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Xeer in the Somali Regional State:
autonomy and control in the Ethiopian
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Abstract [En]: The Somali Regional State, a constituent State of the Federal Democratic Republic of Ethiopia, is characterised by a context of legal pluralism in which Somali traditional law (xeer) plays a central role alongside positive law and religious law. Although formally integrated into the Ethiopian federal system, the Somali Regional State continues to rely on xeer, a traditional legal system rooted in Somali social organisation and identity, particularly in the regulation of social relations and in conflict management. The coexistence and interaction of these normative orders highlight the dynamics of autonomy and control shaping governance in the Somali Regional State.

Titolo: Xeer nel Somali Regional State: autonomia e controllo nel contesto federale etiopico

Abstract [It]: Il Somali Regional State, Stato federato della Repubblica Federale Democratica d'Etiopia, si caratterizza per un contesto di pluralismo giuridico nel quale il diritto tradizionale somalo (xeer) svolge un ruolo centrale accanto al diritto positivo ed al diritto di matrice religiosa. Pur essendo formalmente integrato nel sistema federale etiopico, il Somali Regional State continua a fare affidamento sullo xeer, un sistema di diritto tradizionale radicato nell'organizzazione sociale e nell'identità somala, in particolare nella regolazione dei rapporti sociali e nella gestione dei conflitti. La coesistenza e l'interazione di tali ordini normativi mettono in luce le dinamiche di autonomia e controllo che caratterizzano la governance nel Somali Regional State.

Keywords: legal pluralism; traditional law; xeer; Ethiopian federalism; Somali Regional State

Parole chiave: pluralismo giuridico; diritto tradizionale; xeer; federalismo etiopico; Somali Regional State

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1. Introduction

Located in the south-eastern part of Ethiopia and bordering Somalia to the east, the Somali Regional State is one of the nine States of the Federal Democratic Republic of Ethiopia. Until its integration into the Ethiopian federal system, this area was known as Ogaden, named after the most populous Somali clan in the region. Even after its renaming to the Somali Regional State, the population is predominantly Somali; the Somali identity is not only relevant from a purely cultural standpoint, but also from a legal one. The Somali Regional State is officially part of the Ethiopian federation. Official state law (federal and local) coexists with other normative orders in a dynamic legal pluralism where traditional law – locally known as *xeer* – represents the most important and significant component.

^{*} Articolo sottoposto a referaggio.

This paper will first provide a brief analysis of the main general aspects of this traditional legal system, as well as particular aspects that may be considered critical. Subsequently, after reviewing the key historical events that led to the integration of the former Ogaden into the Ethiopian federal system, it will examine the dynamics of autonomy and control within the Somali Regional State¹. Finally, an attempt will be made to examine how the application of *xeer* in the State interacts with the positive law currently in force².

2. Xeer as the Somali traditional law

2.1. Fundamental principles and functioning of the xeer system

The Somali traditional law, known as *xeer*, plays a totalizing role in managing community dynamics, regulating various aspects of social life and serving as the primary tool for dispute resolution. It developed in a predominantly nomadic pastoral context, where the lack of a central authority³ made necessary a form of regulation based on inter-clan conventions and the mediation of elders⁴ (*odayaasha in Somali*).

Unlike state law⁵, which is characterised by a set of written legal sources that regulate different aspects of social life, *xeer* consists of a system of rules passed down orally⁶, which are flexible⁷ and adaptable to the needs of the context and the specificity of each clan; it does not depend on a central authority, but it is applied by each clan according to internal mechanisms and practices⁸. Furthermore, it relies on the

¹ For a general discussion on federalism in Africa, see A. FISEHA, *Federalism, devolution and cleavages in Africa*. Cham: Palgrave Macmillan 2024. See also J. ERK, *Federalism and decentralization in sub-Saharan Africa: Five patterns of evolution*. In: *Federalism and Decentralization in Sub-Saharan Africa*. Routledge 2018, pp. 1-18. For an analysis specifically focused on Ethiopian federalism, see J. ERK, *'Nations, nationalities, and peoples': The ethnopolitics of ethnofederalism in Ethiopia*. The Ethnopolitics of Ethnofederalism in Ethiopia. Routledge, 2017, pp. 1-13, and D. AMSALU, *Ethiopian Ethnic Federalism: A "God-Sent" Opportunity for All Ethnic Groups?*, *Modern Africa: politics, history and society* 2.2, 2014, pp. 63-92. See also A. DIRRI, *Federalismi africani. Pluralismo e centralismo in Sudafrica, Nigeria ed Etiopia*, G. Giappichelli Editore, Torino, 2024.

² For a general discussion on legal pluralism in Ethiopia, see S. EPPLE and G. ASSEFA, *Legal pluralism in Ethiopia: Actors, challenges and solutions*, transcript Verlag, 2020. See also S. MANCUSO, *Informal laws and state law in the born of Africa*. *Revista General De Derecho Público Comparado* (26), 2019, pp. 1-25.

³ G. SCHLEE, *Customary law and the joys of statelessness: idealised traditions versus Somali realities*, *Journal of Eastern African Studies* 7.2, 2013, p. 263.

⁴ A.M. ADEN, *Xeer: Traditional Mediation in Somalia*. University of Massachusetts Boston, 2011, pp. 5-12.

⁵ Somali traditional law is placed in a context of legal pluralism, that is a scenario in which different legal systems coexist in the same territory; in the specific case, in Somalia, *xeer* coexists with *shari'a* and state law.

⁶ As stated by B.A. GEBEYE, *Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State*, *Women in Society*, 2013, p. 13, every person from the age of seven onwards is instructed in the laws of *xeer*.

⁷ S. MANCUSO, *Pluralismo giuridico in Somalia: Trascorsi storici e sviluppi recenti*. *Jura Gentium* 11, 2014, pp. 140-163, at p. 141. See also J. GUNDEL, *Clans in Somalia*, Austrian Red Cross, Vienna, 2009, p. 46 and A.M. ADEN, *Xeer: Traditional Mediation in Somalia*, cit., p. 3.

⁸ As explained by F.D. FORCHAMMER, *The State of Somalia*, Master Thesis, Copenhagen Business School, Copenhagen, 2011, at p. 51 «the *xeer* is unwritten and is passed on through generations orally. It enables the leaders of the clan to influence the *xeer* and to shape it as they please. Therefore, the *xeer* law system is dynamic and can change over time, enabling the creation of institutions, which can benefit the entire clan but also benefit individuals who seek it».

collective clan member rights and responsibilities rather than individual; from this point of view, *xeer* can also be considered as a tool for social cohesion in Somali tradition⁹.

In order to better understand the cultural context in which *xeer* is applied, it is necessary to provide some information about Somali cultural identity. The Somali people speak a single language, divided into three main dialects understood everywhere; therefore, there are no different languages between the different clans that can hinder communication¹⁰. Ethnically and culturally, the Somali people could be considered as one of the most homogeneous in Africa¹¹ (despite clan differences); indeed, other than a common language, they share a common history and a common religion (Sunni-Islam)¹².

Xeer and *shari'a* have coexisted for centuries within Somali legal pluralism, but the relationship between the two systems is neither harmonious nor systematic. *Shari'a* has exerted a strong cultural and legal influence on *xeer*, but has never completely supplanted it¹³, which remains deeply rooted in the clan structure and agnatic logic of Somali society. The coexistence with *shari'a* is more marked in urban areas¹⁴ and in contexts where the Islamic religion takes on a more institutional or political role, while in rural or nomadic areas *xeer* remains dominant¹⁵.

The system of rules of the *xeer* regulates the life of the entire clan group starting from the largest aggregations up to the single clan; this system of rules however had to clash with the introduction of Western-style legal models giving rise to a series of solutions based on metropolitan law mediated by the consideration of local reality¹⁶. While in rural areas *xeer* continues to be applied in the traditional way, in urban contexts the growing process of urbanization has begun to call into question the influence of clan elders, leading to an increased reliance on state courts for dispute resolution¹⁷.

Within *xeer*, it is possible to trace a series of rules in force not only within the same clan, but also deriving from conventions¹⁸ between different clans which regulate crucial aspects of community life by defining reciprocal rights and duties, since each clan makes agreements with other groups not only to regulate mutual economic relations, but also to guarantee mutual protection¹⁹.

⁹ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region* in Making peace in Ethiopia: Nine cases of Traditional Mechanisms for conflict Resolution, Addis Ababa, 2016, p. 250.

