

**ANALYSIS OF THE ROLE OF INTERNATIONAL COMMUNITY IN  
RESTRUCTURING SOMALIA'S REGIONAL GOVERNMENTS LEGAL  
SYSTEM: A CASE OF SOMALIA MAINLAND**

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## DECLARATION AND APPROVAL

### Declaration by the Student

This project is my original work and has not been presented for a degree in any other University or for any other award.

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### Approval by the Supervisor

I confirm that the work reported in this project has been carried out by the student under my supervision.

  
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## DEDICATION

I dedicate this study to Almighty Allah, to my family. I love you deeply with all my heart.

You have been a listener and a supporter of all my endeavours. Your backing, prayers, steadfastness, motivation throughout this study and love sustain me.



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## LIST OF ABBREVIATIONS AND ACRONYMS

<b>DfID:</b>	Department for International Development
<b>EU:</b>	European Union
<b>ICAI:</b>	Independent Commission for Aid Impact
<b>NGOs:</b>	Non-Governmental Organizations
<b>NSC:</b>	National Security Court
<b>OHCHR:</b>	Office of the High Commissioner for Human Rights
<b>RUF:</b>	Sierra Leone and Revolutionary United Front
<b>SDG:</b>	Sustainable Development Goal
<b>SRC:</b>	Supreme Revolutionary Council
<b>TFC:</b>	Transitional Federal Charter
<b>TFG:</b>	Transitional Federal Government
<b>TNG:</b>	Transitional National Government
<b>UN:</b>	United Nation
<b>UNOSOM II:</b>	United Nations Operation in Somalia II

## ABSTRACT

One of the most important problems facing modern Somalia on its way to security and rebuilding is the lack of a fair and equal justice system. The general objective of the study was to analyse the role played by the international community in the restructuring of the legal system in Somalia Mainland. The specific objectives were to; determine the status of the Somali's Legal systems, examine the role of international community in restructuring the legal system in Somalia Mainland, determine the key international players with initiatives in the justice sector, examining their programs and their purpose of fit in restructuring the justice sector in Somalia Mainland. The study was guided by the theory of Change, Institutional Theory and Stakeholder theory. The study employed case study design. The study was deemed useful in understanding the status of the Somali Legal systems, the role of international community in restructuring the legal system in Somalia and role of Key International players in the restructuring the justice sector in Somalia. The target population comprised 30 participants made up of 4 government legal experts (attorney general and solicitor general), 2 legal scholars from City University of Mogadishu, 3 law reform officials, 9 NGO and UN representatives, 7 civil group officials and 5 clergymen. Purposive sampling was used to select the 4 government legal experts, 2 legal scholars from City University of Mogadishu, 3 law reform officials, 9 NGO and UN representatives, 7 civil group officials and 5 clergymen. Data collection was based on two major methods, document analyses and in-depth interviews. Content analysis involved identifying, analyzing and interpreting patterns of meaning within qualitative data and reporting them in prose form. The text transcript data synthesised similar ideas were put together based on the themes outlined in the research objectives. The findings revealed that that the Somali legal system is a complex and hybrid structure that combines elements of customary law, Islamic law (Sharia), and formal statutory law inherited from the colonial era. The findings also showed that the international community has been actively involved in providing legal training and capacity building to Somali legal professionals and institutions. Finally, it was established that UN, The European Union (EU), The United Kingdom (UK), and African Union Mission in Somalia are the main international players and have played a pivotal role in the reformation of the justice sector in Somalia through various agencies and missions. The study concludes that Somali mainland legal system remains a complex and evolving amalgamation of customary law, Islamic law, and formal statutory law. While significant progress has been made in recent years to restructure and strengthen the justice sector, numerous challenges persist. The study thus recommends that to enhance the immediate Somali mainland legal systems, stakeholders should focus on harmonizing the various sources of law, ensuring consistency in the application of customary law, Islamic law, and statutory law.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the Study

In the aftermath of conflicts, a robust legal framework is indispensable for fostering sustainable peace (Muehlmann, 2008). Nations recovering from turmoil commonly possess glaringly insufficient statutes across various legal domains, including criminal justice, property rights, human rights, commercial law, and administrative regulations. Both national and international stakeholders frequently collaborate to amend these inadequate laws, aligning them with the principles of rule of law and global human rights standards. Nevertheless, the efforts to reform criminal law in post-conflict settings have largely been unsuccessful, except in rare instances (Fedoty & Solomon, 2011). This ineffectiveness is not only due to substantive errors in the reformed laws but also in how the reform initiatives are administered. The shortcomings observed in one post-conflict environment tend to reoccur in subsequent ones. Moreover, failure to restructure legal system of a country to align with countries problems, challenges and conflicts often present nightmare in the drafting of viable and substantive laws in countries that have been experiencing civil conflicts.

