan who inhabit southern Galkacyo Puntland State. Diaspora and political leaders, and clan elders taking note of the success Puntland and Somaliland had with autonomy, began to work towards establishing a regional state under a federal Somalia called Galmudug, like the northern Somali region of Puntland. Currently, the semi-autonomous state of Somalia's Puntland and Galmudug state in Mudug region signed bilateral agreements in which the two administrations will cooperate on the security and business issues. After uninterrupted meetings, Puntland and Galmudug officials held in Garowe town, the capital of Puntland autonomous province, officials

focused how the security and tranquility of their territories could be assured through collaboration.

“The source of conflict lies in the minds of people, external, social conflict is a reflection of intrapsychic conflict. External control does not solve the roots of the problem. If we wish a conflict really to disappear, then a change in attitude is needed. Only when people learn to understand and respect each other can peaceful coexistence begin” (Fry, Bjorkqvist, 1997).

Somalis successfully utilized elders who exercised Somali customary laws (xeer) and religious clerics (wadaado). This customary mediation system implied that clan elders had to enjoy immunity from hostile action and rested on the belief that clan elders’ legislation was binding and that a sensible balance of power was to be maintained at all times. It was thus a system in which not power, but respect and reciprocity were the core values (Masinda, Adan, and Pkalya, 2004).

Somalis believe that the elders have three sources of authority that make them effective in maintaining peaceful relationships and community way of life. They control access to resources and marital rights; they have access to networks that go beyond the clan boundaries, ethnic identity and generations; and possess supernatural power reinforced by superstitions and witchcraft (Masinda, Adan, and Pkalya, 2004). People believe that in wrong doing or not obeying the elders may bring Allah’s anger. As a Somali proverb says; “Abandoning tradition calls forth Allah’s wrath.”

Given this environment and the social structure of Somali society and past history of success of this social process, sustainable peace will come to Somalia by way of traditional mediation.

This is because when alternative methods of resolving the conflict have been tried they have failed, and secondly, when this traditional conflict resolution method has been tried in regions outside Southern Somalia, it has worked. As Ken Menkhaus stated, the international community repeats the same mistake over and over again by selecting a group of leaders that is not inclusive and is disconnected from realities within Somalia. This of course also reflects internal power struggles, as invited parties often threaten to withdraw if opposing groups are invited to the negotiation table by the host of the peace talks.

“Since conflict resolution by outside bodies and individuals has so far proven ineffective in the chaotic conditions of contemporary ethnic conflict- particularly, but not exclusively, in Somalia, eastern Europe and the former USSR, it is essential to consider the peacemaking potential within the conflict communities themselves” (Curle, 1999).

Somali civil society has also been busy. Local NGOs and activists have been filling as many gaps as they can to survive in the anarchic situation of the last 20 years. They are developing community security plans in order to protect civilians and are strengthening local and traditional governance systems based upon traditional Somali values. In the absence of state functions, civil society in Somalia is trying to re-establish basic social services in urban and rural communities. In all these efforts, civil society is trying to bring a measure of stability and hope to areas of conflict and suffering due to the absence of law and order. “There may be many Somali voices in what is loosely called “civil society”, one thing is agreed: without wide dialogue (rooted in Somali tradition) then a genuine political process will be nothing more than an elusive mirage in the political landscape” (Jama, 2010).

As John Prendergast and Emily Plumb argue, “civil society organizations can help to create or support these bottom-up processes and engender societal ownership of the peace agreement. By building intercommunal links, initiating dialogue, and engaging people traditionally left out of the peace process, civil society organizations can help to promote ‘societal buy-in’ for peace building. In fact, grassroots pressure to reach an agreement can sometimes even compel leaders to return to the negotiating table after having failed to reach a settlement (Prendergast, Plumb, 2002).

Somali civil society can be the connection between the different groups of the community. There are now newly founded peace advocacy groups in Somalia who promote peace by combining Somali mediation (Xeer) and Western mediation. They get the elders involved and gain the respect of local communities as they create ownership of peace processes and the dialogues they facilitate. Center for Research and Dialogue (CRD), Puntland Development Research Center (PDRC), Somali Organization for Community Development Activities (SOCDA) are all local NGOs in Somalia that have done shuttle diplomacy between two clans in different regions in Somalia. They all have one thing in common, which is utilizing the Somali elder’s wisdom. These organizations have realized the importance and the role of the Somali elders in Somali conflict resolution. The facilitation of Somali mediation in clan elder settings under a tree employ Somali language and literature. “Language further links these communities of understanding through the communication of thought related to the process of problem-solving. It serves as an instrument for articulating concepts and relating elements and relationships central to cooperative coexistence among a particular group of individuals” (Ostrom, 1997).