¹⁰ S. MANCUSO, *Pluralismo giuridico in Somalia: Trascorsi storici e sviluppi recenti*, cit., p. 142.

¹¹ It is usual, in the Sub-Saharan area of the African continent, to find a great variety of different spoken languages within the same State.

¹² A.M. ADEN, *Xeer: Traditional Mediation in Somalia*, cit., p. 5.

¹³ S. MANCUSO, *Pluralismo giuridico in Somalia: Trascorsi storici e sviluppi recenti*, cit., p. 148.

¹⁴ A.M. ADEN, *Xeer: Traditional Mediation in Somalia*, cit., p. 6.

¹⁵ J. GUNDEL, *Clans in Somalia*, cit., p. 10.

¹⁶ S. MANCUSO, *Pluralismo giuridico in Somalia: Trascorsi storici e sviluppi recenti*, cit., pp. 142-143.

¹⁷ J. GUNDEL, and A.A.O. DHARBAXO, *The predicament of the 'Oday'. The role of traditional structures in security, rights, law and development in Somalia. Final Report*, Danish Refugee Council & Novib-Oxfam, Nairobi, 2006, p. 50.

¹⁸ A.M. ADEN, *Xeer: Traditional Mediation in Somalia*. University of Massachusetts Boston, 2011, p. 10. See also p. 50: «*Xeer is more than a contract. It shapes basic values, laws and rules of social behavior*».

¹⁹ J. GUNDEL, *Clans in Somalia*, cit., p. 22.

In order to better understand the functioning and the impact of traditional law resulting from clan conventions, it is necessary to clarify the structure of these traditional socio-political units. Clans in Somalia are commonly composed of different levels²⁰. The first level consists of the clan-family which represents the upper limit of the clan structure and can trace back up to a common ancestor. The second level is the clan, which usually comprises around 20 generations and can act as a collective political unit, with some territoriality linked to seasonal movements. Indeed, the members' identity derives from agnatic descent, not from territory. The clan is the highest unit of political action, led by a chief but without centralized administration; it is divided into sub-clans and the so-called primary line (6-10 generations), which regulates exogamous marriages and helps to limit internal conflicts. Finally, at the base of this structure, there is the mag-paying group. This is the unit of descent responsible for paying the *mag*²¹, which is a compensation in a sum of camels or money that the clan of the person who committed a murder or physical violence owes to the clan of the victim with the specific aim of avoiding feuds²², reprisals between the clans²³ or the system of revenge. The mag-paying group is composed of lines that go back to a common ancestor of 4-8 generations. It includes hundreds or thousands of men and constitutes the main point of reference for the individual's social identity, protection, and political participation. Moreover, in the Somali traditional social structure framework, the most significant collective issues are discussed in a communal assembly open to all male adult members of the clan called *shir*²⁴. The clan structure pushes Somalis to live close to their families, contributing to the formation traditional villages. This is motivated both by the need for mobility to access resources such as water and pastures, and by the need for security against hostile clans.

Although conflicts are more frequent in villages²⁵ and among nomads than in cities, the pervasive presence of the clan and the authority of the elders have guaranteed effective mechanisms of conflict resolution and social cohesion for centuries²⁶ by using *xeer*. In this system the role of the elders is not only to interpret and apply traditional rules, but also to perform a political function, acting as representatives of the clans, mediators and guarantors of peace in the negotiation processes and in

²⁰ J. GUNDEL, and A.A.O. DHARBAXO, *The predicament of the 'Oday*, cit., pp. 5-6. See also J. GUNDEL, *Clans in Somalia*, cit., pp. 7-9.

²¹ Corresponding to the *diya* under *shari'a* law.

²² A.M. ADEN, *Xeer: Traditional Mediation in Somalia*, cit., pp. 46-48.

²³ J. GUNDEL, *Clans in Somalia*, cit., p. 8.

²⁴ S. MANCUSO, *Pluralismo giuridico in Somalia: Trascorsi storici e sviluppi recenti*, cit., p. 143.

²⁵ As stated by A.M. ADEN, *Xeer: Traditional Mediation in Somalia*, cit., p. 7, inevitably in some areas, rival clans coexist in the same village, particularly in conflict-ridden cities such as Galkayo. In the South of Somalia, on the other hand, agricultural communities are more stable and sedentary, and historically less conflictual than in the North, at least until the civil war.

²⁶ *Ibid.*

collective decisions²⁷. They draw their authority from their age, experience and ability to resolve conflicts fairly, ensuring social cohesion. The great prestige and moral authority enjoyed by elders is among the factors ensuring the effectiveness of elder-based mediation; this means that their word carries more weight than that of the political leaders of the state apparatus²⁸. The weakness of a strong central state in Somalia, combined with the presence of Somali communities in the peripheral regions of Ethiopia, has made the role of elders even more important, especially in resolving disputes. Through mediation, they avoid resorting to violence and prevent larger conflicts that could lead to clan feuds²⁹. In the traditional Somali system, disputes are often managed by councils of elders whose composition can vary according to the extent of the conflict and the clan level involved; they manage inter-clan disputes and make strategic decisions for the community. Usually, the local elders of the sub-clans resolve internal disputes and negotiate compensation for damages or murders.

The dispute resolution system is based on a system of negotiation and consensus. In particular, the parties involved present their positions to the elders, who seek a solution based on the principles of *xeer*, being the main purpose of the dispute resolution system in *xeer* not individual punishment, but rather the restoration of social balance, preventing escalations of violence³⁰. Finally, the length of the court proceedings is a factor that often discourages the parties to the dispute from resorting to state courts. Without the rigidity of state court procedures, resolving disputes through traditional law is often seen as a quicker and more effective approach. This aspect has made the elder-based mediation system more preferable in managing local conflicts³¹.

To summarize, the traditional justice system is structured to resolve disputes through the involvement of clan elders, who serve as mediators and guarantors of the agreements reached³², since *xeer* relies on a collective mechanism based on the trust and authority of the elders and does not draw its origin and legitimacy from a judicial system regulated by positive law. Indeed, it is the community's compliance with the rules and the social pressure exerted on wrongdoers that gives binding force to decisions³³. Unlike state law, *xeer* does not provide for coercive sanctions or imprisonment, but is based on a system of economic compensation and reconciliation between the parties in conflict. Social exclusion is probably

²⁷ *Ibid.*, pp. 5-12.

²⁸ *Ibid.*, pp. 46-48.

²⁹ H. IBRAHIM, *The Role of the Traditional Somali Model in Peacemaking*, *The Journal of Social Encounters* 2.1, 2018, pp. 60-68.

³⁰ *Ibid.* From this point of view, a comparison between *xeer* and *shari'a* may be traced: *xeer* is based on collective responsibility and on inter-clan compensation mechanisms (*mag*), whereas *shari'a*, although providing for forms of compensation ('*aql* or *diya*), places the emphasis on individual responsibility and on the punishment of crimes according to divine criteria.

³¹ G. SCHLEE, *Customary law and the joys of statelessness*, cit., p. 266.

³² A.M. ADEN, *Xeer: Traditional Mediation in Somalia*, cit., p. 50.

³³ *Ibid.*, p. 30.

considered the most serious form of punishment, since it prevents the offender from accessing community benefits and, in extreme cases, can even lead to expulsion from the clan³⁴.

As already mentioned, in the cities the role of the elders tends to be weaker and the *xeer* system has difficulties in adapting to new social and political realities. Nevertheless, the elders system is still the main mechanism for conflict management in Somali society; despite the challenges posed by legal pluralism, their role as mediators remains crucial to ensuring stability in Somali regions.

Xeer plays a central role not only in conflict management, but also in family law, regulating marriage and the resolution of family disputes³⁵; in these areas, it often interacts and overlaps with the *shari'a*³⁶. It is also crucial in the management of natural resources: through the application of collective rules under Somali traditional law, individuals or clans are prohibited from wrongfully appropriating pastures, water wells and land³⁷.

What has been discussed above does not refer to traditional legal systems that are not applied anymore, but rather to systems that are still relevant; approximately 80% of disputes in Somalia are resolved through *xeer*, because the population perceives it as a fairer and more effective system than state courts, which are often considered corrupt or inefficient³⁸.

The necessarily short presentation made above will serve to understand why the presence of elders has been fundamental in trying to maintain stability in a context of tensions between the Somali clans and the Ethiopian federal government³⁹ in the Somali Regional State in Ethiopia.