Countries emerging from conflicts like Somalia are faced with challenge of dealing with fragile legal system. These countries are characterized by lack of universal law to bind the society together which often results to lawlessness. In addition, the indigenous legal system more often is inconsistent with civil laws which further make it hard to harmonize the legal framework system of the land (Giorgetti, 2014). It also argued that states emerging from conflict are deficient of legal experts and resources to kick-start the process of legal restructuring. As a result, the country turns toward the international

community through agencies like the United Nations for support and bilateral organization for support in restructuring its legal framework (Ahmed, 2014). However, it is not empirically clear what are the roles played by the international community in matters related to legal restructuring.

The prevailing view within the international community posits that the establishment of the rule of law is a fundamental precursor to the transition from a state of war to one of peace (Sannerholm, 2007). In pragmatic terms, this commonly manifests in initiatives focused on the criminal justice system. However, there is frequently an oversight when it comes to extending the principle of rule of law to other areas such as administrative law, governance, and economic management. Consequently, global entities engaged in the reconstruction of societies ravaged by conflict tend to prioritize rule of law initiatives that are narrowly confined to public sector reform. Another important role for international community is to help national countries in conflict or emerging from conflict is to consult each other and discuss what their own priorities and strategies should be (Fedotov & Solomon, 2011). This role as facilitator of national consultations, bringing together other local actors, is one of the most useful and appropriate for international actors in the post-conflict justice sector (OHCHR, 2006), helping to identify and encourage local actors like the civil groups, Human Rights groups participate in legal system reforms. Nevertheless, the success of legal reforms conducted by international actors remains unclear and whether the reforms are sustainable.

In Bosnia and Herzegovina, the overhaul of the legal system was largely orchestrated by international actors. Initiated in preparation for potential European Union (EU) membership, Bosnia has enacted various legal reforms aimed at addressing its current socioeconomic and political challenges (Morati & Sabic-El-Rayess, 2009). The goal was

to consolidate a fragmented legal system into a unified, de-politicized, and inclusive legal framework. However, the Dayton Agreement underpins Bosnia and Herzegovina's legal structure, creating a complex, decentralized system based on ethno-political power-sharing. There is a lack of domestic political will to confront the significant legal challenges, with most reforms being the result of external pressure from the international community (Dizdarevic, Sali-Terzic & Huremagic, 2006). After intense negotiations, a political document was agreed upon that fell short of the international community's initial aspirations, and it was expected to undergo further modification during its translation into specific legal reforms and implementation.

Vietnam has been the theater of ongoing internal and external strife and has been subject to various forms of international influence, including that of China, France, the former Soviet Union, and the United States. The legal system of the contemporary Socialist Republic of Vietnam reflects the layered impacts of Confucianism, Colonialism, and Communism, along with indigenous traditions (Ben-Asher, 1998). The Vietnamese war of 1955-1975 was catalysed by international community influence characterized by socialism (North Vietnam) and capitalism (South Vietnam). The aftermath of the war where North Vietnam won led to legal reforms that were leaned toward socialism.

Liberia and Sierra Leone are war torn countries. The Liberia war began in 1989 while civil war in Sierra Leone began in 1991. In Liberia both the first war 1989-1996 and second war 1999-2003, was characterised by divergence in ideologies, political inclination and legal system framework (Carter, 2008). Likewise, Sierra Leone the civil war of 1991-2002, between Sierra Leone and Revolutionary United Front (RUF), was also as a result of political ideologies coupled by weak legal system. In addition, the Sierra Leone war had much influence of international foreign countries (Hayner, 2007).

In the end of the wars, both countries, Liberia and Sierra Leone resorted to the aid of the international community for aid and legal reforms (Sawyer, 2008). However, Liberia and Sierra Leone today still struggle with massive challenges pertaining to the rule of law.