The traditional system in Somalia is also modernizing and changing in its own way, and is able to work with NGOs, civil society, scholars, politicians and the international community. Even in regard to human rights, “for the first time in history the traditional leaders have made and signed a common declaration that enhances their commitment on the protection of human rights in their respective communities all over Puntland” (Shuke, 2006).

UNDP Somalia has been supporting the informal justice system in Somaliland and Puntland to strengthen access to justice for vulnerable groups. To avoid the traditional mediation disadvantages, many traditional leaders have attended seminars underlining the crucial role of the absence of proper documentation and recording of mediation agreements that can prevent the return of conflicts.

There is a growing consensus among the Somali community to get back to their old way of life after 21 years of civil war through a revival of the Somali Xeer. There is no other alternative to turn to in order to resolve the conflict. Since the collapse of the state in January 1991, dispute mediation and arbitration at any level (individuals, families, and neighborhood) have been performed almost entirely by clan elders. In the Somali community, traditional mediation over the years gained respect, a system of justice which is strong enough to hold together communities that have been fragmented by the upheaval of uncertainty over recent years.

The Somali traditional system of governance and conflict resolution has survived the civil war in many areas, in particular Somaliland and Puntland. The achievements of these regions are based on the following:

- These communities have a strongly traditional law and clan elder leadership, which manage conflict through consensus and open dialogue.
- The clan leaders have trust and respect from the members of their community.

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

Both Somaliland and Puntland are evidence of the effectiveness of the revival of traditional structures after the state collapsed in 1990. As Gundel stated, “the traditional leaders in Somalia are not only the prime force for stability and continuity in terms of regulating access to pastures water and conflict resolution between clans but also, especially in Somaliland and Puntland, have been instrumental in establishing relatively stable structures of governance, jurisprudence and security” (Gundel, 2006). In this way Somaliland and Puntland built a traditional grassroots peace building process based on trust and confidence among communities, which provided indigenous peace and governance from the ‘bottom-up’ and made Somaliland unique in the Horn of Africa.

This movement happened not only in Somaliland and Puntland, but in every region the Somali people inhabit. An important example is the Wajeer case, which also clearly shows the role women can play in bringing peace to Somalia.

The Wajir Case: Conflicts of 1992-95

Wajir district is shared by a number of Somali clans, principally the Ajuraan, Degodia, and Ogaden. The Ajuraan community considers itself the “original” inhabitants of much of the land, and enjoyed protected access to Wajir-West under the British colonial system. Since independence they have faced long-term migratory pressure and changing demographics from westward-expanding neighbors, especially the Degodia (Goldsmith, 1997). The district has historically been almost entirely rural and pastoral, with only four settlements in the entire district in 1940. Migratory pressures on the Wajir rangeland have been exacerbated by the firepower and changed clan demographics arising from the Somali civil war, and have led to endemic tensions between the three clans over rights to pasture and wells. Anxiety over land access is clearly a major underlying factor in district conflicts. But the clashes which erupted in 1992 and 1993 between the Degodia, Ajuraan, and Ogaden clans were triggered by the arrival of multi-party politics and competition over Member of Parliament (MP) constituencies.

In 1992, general elections led to heightened tensions in a number of electoral districts (“constituencies” in the Kenyan system) where two or more clans shared residency and where demographics were either shifting or were actively manipulated to produce a desired outcome for a clan and its MP candidate. The ethnic clashes which ensued rocked much of Wajir district, spreading to other clans and overwhelming the local government. Violence even spread among the market women in Wajir town. From 1992 to 1995, a total of 500 businesses in Wajir were looted or destroyed; livestock estimated at a value of \$900,000 were lost to rustling; and Wajir town was nearly emptied of professionals and middle-class residents. During that period, 165

civil servants and teachers either left their posts or refused to go when assigned to Wajir (Ibrahim 1997).