2.2. Critical aspects of *xeer*

Despite its flexibility and ability to resolve disputes quickly, some features of the *xeer* system could be considered as critical issues .

First, since *xeer* is a set of oral rules passed down from generation to generation, each clan develops and enforces its own versions of *xeer*, which can lead to inequalities in access to justice and contradictions between rules adopted by different groups .

³⁴ B.A. GEBEYE, *Women's Rights and Legal Pluralism*, cit., p. 32. See also F.D. FORCHAMMER, *The State of Somalia*, cit., p. 51.

³⁵ A.M. ADEN, *Xeer: Traditional Mediation in Somalia*, cit., p. 7.

³⁶ V. LULING and A.S. ADAM, *Continuities and changes: Marriage in Southern Somalia and the Diaspora*, 2015, pp. 139-166, at p. 147. See also A. AREF, and M.M. RAHMAN, *The handbook of marriage in the Arab World*. Springer Nature, 2024, p. 225. *Yarad* is a form of matrimonial compensation (*bridewealth*) rooted in Somali customary law (*xeer*), paid to the bride's family to reinforce inter-clan ties, while *meher*, required by Islamic law, is a mandatory gift granted directly to the bride as her personal right and as a symbol of the husband's commitment.

³⁷ J. GUNDEL, *Clans in Somalia*, cit., p. 10.

³⁸ F.D. FORCHAMMER, *The State of Somalia*, cit., at p. 48 mentioning J. GUNDEL and A.A.O. DHARBAXO, 2006.

³⁹ P.B. HENZE, *Ethiopia and Somalia*. Center for Security Policy, 2007, pp. 1-5.

The different way to conceive law is also an issue, since it makes the integration of xeer with state legal systems considerably more difficult. Xeer is oral, based on concepts of collective responsibility, restorative and compensatory justice, which are often incompatible with Western-style state legal systems, which are written and privilege individual criminal sanctions. This distinct perspective has led to conflicts of jurisdiction between state courts and traditional justice, especially in urban contexts and in state-building attempts . At the same time, xeer may also conflict with international human rights standards; e.g., the collective responsibility imposed on mag-paying groups by the xeer could be seen as removing responsibility from individual perpetrators of crimes .

Another critical aspect is strictly linked to the role of the clan leaders: in some cases, xeer has been used by clan leaders to consolidate their power, to the detriment of principles of fairness and justice as occurred during the Somali conflict, when some armed factions have exploited the rules of xeer and its way of communication and application by using its regulatory instruments to legitimize temporary alliances between clans or to justify revenges . The power relations within the clan could also be seen as a threaten to the impartiality of the judging authority because, in certain situations, elders may be influenced by these power dynamics, penalizing members of weaker groups .

Xeer has an agnatic and patriarchal connotation grounded on the characteristics of the Somali society in which legal and political decisions are predominantly reserved to men ; since youth and especially women traditionally cannot participate to decision-making processes and their voice could only be mediated by the men of the clan . Due to the strong influence exercised by Islamic principles, women are heavily penalized towards men . They cannot be part in either the mediation process or in the guurti and the shir, but can only have an indirect influence, by presenting their requests through men of their clan ; in the case of an offense against a man the compensation (mag) will be 100 camels, but if the victim is a woman the amount is halved ; the choice of partner for the woman is entrusted to the family, and the age for marriage can be linked to puberty, while for men it is generally indicated at 20 years old . In some contexts, a woman victim of rape can be destined to marry her aggressor . Regarding successions, married women may not inherit from their parents . Victims of gender-based violence are often penalized, since in xeer sexual crimes are treated as economic disputes between clans rather than as individual violations . However, it must also be said that women may play an important role in conflict mediation processes. In the initial stages of the dispute, they can be sent as peace ambassadors or as the first contact between the contending clans. Women enjoy great respect in the community and, as already mentioned, can also indirectly influence the decisions of their traditional and political leaders .

3. An historical overview of the Somali Regional State in Ethiopia

Before addressing the historical and political events of the region, it is appropriate to clarify the terminology used. The term “Ogaden” has historically been used to indicate the eastern area of present-day Ethiopia inhabited predominantly by Somali populations, in particular those belonging to the *Ogaadeen* clan. However, the name “Ogaden” is today considered politically sensitive and partial, as it does not reflect the actual clan composition and social plurality present in the region. For this reason, starting from the 1990s, with the introduction of ethnic federalism in Ethiopia, the region was officially renamed “Somali Regional State”, a designation that aims to represent the Somali identity of the resident population in a more inclusive way. In the following discussion, both terms will be used according to their historical context: the term “Ogaden” will be used to refer to the periods up to the 1995 federal reorganization, whereas the term “Somali State” or “Somali Regional State” will be used to refer to the more recent phases, within the framework of Ethiopian federalism. The use of an apparently contradictory terminology (Region/State) for the Somali State as a member of the Ethiopian federation finds its explanation in the normative sources. The Constitution of the Federal Democratic Republic of Ethiopia formally identifies it as the “State of Somalia” (Art. 47, par.1, no.5). However, the constitution of the latter (Proclamation No. 17/1994) adopts the designation of “The Somali Regional State”.

Ogaden is a region historically inhabited by Somali populations and incorporated into the Ethiopian Empire in the late 19th century. During the period of Ethiopian imperial expansion under Menelik II, military campaigns between 1891 and 1906 caused the occupation of the Ogaden, which became an integral part of Ethiopian empire⁴⁰. The empire's goal was to consolidate control over a strategic region for commerce which includes the ports of Zeila and Berbera and to secure control over the grazing lands⁴¹. However, the Ethiopian administration encountered resistance, especially from the local population and the dervishes of Sayyid Mahammad Abdille Hassan, who led an armed revolt against the Ethiopian, British and Italian forces between 1899 and 1920⁴², in a context in which the borders between Ethiopia and Italian-governed Somalia were defined by virtue of the treaty of 16 May 1908, with the

⁴⁰ The Ethiopian Empire's campaigns of occupation of the Ogaden were not occasional but systematic. Between 1891 and 1906, annual military expeditions (*zämächa*) were organized, aimed at obtaining tribute in cattle and at affirming imperial rule with often brutal punitive operations against the Somali populations. Imperial sovereignty over the Ogaden was divided into three spheres: fortified towns with permanent garrisons, communities that paid tribute and whose leaders received imperial titles, and areas subject only to occasional raids by Ethiopian troops. See T. HAGMANN, B. KORF, *Agamben in the Ogaden: Violence and sovereignty in the Ethiopian–Somali frontier*, *Political Geography* 31.4, 2012, pp. 205-214, at p. 208.

⁴¹ T. HAGMANN, *Talking Peace in the Ogaden: The search for an end to conflict in the Somali Regional State in Ethiopia*. Rift Valley Institute, 2014, p. 14.

⁴² See C. BARNES, *The Ethiopian-British Somaliland Boundary*, in D. FEYISSA e M.V. HOEHNE (eds.), *Borders and Borderlands as Resources in the Horn of Africa*, James Currey, Woodbridge, 2010, pp. 122-131. See also C. BARNES, *Gubo–Ogaadeen poetry and the aftermath of the Dervish wars*, *Journal of African cultural studies* 18.1, 2006, pp. 105-117. See also T. HAGMANN, *Talking Peace in the Ogaden*, cit., p. 14.

mutual commitment not to contest or claim the sovereignty of the territories as established in the agreement. In the 1920s, opposition between imperial Ethiopia and colonial Italy intensified, with both powers attempting to extend their military and administrative presence in the Ogaden, through the establishment of new garrisons and control centres⁴³.

Tafari, the future Emperor Haile Selassie⁴⁴ and at the time regent, not yet emperor, worked actively to strengthen the central authority and independence of the country, being also committed to building a modern administrative network⁴⁵. In the Ogaden, its progressive occupation of the territory increased tensions with Italy and also with the United Kingdom⁴⁶ which governed the northern part of Somalia (British Somaliland), also bordering with Ogaden. The Italo-Ethiopian friendship treaty of 1928⁴⁷ was perceived divergently by the two parties: Ethiopia interpreted it as a guarantee of peace and sovereignty, while Italy considered it a tool for economic penetration. Ethiopia's refusal to respect some clauses of the treaty fueled Italian resentment, which resulted in subsequent military aggression. Tensions erupted in border clashes in December 1934 near the town of Wal Wal. This episode was the pretext for Italy to launch the invasion of Ethiopia the following year⁴⁸. After the Italian defeat in 1941, the United Kingdom administered the Ogaden until 1948. However, even during this period there were local armed protests and complaints about the British administration, which was seen as ambiguous in its handling of Somali claims⁴⁹.