Wajir was the epicenter of the descent of much of Northeast Province into anarchy. What happened next is one of the more extraordinary turns of events in Kenya's troubled frontier violence, and is well-documented in print and now film. An initially small women's civic group helped set in motion a peace process which eventually culminated not only in a relatively durable peace among the three main clans in Wajir, but also helped produce a new type of civic-government partnership for conflict management that went on to become a model for peace committees throughout much of Kenya. Two women intervened to stop the market violence. The Wajir Women for Peace Group was formed out of those talks, which expanded to include other women in the town. This women's group was then joined by a group of professionals who formed the multi-clan Wajir Peace Group (WPG), with members from all clans in the district. They facilitated a meeting of clan elders from all the lineages in the district which culminated in the Al Fatah declaration, which set out guidelines for the return of peace and future relations between the clans.

Other groups also began to form, involving elders and youth, while a group of businessmen began raising money for peace activities. In April 1994, a new Development Committee was appointed to Wajir, who sought to partner with local civic groups and traditional authorities to keep the peace. A rapid response team composed of both government and civic leaders was formed on the assumption that early response could prevent many manageable conflicts from spiraling out of control. Disputes were handled not according to the letter of the Kenyan penal code, but "the Somali way"—customary law and blood compensation payment was utilized to manage murders, and collective punishment in the form of confiscation of a clan's cattle until a

culprit was apprehended and stolen animals or goods returned. The result was a steady decline in banditry and crime (Ndegwa, 2001).

While the deeper, underlying conflict drivers were not addressed, at least one of the main triggers of communal violence – violent crime – was greatly reduced. The Wajid experiment in civic-governmental collaboration – or, in some respects, government sub contracting out of key functions to local civic and traditional authorities – was formalized via a decision to unite the peace groups as a sub-committee of the District Development Committee (DDC), a forum within the district administration bringing together government and civil society. The Wajir Peace and Development Committee (WPDC) were also established in 1995 (Wajeer, 2009).

Chapter Six

Characteristics of Xeer

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

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

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

The community members involved in the conflict participate in the dispute resolution process. All participants have their own role to play in the mediation. These community members can include traditional authorities such as elders, chiefs, religious groups, women's

organizations, local institutions and business professionals. Opening and closing ceremonies and poems and proverbs also play major roles in the mediation process and make the Xeer unique.

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

Women are not invited under the tree, but they still past their views behind closed doors to their husbands or parents. Women play important roles in the conflict mediation process. In the early stage of the conflict they can act as peace envoys and sometimes the first messengers sent between disputing clans to break the ice. In the grassroots and community level, women have respect and can exercise influence over their traditional and political leaders. Historically, As a Somali proverb says; “He who does not give thanks to his mother, does not give thanks to Allah”.

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

understood and enjoyed and like the mass media in the west, it has the power to influence opinion.

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

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

Chapter Seven

Conclusion and Recommendations

Conclusion

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

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

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

When the clan elders free themselves from hatred, bias, and stereotypes and then come together as Somalis and share their wisdom and knowledge from their wise men and within community, trust will be restored. Somalis survived for centuries by allowing the elders to play

their roles. Somalis must find a way to return and revive Xeer (Somali Traditional Mediation). Once the Somali clan elders find a way to communicate again and start resolving conflicts that exist in their communities one at a time as they did for centuries then we will see peace return to Somalia. The participation of the Somali elders will also pave the way for a larger reconciliation process.

We must remember that there are three major laws which Somali people practice whether written or unwritten:

1) Somali-penal System: The first was Somalia's codification of laws designed to protect the individual and to ensure the equitable administration of justice. The basis of the code was the constitutional premise that the law has supremacy over the state and its citizens. Unfortunately, there is no strong central government to implement this law.

2) Islamic Sharia: Islamic teachers served the community by preaching, leading prayers, blessing the people and their livestock, counseling, and performing marriages. Although the Sharia law plays an important role in Somali culture, they do not settle disputes themselves or sit in judgment. Instead, their task is to encourage opponents to make peace.

3) Somali Traditional Mediation (Xeer): There is no argument that this traditional mediation (Xeer) existed before Somali people were introduced to the other two categories. The whole process rests on the sincerity and truthfulness of the elders, their skills as mediators, and their just application of Xeer agreements. Xeer is more than a contract. It shapes basic values, laws and rules of social behavior.