⁴³ See H.G. MARCUS, *A history of Ethiopia*. Univ of California Press, 2023, pp. 126-130. In 1926–1927, Ethiopia experienced a period of rapid economic expansion and modernization, with Addis Ababa experiencing a boom. Foreign trade increased, led by exports to Aden and Djibouti. At the same time, the aristocracy invested in real estate and businesses, while a new bureaucratic and mercantile bourgeoisie emerged. The introduction of European automobiles and furniture reflected Ethiopia's growing integration into the global economy. The countryside also saw signs of transformation: local officials built roads and facilitated the entry of foreign traders, particularly Greeks, Indians, Arabs, and Armenians, who contributed to the spread of textiles and consumer goods.

⁴⁴ Tafari in consolidating his political power, had to face resistance from the aristocracy; following a failed coup orchestrated by conservative circles and the death of Empress Zawditu, he was crowned as emperor Haile Selassie. He inaugurated a phase of institutional modernization, promoting a professional army, a national communications network and important public works, while maintaining a rigid monarchical etiquette and attributing to his mission a providential character. See H.G. MARCUS, *A history of Ethiopia*, cit., at pp. 126-130.

⁴⁵ *Ibid.*; Tafari sought to reduce Ethiopia's commercial dependence on Europe, initiating economic relations with alternative partners such as India, Japan and the United States.

⁴⁶ See C. BARNES, *The Ethiopian-British Somaliland Boundary*, cit. See also C. BARNES, *Gubo–Ogaadeen poetry*, cit.

⁴⁷ The treaty included, among other things, a free zone in Aseb and a road link between Eritrea and the heart of Ethiopia.

⁴⁸ T. HAGMANN, B. KORF, *Agamben in the Ogaden*, cit., p. 208. With the Italian occupation Ethiopia became part of that special legal order created by Italy for its colony and based on the disparity of status between Italian citizens and colonial subjects, whose legal personality was only partially recognized. Colonial laws served the need to support the authority of the governors and the dominance of the national element, creating a permanent exception to the principles provided for by the Statuto Albertino. In this respect see L. MARTONE, *Diritto d'Oltremare: Legge e ordine per le colonie del Regno d'Italia*, Giuffrè Editore, 2008.

⁴⁹ T. HAGMANN, B. KORF, *Agamben in the Ogaden*, cit., p. 209.

These turmoils led to the return of this region to Ethiopia in 1948⁵⁰. This decision, ratified by the United Nations, was considered by the Somalis as a betrayal, contributing to strengthen Somali nationalism and the dream of a “Greater Somalia”⁵¹, which would have unified all the Somali populations in a single state, including those territories belonging to Ethiopia, Kenya and Djibouti⁵² inhabited by Somali people.

As early as 1945, there was an initial rapprochement between the United States and Ethiopia, encouraged by contacts between President Roosevelt and Emperor Haile Selassie⁵³. With the independence of Somalia in 1960, the new state began strengthening relations with Moscow⁵⁴.

The first armed conflict between Somalia and Ethiopia over the Ogaden took place from 6 to 15 February 1964. The escalation was avoided thanks to the mediation of the UN Secretary General, the Organisation of African Unity (OAU)⁵⁵ and the refusal of the United States to provide further military support to Ethiopia⁵⁶. Despite this, Mogadishu continued to support liberation movements active in the Ogaden, including the Ogaden Liberation Front (OLF).

In 1969, the assassination of the President of the Somali Republic marked a turning point. Siad Barre came to power⁵⁷, while in Ethiopia, despite the annexation of Eritrea following the dissolution of the federation, Haile Selassie's control over the country's peripheries became weak⁵⁸. This framework of fragility⁵⁹ culminated in the military coup of September 12, 1974, carried out by a committee of military officers which adopted a socialist regime named Derg⁶⁰. With the rise of Menghistu Haile Mariam as

⁵⁰ T. HAGMANN, *Talking Peace in the Ogaden*, cit., p. 15.

⁵¹ P.B. HENZE, *Ethiopia and Somalia*, cit., p. 2.

⁵² T. HAGMANN, *Talking Peace in the Ogaden*, cit., p. 17.

⁵³ M. GUGLIELMO, *Il Corno d'Africa: Eritrea, Etiopia, Somalia*, 2013, p. 23.

⁵⁴ As stated by M. GUGLIELMO, *Il Corno d'Africa* cit., pp. 25-28, although Mogadishu was convinced that it enjoyed full Soviet support in its pan-Somalist project, in reality the USSR entered into the alliance mainly for strategic reasons linked to the Cold War and the competition with the United States in the region.

⁵⁵ In the drafting stage of the Constitutive Act of the OAU, Ethiopia succeeded in having the principle of the inviolability of the borders inherited from the colonial era recognized. As stated by A.M. MORONE, *The Unsettled Southern Ethiopian-Somali Boundary on the Eve of Decolonization: Political Confrontation and Human Interactions in the Ogaadeen Borderland*, 2015, pp. 93-116, during the foundational meetings of the OAU, Ethiopia successfully countered Somali demands for self-determination by aligning its position with the emerging continental consensus on maintaining colonial-era boundaries, ultimately leading to the OAU's 1964 resolution which formally condemned the Somali revisionist approach. See also M. GUGLIELMO, *Il Corno d'Africa* cit., p. 29. See also L. PUDDU, *Border diplomacy and state-building in north-western Ethiopia, c. 1965–1977*, *Journal of Eastern African Studies* 11.2, 2017, pp. 1-19, at pp. 7-8.

⁵⁶ M. GUGLIELMO, *Il Corno d'Africa* cit., at 25-28.

⁵⁷ As stated by I.M. LEWIS, *The Ogaden and the fragility of Somali segmentary nationalism*. *African Affairs* 88.353, 1989, pp. 573-579, although Siad Barre's regime officially banned 'tribalism', his inner circle of power was secretly built on an alliance of three related Darod clans: his own, the Marehan; his mother's, the Ogaden; and his son-in-law's, the Dulbahante. This alliance, known by the acronym 'MOD', gave the President a privileged relationship with the Ogadeni nationalists chafing against Ethiopian rule.

⁵⁸ *Ibid.*, pp. 30-31.

⁵⁹ A first symptom of this growing instability emerged in December 1960, when the commander of the imperial forces, Menghistu Newaye attempted a coup.

⁶⁰ The term 'Derg' is an Amharic word meaning 'committee'. It was the name used for the Coordinating Committee of the Armed Forces, the military junta that ruled Ethiopia from 1974 to 1991.

leader of the Derg in 1977, the regime became increasingly close to the Soviet Union, severing relations with Washington⁶¹. Meanwhile, Siad Barre's Somalia was accused by Ethiopia of supporting the Eritrean and Ogaden rebel movements. With the support of Cuba, the Soviet Union tried to mediate tensions between Ethiopia and Somalia in an attempt to maintain control over the entire region. However, such attempt failed and Moscow decided to support Ethiopia exclusively⁶². Meanwhile, Somalia joined both the OAU and the Arab League, and under the leadership of Siad Barre openly relaunched the project of reconquering the Ogaden. In this context, the Western Somali Liberation Front was born⁶³. In order to annex the Ogaden, Somalia supported separatist movements such as the Western Somali Liberation Front (WSLF)⁶⁴ and the Somali Abo Liberation Front (SALF)⁶⁵.

Subsequently, the Somali army invaded the Ogaden in July 1977. Initially it achieved significant military successes⁶⁶; however, the conflict took on a broader geopolitical dimension, with the Soviet Union and Cuba siding with Ethiopia, allowing the Derg regime to reconquer the territory in March 1978⁶⁷. The Somali defeat marked the beginning of a new phase of instability for the Ogaden, characterized by low-intensity conflicts between local armed groups and the Ethiopian government.

After the Ogaden War, separatist movements continued their fight against the Ethiopian government. In 1984, the Ogaden National Liberation Front (ONLF) was formed, with the aim of achieving independence for the region⁶⁸. This movement, formed mainly by members of the *Ogaadeen* clan, has waged an intermittent rebellion against the central Government⁶⁹.

After the fall of the Derg in 1991, Ethiopia was reorganized into a federal state based on ethnic divisions, and Ogaden officially became the “Somali Regional State”. Initially, the regional government was dominated by the ONLF, which in 1994 called for a referendum on self-determination. This demand led to open conflict with the central government, which expelled the ONLF from the local administration

⁶¹ As stated by M. GUGLIELMO, *Il Corno d’Africa: Eritrea, Etiopia, Somalia*, Bologna, Il Mulino, 2013, p. 33, initially, the United States tried to maintain relations with the new Ethiopian regime to prevent the country from losing control over Eritrea and to avoid completely leaving the influence to the Soviet Union, which in the meantime was still supporting Somalia.

⁶² *Ibid.*, pp. 34–35.

⁶³ *Ibid.*, p. 36.

⁶⁴ Movements operating in the Ogaden and Eastern Hararghe.

⁶⁵ Mainly active in the Bale region.

⁶⁶ As stated by T. HAGMANN, *Talking Peace in the Ogaden*, cit., p. 18, in the first phase of the war, Somali forces occupied several strategic cities, including Jijiga and Dire Dawa.

⁶⁷ *Ibid.*

⁶⁸ M. MUSSA, H. TEKA, A. ALIYE, *Indigenous conflict management and resolution mechanisms on rangelands in pastoral areas, Ethiopia*, *Journal of African Studies and Development* 10.9, 2017, pp. 112–117.

⁶⁹ As stated by T. HAGMANN, *Talking Peace in the Ogaden*, pp. 76–78, during that period the region has been the scene of violence and counterinsurgency operations conducted by the Ethiopian army, often accused of human rights violations and indiscriminate repression.

and repressed the movement⁷⁰. Despite the separatists attempts, effective control of the area has remained in the hands of the central Ethiopian government, with political management strongly influenced by the Ethiopian People's Revolutionary Democratic Front (EPRDF). Tensions between the central Government and the independence groups, combined with disputes with neighbouring regions (especially Oromia), have kept the Ogaden in a state of latent conflict⁷¹.

In 2003, the president of the Somali Regional State, Abdurashid Dulane, was removed, accused of “weakness” towards the “anti-peace forces”; a clear demonstration of how the clash between the federal government and the ONLF also caused fractures within the *Ogaadeen* clan, with mutual accusations and the instrumental use of political labels to delegitimize rivals⁷².

As a consequence of such instability, the Ethiopian government turned the Somali Region into a “military zone”⁷³, limiting access to external actors and imposing emergency regimes⁷⁴. Subsequently, the management of the conflict was handed over from the federal forces to the regional militia called Liyu Police, composed mainly of members of the *Ogaadeen* clan⁷⁵. Since 2010, the conflict has degenerated into an internal war within the *Ogaadeen* clan itself, between supporters of the regional government, members of the ONLF and intermediate groups⁷⁶; the local context remained highly unstable⁷⁷. Furthermore, conflicts between Somali and Oromo populations have also intensified from 2017 in disputed territories along regional borders, such as Moyale, Meiso and Babile⁷⁸.

⁷⁰ T. HAGMANN and M.H. KHALIF, *State and politics in Ethiopia's Somali Region since 1991*, Bildhaan: An International Journal of Somali Studies 6.1, 2008, p. 19.

⁷¹ A.I. SAMATAR, *Ethiopian federalism: autonomy versus control in the Somali Region*, Third World Quarterly 25.6, 2004, p. 1138.

⁷² A.K. ADEGEHE, *Federalism and ethnic conflict in Ethiopia. A comparative study of the Somali and Benishangul-Gumuz regions*, Leiden University, 2009, p. 140.

⁷³ As reported by M. MUSSA, H.TEKA, A. ALIYE, *Indigenous conflict management and resolution mechanisms on rangelands in pastoral areas, Ethiopia*, cit., p. 43, in 2007 the ONLF carried out an attack on a Chinese-run oil field in Abole. See also T. HAGMANN, B. KORF, *Agamben in the Ogaden*, cit., p. 209, who report another attack in Degehabur, after which the Ethiopian army imposed an economic blockade and launched widespread repression in the region. See also T. HAGMANN *Talking Peace in the Ogaden*, cit., pp. 21–22. Such government response turned into a prolonged military campaign lasting until 2010. See also A.K. ADEGEHE, *Federalism and Ethnic Conflict in Ethiopia*, cit., p. 194, who notes that several prolonged conflicts occurred during those years, particularly in Moyale (on the border with Oromia), where the referendum to decide territorial affiliation was never implemented and tensions remain high. Furthermore, armed clashes and disputes along the Djibouti–Addis Ababa road with the Afar Region persist, keeping the situation unstable even in recent years.

⁷⁴ T. HAGMANN, B. KORF, *Agamben in the Ogaden*, cit., p. 211. Examples include the arrest of foreign journalists, the temporary closure of the Red Cross office in Gode, and the selective distribution of humanitarian aid based on loyalty to the central government.

⁷⁵ T. HAGMANN, *Punishing the periphery: legacies of state repression in the Ethiopian Ogaden*, Journal of Eastern African Studies 8.4, 2014, pp. 725–739, at p. 728.

⁷⁶ *Ibid.*; See also T. HAGMANN, *Talking Peace in the Ogaden*, cit., pp. 26–28.

⁷⁷ As stated by S. DEVEREUX, *Vulnerable livelihoods in Somali region, Ethiopia*. Brighton, Institute of Development Studies, 2006, p. 110, in areas such as Shilabo, Doboweyn and Kebribayah several episodes of conflict have been reported, both inter-clan and with militias, especially related to access to land and pastures.

⁷⁸ As stated by M. MUSSA, H.TEKA, A. ALIYE, *Indigenous conflict management and resolution mechanisms on rangelands in pastoral areas, Ethiopia*, cit., pp. 43–44, these clashes have resulted in up to one million internally displaced persons, and

After being appointed Prime Minister in April 2018, Abiy Ahmed promised to deal with ethnic conflicts in the country. In July, his administration removed the ONLF from being considered a terrorist group which prompted the latter to declare an indefinite unilateral ceasefire in August⁷⁹. This approach led to the signing of a peace treaty between Ethiopia and the ONLF on 21 October 2018 in Asmara; the two sides agreed to end all hostilities and form a joint committee to discuss the root causes of the conflict⁸⁰. Despite the agreement, its implementation has faced obstacles. The ONLF has accused the Ethiopian government of failing to fully deliver on its commitments, particularly regarding the reintegration of fighters and the resettlement of displaced communities. In September 2024, the head of the Ethiopian armed forces, Birhanu Jula, called the ONLF an “enemy of the state”, raising concerns about the real implementation of the agreement⁸¹.

The Somali Regional State therefore has a long history of conflict and resistance to Ethiopian control. Its strategic location and ethnic characteristics have made it a focal point of regional politics, between independence aspirations, central government interventions and geopolitical influences. Even today, tensions in the region remain strong, with the Ethiopian government maintaining tight control over the region and local movements that continue to claim greater autonomy or even secession.

4. The Somali Region in the Ethiopian Federalism: Autonomy and Control

Following the fall of the Derg regime in 1991 and the rise of the EPRDF (Ethiopian People's Revolutionary Democratic Front), Ethiopia adopted a system of ethnic federalism. In 1994, the federal government attempted to integrate the Somali Region into the federal structure, encouraging the creation of a local pro-government party, the Somali People's Democratic Party (SPDP), which gradually replaced the ONLF as an independence movement⁸².

The new constitution of 1995 divided the country into States based on ethnicity, granting different communities, at least formally, the right to self-government and even secession⁸³, as provided for by Article 39 of the Constitution. In the context of this reorganization, the Somali Regional State thus constitutes one of the nine federal states of Ethiopia with its own state Constitution. Several clans live in

are linked both to disputes over resources and to the weakness of federal and regional institutions in managing tensions. See also A.K. ADEGEHE, *Federalism and ethnic conflict in Ethiopia*, cit., p. 185, who stated that in some areas, such as Moyale, the persistence of dual administrations and parallel jurisdictions continues to generate instability, also fueled by dynamics of political rivalry between neighbouring regional governments.

⁷⁹ H.U. STAUFFER (ed.), *Peace Treaty and End of UN-Sanctions. Documentation*, Afrika-Komitee Basel, Switzerland, 2018, p. 66.

⁸⁰ *Ibid.*, p. 67.