Clan elders are a potential source for reconciliation because of their ability to shape relations between warring groups. Instead of focusing on differences, the common bonds of language, religion, traditions, and inter-clan marriage, can unite communities. The Somali system like other

African nations seemed to have a way of resolving conflict that outsiders may not be well versed with. This is more effective first because it originated from the people and second it sustains itself. If this can be incorporated in all mediation processes then there is no reason why peace will not be attained in this country that had endured years of turmoil. As Ken Menkhaus (2005) stated, “intensive diplomatic interventions have failed to end the Somali crisis.” His critique of six Somali peace conferences identifies lack of political will, misdiagnosis of the crisis, confusion between state building and reconciliation and poor mediation skills as factors that have contributed to failure. It concludes with some constructive lessons, above all the need to ensure greater Somali ‘ownership’ of the peace process.

With respect to the resolution of the conflict, MacCallum correctly argues that: “The unity and peace of the Somalis, as well as their mutual understanding, are based on the *Xeer*. The *Xeer* stands at the center of the Somali identity; without it there could not be a Somali nation. The *Xeer* is both father and child of the Somali nation. It protects the sovereignty of every Somali. The Federation must respect the *Xeer* and leave it free to develop into a modern body of law” (MacCallum, 1998).

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

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

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

On the other hand, decisions made through traditional structures are direct, fast and visibly carried out without going through the process of paper work and difficult channels. The system may seem archaic, but works well for Somali society and did so for centuries. For that reason, when an international mediation method is tried it evokes indifference or hostility, and when local mediation is tried the Somali people typically give it their cooperation and comply with its directives.

The difference between the two methods seems to be in the approaches adopted to address grievances, generally termed as the top-down and bottom-up approaches/grass roots level. The argument of this paper is that when an approach to conflict resolution in the Somali conflict incorporates top-down process, it fails and will continue to fail unless Somali Xeer is revived. If

clan elders are empowered and the bottom-up approach is used, it is likely to succeed. As Shivakumar stated “Indigenous institutions are crucial points of reference in conflict resolution and development because they represent understandings, whether tacit or explicit, among a local population of their relationship to each other with respect to the particular problems of collective action they face together” (Shivakumar, 2003)

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

Recommendations:

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

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

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

Using traditional authorities to implement activities other than conflict-resolution activities, such as development or relief programs, can help jump-start intra-community dialogue that has broken down.

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

Appendix A

Here is a great example of how communities need the elder's wisdom. I was told this story by my father years ago but I also uncovered it again in my research of David W. Augsburger's book "Conflict Mediation across Cultures."

The Wise Advisor (from the Yoruba people, West Africa)

There was one a powerful king whose mad ambition was to rule without the advice of his elders. The king did not realize that his strength came from the elders' wisdom. (After a man is cured he beats his doctor).

The king called some ambitious young men, and said, "You have the brains and energy to rule the kingdom. Why sit and let your fathers talk? Go home, each of you, and kill your fathers, and come and have your share of the world." (The knife destroys its own house, thinking it is only an old sheath.)

The young men went home, and each killed his father. Except for one whose father said, "Spare my life. It is only in time of crisis that you will know how useful I am." (No one can appreciate his bottom until it has a boil.) So he hid his father in a remote hut. The king kept his promise, and give titles to the young men. But soon he grew weary of their interference and tired of their stupidity. So he called them all and said, "We shall build a new palace. All of you shall help. Any who refuse, shall die. To distinguish it from other buildings, it shall start from the top down."

The young men were frightened, and did not know what to do. But the boy with a father went to his hiding place and told the story.

“What an old man can see sitting down a young man can’t see standing up” he said. Then he told him what to do. Then he told him what to do. The next day, when all had appeared at the building site in fear and trembling, the young man stepped forward. Oh king he said, we are ready to begin the palace, but according to the custom, you, the king and landlord, must lay the first stone.”

“Who taught you such wisdom?” asked the king, and the boy confessed that he had preserved his father. Then the king called for the old man and installed him as the bashorun, saying: “truly it is your wisdom that will guide my kingdom, for you see, seated, what we cannot see on our feet.” And the old man replied, it is the wisdom of the dead that prevents old men from making mistakes.” (Gbadamosi and Beier, 1968)

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