⁸¹ See the articles on the following websites: [Hiiraan](#) and [Addisstandard](#).

⁸² A.I. SAMATAR, *Ethiopian federalism: autonomy versus control in the Somali Region*, cit., p. 1135.

⁸³ M. MUSSA, H. TEKA, A. ALIYE, *Indigenous conflict management and resolution mechanisms on rangelands in pastoral areas, Ethiopia*, cit., p. 41.

the Somali Regional State but the *Ogaadeen* is still the largest: six zones of this State belong to this clan⁸⁴. Ethnic groups include the Somalis (97.2%), the Guragas (1.68%), the Amahara (0.66%) and the Oromo (0.46%); from a religious point of view, 98.4% are Muslims, 0.6% are Christians and the remaining 1% practice other religions⁸⁵. According to Article 6 of the Constitution of the Somali Regional State, the official language is Somali; other than that, Article 12 provides that the regional state is secular, thus separating religion from state affairs.

Ethiopian federalism introduced a regional administrative apparatus that, on paper, grants broad autonomy to ethnic regions. By virtue of the combined provisions of Articles 39(3)⁸⁶ and 50(4)⁸⁷ of the Federal Constitution, it is foreseen that the regions may create sub-state levels of government, provided that they are able to guarantee direct participation to the citizens⁸⁸.

Article 52 of the Federal Constitution reserves to the States all powers that are not explicitly assigned to the federal government or shared concurrently between the two levels. In other words, the Constitution recognizes a residual authority of the regions, granting them the competence to regulate all matters not otherwise specified at the federal level.

From an administrative standpoint, the regional constitutions within the Ethiopian federal system provide for three main levels of administration: zones, *woredas* (districts), and *kebeles* (smaller local units)⁸⁹. Article 45 of the Constitution of the Somali Regional State establishes that “*the state is organized in Kebeles, Woredas or Municipalities and State Councils*” while also granting the State Council the authority to “*organize other administrative hierarchies and determine their powers and duties by law.*”

In practice, the functions and responsibilities of zones and *woreda*/city administrations are not defined by the regional constitution but rather by Article 6 of the Financial Management Proclamation No. 110/2012. According to World Bank data (2020)⁹⁰, the Somali Regional State is the second largest region in Ethiopia and is currently divided into 11 zones, 93 rural *woredas*, and 6 city administrations⁹¹.

However, as always, it is necessary to carefully separate what is on paper from what actually happens in reality. As said, the Federal Constitution does not provide a detailed institutional framework for the

⁸⁴ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., p. 241.

⁸⁵ *Ibid.*, p. 242.

⁸⁶ «Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.».

⁸⁷ «State government shall be established at State and other administrative levels that they find necessary. Adequate power shall be granted to the lowest units of government to enable the People to participate directly in the administration of such units.».

⁸⁸ C.M. FOMBAD, N. STEYTLER, eds. *Decentralization and Constitutionalism in Africa*. Oxford University Press, 2019, p. 286.

⁸⁹ *Ibid.*, p. 140.

⁹⁰ Public Expenditure and Financial accountability (PEFA), Performance Assessment Report, World Bank 2020, p. 15.

⁹¹ As reported by Z. AYELE (ed.), *Local Government and the Changing Urban-Rural Interplay. Country Report Ethiopia*, Addis Ababa University – Center for Federalism and Governance Studies, 2021, p. 71, the *woreda* expansion program in the Somali Region, promoted as part of decentralization policies, was suspended in 2019 due to inefficiencies and challenges related to the administrative and political management of the new districts.

relationship between the federal state and the regional states. Management is done through political practices and with the intrusive power of the federal government and the dominant party⁹² that is the Prosperity party⁹³. The functions of local governments are not constitutionally guaranteed, but entrusted to ordinary laws, therefore modifiable and vulnerable to centralization⁹⁴.

Popular participation is formally recognized, as mentioned, by Article 50(4) of the Federal Constitution, but in practice it is limited by vertical political control and the “democratic centralism” of the dominant party⁹⁵. The lack of independence of the institutions prevents true constitutional control by citizens leading to a strong interference from the central government⁹⁶. According to Samatar⁹⁷, Ethiopian politics has created a system of “autonomy without power” with limited decision-making independence for local authorities, where decentralization exists only formally. For instance, it was reported that the Ministry of Federal Affairs played an “intrusive” role especially in the peripheral regions (Afar, Somali, Gambella and Benishangul-Gumuz) in 2008, exercising direct supervision rather than coordination⁹⁸. With the management remaining *de facto* centralised, traditional leaders are co-opted within the regional/federal government⁹⁹. The party exercises active control over regional authorities as demonstrated by the fact that local leaders must be approved by the central government and are often removed and replaced if their political direction deviates from what is set out in the federal political agenda¹⁰⁰. The central government maintains strong control through the army and the federal police, effectively limiting the power of regional institutions¹⁰¹. This control can also be found in the tax field, as the budgets and funds allocated to the Somali Regional State are centrally controlled and often distributed in a non-transparent manner, fueling corruption and favoritism¹⁰². In theory, local governments should enjoy political and fiscal autonomy, but there are no real mechanisms of democratic accountability; appointments are controlled by the party and the role of local councils is marginalized¹⁰³. Regional constitutional reforms (such as the separation of the president and the chief executive) were decided centrally, without involving local authorities¹⁰⁴.

⁹² A.K. ADEGEHE, *Federalism and ethnic conflict in Ethiopia*, cit., p. 233.

⁹³ The Prosperity Party is the successor of the EPRDF and is composed of parties that were members of that coalition.

⁹⁴ C.M. FOMBAD, N. STEYTLER, eds. *Decentralization and Constitutionalism in Africa*, cit., p. 91.

⁹⁵ *Ibid.*, pp. 452–453.

⁹⁶ Z. AYELE (ed.), *Local Government and the Changing Urban-Rural Interplay*, cit., p. 71.

⁹⁷ A.I. SAMATAR, *Ethiopian federalism: autonomy versus control in the Somali Region*, cit., p. 1150.

⁹⁸ A.K. ADEGEHE, *Federalism and ethnic conflict in Ethiopia*, cit., p. 240.

⁹⁹ C.M. FOMBAD, N. STEYTLER, eds. *Decentralization and Constitutionalism in Africa*, cit., p. 591.

¹⁰⁰ T. HAGMANN, M.H. KHALIF, *State and politics in Ethiopia's Somali Region since 1991*, cit., p. 30.

¹⁰¹ A.I. SAMATAR, *Ethiopian federalism: autonomy versus control in the Somali Region*, cit., pp. 1131–1154.

¹⁰² T. HAGMANN, M.H. KHALIF, *State and politics in Ethiopia's Somali Region since 1991*, cit., pp. 32–33.

¹⁰³ Z. AYELE (ed.), *Local Government and the Changing Urban-Rural Interplay*, cit., p. 71.

¹⁰⁴ C.M. FOMBAD, N. STEYTLER, eds. *Decentralization and Constitutionalism in Africa*, cit., p. 13.

Another factor of instability in the Somali Region is the relationship between state institutions and traditional systems of governance, particularly the role of clan elders. Although the federal system has attempted to strengthen administrative governance, local people continue to rely mainly on clan elders to resolve disputes and manage local affairs¹⁰⁵. This has led to tensions between official regional authorities and traditional power structures, with the federal government often seeking to co-opt elders to strengthen its control over the region. A clear example of this dynamic was the creation of an official Council of Elders, the regional *guurti*, to integrate clan leaders into state institutions¹⁰⁶. This institution finds its foundation in Article 56 of the Constitution of the Somali Regional State, entitled “Establishment of the Elders and Clan leaders Council”. In this context, elders were selected without consulting the local population, and since they receive their salaries from the government, their legitimacy depends on the authorities who appointed them¹⁰⁷. The members of the government-backed council of elders are described as “paid conflict mediators” who have lost the trust of their respective clans, particularly when clan interests are at stake in conflict resolution processes¹⁰⁸. By transforming traditional leadership into a salaried position, the government has also undermined the essence of eldership in the Somali Regional State where moral authority was traditionally linked to independence from political and economic power¹⁰⁹. The consequence was the appointment of elders loyal to the federal government to promote political stability and population control¹¹⁰ repressing traditional leaders who support independence for the region, as happened with some members of the ONLF¹¹¹. In this way, the federal government saw the elders as a means of mediation between the population and the government, especially in rural areas where state administration is weak¹¹²; many of these elders are seen as instruments of government, rather than true representatives of tradition¹¹³. This has made governance in the Somali Region a hybrid between state administration and clan power, where central government control is mediated through traditional instruments of leadership; the consequence is that state and traditional power can overlap or conflict, creating confusion about the competences and authorities legitimated to resolve conflicts¹¹⁴.

¹⁰⁵ S. DEVEREUX, *Vulnerable livelihoods in Somali region, Ethiopia*, cit., p. 111.

¹⁰⁶ LEWIS 2002 in T. HAGMANN, *Bringing the sultan back in: elders as peacemakers in Ethiopia's Somali region*, cit., pp. 9-11.

¹⁰⁷ A.I. SAMATAR, *Ethiopian federalism: autonomy versus control in the Somali Region*, cit., p. 1152, fn. 42.

¹⁰⁸ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., p. 249.

¹⁰⁹ *Ibid.*, p. 262.

¹¹⁰ T. HAGMANN, *Beyond clannishness and colonialism: Understanding political disorder in Ethiopia's Somali Region, 1991–2004*, *The Journal of Modern African Studies* 43.4, 2005, 509-536, p. 529.

¹¹¹ T. HAGMANN, M.H. KHALIF, *State and politics in Ethiopia's Somali Region since 1991*, cit., p. 515.

¹¹² S. DEVEREUX, *Vulnerable livelihoods in Somali region, Ethiopia*, cit., p. 115.

¹¹³ T. HAGMANN, *Beyond clannishness and colonialism*, cit., p. 529.

¹¹⁴ D. AMSALU, *State Intrusion into Customary Dispute Resolution Mechanisms in Ethiopia (1991–2018)*, in *Journal of Ethiopian Studies*, Vol. LV, No. 2 (December 2022), pp. 29-54, at p. 37.

There have been some significant changes in the governance of the Somali Regional State in recent years. After 2004, this State saw an increase in the number of administrative districts, in an attempt to decentralize power¹¹⁵. However, this decentralization has been more theoretical than practical, with key decisions still being made at the federal level. In recent years, some Somali leaders have gained prominent roles in the central government, representing a partial integration of the Somali community into Ethiopian politics¹¹⁶, even though many politicians in the Somali Region are seen as mere instruments of the federal government, unable to truly represent local interests. Then, latent tensions remain, especially in rural areas and on the borders with the Oromia region.

The Somali Region is therefore an emblematic case of the contradictions in the Ethiopian federalism: although formally autonomous, it is actually strongly controlled by the central government. The role of clan elders, the weakness of local institutions and economic dependence on Addis Ababa make the governance of the region unstable and vulnerable. While federalism has given the Somali population official recognition within Ethiopia, the lack of real autonomy and the continued repression of independence voices demonstrate the limits of the Ethiopian federal model.

5. Xeer in the Somali Regional State

Before moving on to a brief analysis of the application of *xeer* in the Somali Regional State, it is worth examining whether traditional law is officially recognized or not. First of all, article 34(5) of the Ethiopian Federal Constitution provides that personal and family law disputes may be settled under traditional law, provided that there is consent of the parties. Secondly, article 78(5) empowers legislative bodies to establish or officially recognize courts under traditional law. However, Article 9(1) provides the specific limit that “*Any law, customary practice or a decision of an organ of state or a public official*” shall be compatible with the Constitution; otherwise, they will be considered incapable of producing any legal effect. The Constitution of the Somali Regional State first implements these principles by reiterating the possibility of resorting to traditional law courts for family disputes (Article 34.5 and Article 66). In particular, Article 34 of the Somali Regional State Constitution reproduces Article 34 of the Federal Constitution, including paragraph 5, which requires the consent of the parties to resolve disputes in the specified matters through traditional law. Article 66, in turn, formally recognizes the possibility of establishing or giving legal recognition¹¹⁷ to traditional and religious courts. Secondly, as already discussed, it takes a further step on

¹¹⁵ T. HAGMANN and M.H. KHALIF, *State and politics in Ethiopia's Somali Region since 1991*, cit., p. 45.

¹¹⁶ *Ibid.*, pp. 29-30.

¹¹⁷ Art. 66(2) of the Constitution of the Somali Regional State provides that “*customary or religious courts that had recognition and functioned prior to the adoption of this constitution shall be recognized and organized based on this constitution.*”

paper towards the institutionalization of traditional authorities with the recognition in Article 56 of the "Elders' and Clan Leaders' Council", as already explained above.

Starting therefore from the constitutional provisions of both the Federal Democratic Republic of Ethiopia (FDRE) and the Somali Regional State, two aspects emerge that deserve attention in analysing the application of *xeer* within the regional context. The first aspect concerns the concept of consent. Although both constitutions require that traditional and religious laws apply only with the consent of the parties, in practice women in the Somali Regional State are often not free to make such a choice¹¹⁸. Social pressure, fear of exclusion, and the close link between clan and religion usually force them to bring their cases before *xeer* or *shari'a* courts; as a result, the idea of consent remains mostly formal. The second aspect relates to the formal institutionalization of the Council of Elders within the regional constitution. It has been already outlined the provisions of the Somali Regional State Constitution and the resulting challenges of a system that was intended to act as a bridge between federal governance and clan structures, and, in particular, the limited trust¹¹⁹ placed by local communities in elders appointed and remunerated by the government in their role as traditional judges.

It is now worth examining how this mechanism operates in practice within the Somali Regional State. In cases of violent inter-clan conflict, district officials, *guurti* elders and security forces act jointly to prevent escalation and restore peace, reflecting an institutionalized model of cooperation between state and customary authorities. Local state authorities (*woreda*) sometimes organize task forces composed of elders and security forces to break up violent conflicts¹²⁰. Once hostilities are contained, the process enters a structured mediation phase involving three distinct groups of elders¹²¹: those representing each of the disputing clans and a group of elders from a neutral third clan, formally mandated to mediate the negotiations. These neutral elders, often members of the *guurti*, are entrusted with determining the amount and timing of the compensation and ensuring that reconciliation is achieved between the parties. District administrators supervise the entire process, document the agreements¹²², and formally validate them, while the neutral elders ensure compliance with the principles derived from *xeer*. Agreements reached are formalized through writing and filed with local courts, thus creating a legal precedent for future disputes¹²³. This coordinated framework reveals how traditional mechanisms have been progressively embedded within local governance structures, giving rise to a hybrid system of justice that

¹¹⁸ B.A. GEBEYE. *Women's Rights and Legal Pluralism*, cit., pp. 32-34.

¹¹⁹ T. HAGMANN, *Beyond clannishness and colonialism*, cit., p. 530.

¹²⁰ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., pp. 255-256. See also T. HAGMANN *Bringing the sultan back in: elders as peacemakers in Ethiopia's Somali region*, cit., p. 15.

¹²¹ T. HAGMANN *Bringing the sultan back in: elders as peacemakers in Ethiopia's Somali region*, cit., p. 16.

¹²² *Ibid.*, p. 18.

¹²³ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., pp. 255-256.

combines the moral authority of elders with the administrative functions of the state. However, the effectiveness of this cooperation often depends on local power dynamics, the impartiality of mediators, and the limited enforcement capacity of state institutions.

Despite the presence of a regional administration formally integrated into Ethiopian federalism, *xeer* continues to be a key element of local governance in the Somali Regional State. The Somali Region is inhabited mainly by Somali people (96%)¹²⁴ professing the Islamic religion (98.4%)¹²⁵ who maintain social and legal structures similar to those of Somalia. This has led to a hybrid coexistence between traditional Somali law and the Ethiopian legal system, in which the clan-based order and the application of *xeer* play a predominant role in conflict management and social order¹²⁶. By virtue of *xeer* application, the main conflict resolution mechanism is the mediation of the *odayaasha*, the clan elders. This process is divided into several consecutive phases. The first phase consists of the cessation of hostilities, often promoted by religious authorities who cite verses from the Koran to call for peace¹²⁷. This approach to the settlement of disputes is particularly relevant in the context of the Somali Region, where the population's strong Islamic identity stands apart from Ethiopia's prevalent Christian tradition¹²⁸, making the resort to Koranic precepts a distinctive element in the pursuit of local peace. The process continues with the fulfilment of the preconditions to start negotiations: the council of elders (*guurti*) intervenes, organizing formal meetings (*xaajo*) to negotiate compensation (*mag*) between the clans involved¹²⁹. Once the amount of compensation has been negotiated, the guilty clan initially delivers 30 young camels as *rafiso*, that is the first payment for the funeral expenses, and subsequently transfers the rest of the agreed payment, *the mag dheer*, that is the balance made up of camels, even older and less valuable ones¹³⁰. Then, the process concludes with a formal act of reconciliation between the parties involved in the conflict¹³¹. The final stage involves a symbolic act of reconciliation: the guilty party receives a veil on his head (*umaamada medxa kasaan*) and the families involved exchange kisses on their hands, symbolically sealing peace¹³². It is possible to observe again the centrality of the mag-paying group system, which acts as a collective security instrument with the same criteria present in Somalia. Therefore, if a member of a clan kills someone from

¹²⁴ The reference is to a 1997 census reported in S. DEVEREUX, *Vulnerable livelihoods in Somali region, Ethiopia*, cit., p. 26.

¹²⁵ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., p. 242.

¹²⁶ *Ibid.*, p. 115.

¹²⁷ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., p. 250.

¹²⁸ According to the CIA World Factbook, the religious distribution in Ethiopia is as follows: Ethiopian Orthodox 43.8%, Muslim 31.3%, Protestant 22.8%, Catholic 0.7%, traditional 0.6%, other 0.8% (2016 est.). Accessible on the CIA World Factbook [website](https://www.cia.gov/library/publications/the-world-factbook/).

¹²⁹ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., p. 252.

¹³⁰ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., p. 253.

¹³¹ T. HAGMANN, *Bringing the sultan back in: elders as peacemakers in Ethiopia's Somali region*, cit., p. 14.

¹³² D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., p. 254.

another clan, his group is responsible for paying compensation (in the Somali region, the compensation follows the general *xeer* rule: 100 camels for a man and 50 for a woman). The distribution of the *mag* is decided by the elders, who establish quotas for each family¹³³.

The role of elders is also expressed in managing inter-clan disputes over resources such as land and water: the scarcity of resources like water and grazing land has intensified inter-clan hostilities, with community elders featuring as key actors in conflict dynamics and being called upon to promote reconciliation and peace¹³⁴. However, in urban settings, the role of elders has been partially reduced, with an increasing presence of formal law enforcement¹³⁵, while in rural areas, people still prefer the traditional system over state courts¹³⁶.

In the aforementioned conflict between the Oromia and Somali regions, characterized by a long history of clashes along the border, traditional conflict resolution mechanisms have achieved important results: for example, despite the complexity of these tensions, hardly settleable with formal government interventions, such traditional conflict resolution mechanisms have had significant success in the city of Moyale. Here, the ethnic groups involved agreed to extradite from both sides those responsible for crimes, avoiding the clan protection that fueled tensions and thus leading to a substantial improvement in security and mutual trust between the two communities¹³⁷.

In the Somali Regional State, local economic systems do not operate separately, but are interconnected and dependent on social collaboration. This interdependence significantly differentiates this region from other Ethiopian areas, such as the agricultural highlands¹³⁸. Here, pastoralists and farmers continuously negotiate access to resources, such as land and water, while trade involves complex circuits of local and international intermediaries. Also important are the links with the Somali diaspora, which directly supports local economic and commercial development through remittances. Finally, the stability of livelihoods in the region is strongly influenced by cross-border economic flows with Somalia, Somaliland, Djibouti, Kenya and the Gulf countries: any disruption in these flows can represent a significant threat to the economic survival of the community¹³⁹.

¹³³ S. DEVEREUX, *Vulnerable livelihoods in Somali region, Ethiopia, cit.*, p. 12.

¹³⁴ *Ibid.*, pp. 2-7-8.

¹³⁵ See S. TAN and N.A. HASSEN, *Examining the choice of land conflict resolution mechanisms: The case between the harsbin and yocaale woredas of the Somali region of Ethiopia*. Journal of Environmental Management 342, 2023, 118250, pp. 2, 6–8. Based on the case study of Yocaale woreda, the authors observe that while *xeer* remains effective in resolving inter-clan and resource-based disputes, boundary and politically sensitive land conflicts are generally referred to formal administrative institutions following the 2011 woreda restructuring, as such disputes require official demarcation, access to government records, and enforcement beyond the authority of the elders.

¹³⁶ S. DEVEREUX, *Vulnerable livelihoods in Somali region, Ethiopia, cit.*, p. 11.

¹³⁷ D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region, cit.*, p. 260.

¹³⁸ S. DEVEREUX, *Vulnerable livelihoods in Somali region, Ethiopia, cit.*, pp. 13-14.

¹³⁹ *Ibid.*

Focusing again on the relationship between *xeer* and state law, some clear divergences can be detected. One of the most emblematic cases is about violent crimes. *Xeer* emphasizes compensation (*mag*) rather than individual punishment. Ethiopian law, on the other hand, provides for individual criminal sanctions, creating tensions between clans and state authorities¹⁴⁰.

The Ethiopian government has sought to limit the influence of the *xeer* by promoting recourse to regional courts; however, the population continues to perceive state courts as less reliable, especially in inter-clan disputes¹⁴¹.

It is important to specify that the choice to apply the *xeer* leaves no room or tends to exclude non-Somalis living in the region; in fact, in the event of a dispute, Somalis will inevitably apply the rules of *xeer* against a party who, not having clan protection, could be penalized, for example by the payment of the *mag*¹⁴². Therefore, those critical aspects of *xeer* that were previously outlined in the general discussion in paragraph 2.2 are also found in the Somali Regional State.

Xeer thus continues to be a fundamental element of society in the Somali Region, despite pressure from the Ethiopian state to replace it with formal legal institutions and despite Article 3347 of the Ethiopian Civil Code (1960), which declares that all written or customary rules previously in force on matters covered by the Code are repealed, a provision that has largely remained a dead letter¹⁴³. Although the government has sought to integrate elders into state structures, the population continues to rely on the traditional system for dispute resolution.

6. Conclusion

The analysis conducted in this paper demonstrates how the *xeer* system is an essential component of governance and social cohesion, not only in Somalia, but also within the Somali Regional State of Ethiopia. The role of the elders and the application of traditional laws is still the primary tool to regulate the social life of the community and to manage conflicts, especially in rural areas. The flexibility of *xeer* demonstrates its resilience in a context of legal pluralism, political tensions and economic challenges. However, the coexistence of positive law and traditional law generates normative and institutional frictions with the Ethiopian positive law mainly because of their different nature and structure. This creates conflicts of competences and difficulties in harmonizing systems, especially in urban contexts. At the same time, it should be taken into account the political reality of Ethiopian federalism, which seems more as an instrument of control than of real self-government. The question still remains as to the

¹⁴⁰ *Ibid.*, p. 12.

¹⁴¹ T. HAGMANN, *Beyond clannishness and colonialism*, cit., p. 528.

¹⁴² D. SEYOUM, *Resolving conflicts through deliberation: The use of elders in the Ogaden region*, cit., p. 261.

¹⁴³ S. MANCUSO, *Informal laws and state law in the horn of Africa*, cit., pp. 1-25, at pp. 12-13.

ability to effectively integrate these two different models, recognizing their respective strengths without one cancelling out the other. The recognition of the *guurti* in the Constitution of the Somali Regional State certainly represents a step forward in the attempt to harmonise positive law with traditional law. However, this process appears to have partially altered the elders' original function: their role should be that of mediators restoring community order, not of actors operating "on behalf" of state authorities. A more effective solution would be to focus on refining the constitutional recognition of traditional law—allowing it to operate freely, yet within the limits of compatibility with the core principles of the Constitution—rather than attempting to control it directly. State interference produces mistrust among communities, which will then continue to apply their traditional norms informally, thereby rendering constitutional provisions little more than empty words.

Another fundamental aspect to be addressed for a more effective integration between traditional law and state law inevitably concerns the need to define more clearly, even at the federal constitutional level, the principle of vertical subsidiarity. This would allow for a more precise attribution of competences and powers to local governments, institutional bodies closer to the communities and therefore able to detect their needs and peculiarities. The clarification of these competences would not only contribute to reduce conflicts and regulatory overlaps, but could also raise a more effective dialogue between the formal state system and local traditional systems.

Without a transition from a control-based approach to one based on harmonization of the different legal systems and on a real comprehension of the community needs, *xeer* will remain a parallel but subordinate system, and the Somali Regional State will continue to embody the unresolved tension between promised autonomy and denied autonomy.