Prior to colonization, the sole authoritative source of law in Somalia was its indigenous customary law, Xeer (Le Sage, 2005). The division of Somalia during the Scramble for Africa led to its territory being partitioned among France, Great Britain, Italy, and Ethiopia. Each colonial power imposed its own legal structures on the Somali population, much like in many other African countries at the time (Hoehne, 2006). The British and Italian authorities took markedly different approaches to governance. British rule was indirect, implementing an auxiliary judicial system based on British common law and the Indian penal and criminal procedure codes while still retaining the use of Somali customary law and Sharia law in some domestic contexts (Wauters, 2013; Battera & Campo, 2001). On the other hand, Italian authorities fully settled in the region and superimposed their own civil and penal codes on the Somali population.

Upon achieving independence, the Somali government aspired to unify the disparate legal systems into a single cohesive framework (Le Sage, 2005). This entailed the amalgamation of four disparate systems: British common law, Italian (continental) law, Islamic Sharia law, and traditional Somali Xeer. Consequently, in 1962, the Somali National Assembly enacted a "Law on the Organisation of the Judiciary." This law designated Italian law as the primary source for civil, commercial, and penal issues, while Anglo-Indian law was maintained for criminal procedures (Pegg & Kolstø, 2015). Sharia law continued to govern in family, inheritance, and minor civil cases, and Xeer remained the norm for resolving clan-based disputes. Despite these attempts at legal unification at the national level, local governing bodies often persisted in using their extant legal

frameworks, leading to ongoing jurisdictional disputes and inconsistencies in the application of laws and procedures.

In 1969, a military coup led by Siyad Barre, and his Supreme Revolutionary Council (SRC) overthrew the existing government in Somalia (Wauters, 2013). Under Barre's leadership, the state adopted 'scientific socialism,' a communist ideology backed by the Soviet Union. The regime sought to consolidate its authority by concentrating legislative, executive, and judicial powers within the SRC (Le Sage, 2005). A new civil code, largely influenced by the Italian legal system but executed in an authoritarian manner, was instituted. A National Security Court (NSC) was established with expansive powers, including the authority to detain civilians and supersede lower court jurisdictions.

The fall of the Barre regime in 1991 led to a state of anarchy, with different armed factions and regional bodies exerting control over various parts of Somalia (Warsame, 2012). This situation prompted a United Nations intervention in 1992, authorizing United Nations Operation in Somalia II (UNOSOM II) through resolution 865. UNOSOM II had a broad mandate, including the reconstitution of Somali legal, judicial, and penal systems (Wauters, 2013; Ganzglass, 2018). In essence, UNOSOM II not only facilitated the rebuilding of Somalia's judiciary but also effectively functioned as the legislative and judicial authority, thereby wielding more power than the pre-civil-war government.

UNOSOM II faced significant challenges that led to its ultimate failure. Two main reasons stand out. Firstly, the selection of judges and police officers was done without consulting local militia leaders and civil authorities, which led to tensions and limited the effectiveness of the reconstituted institutions (Le Sage, 2005; Carter, 2008). Secondly, the imposition of the 1962 laws in a top-down manner disregarded existing local legal

initiatives, leading to enforcement issues and increasing local political unrest (UN, 1994). The situation in Somalia continued to deteriorate, with increasing insurgencies and an inability to protect civilians. Concerns for the safety of UN personnel led to the termination of the UNOSOM II mission on March 31, 1995, as outlined in resolution 954, which also empowered UNOSOM II military forces to take all necessary actions for the safe withdrawal of the mission.

When the Transitional Federal Government (TFG) was established in 2004, with the support of the international community, it faced significant problems in re-establishing administration and the rule of law across the whole of Somalia (Le Sage, 2005). The Transitional Federal Government (TFG) was not successful in gaining significant authority over the diversified and fractured legal environment in Somalia, which is comprised of a complicated interaction between numerous judicial systems.

In today's Somalia, there are four primary systems of justice in operation, including the official central and regional governments, the informal clan system known as 'xeer,' Islamic sharia courts, and a patchwork of civil society and militia-led initiatives (Mustafa, 2018). These contrasting systems not only cause a great deal of uncertainty, but they also often result in acrimonious jurisdictional conflicts. Each system has its own advantages and disadvantages, and the combination of these systems results in a complex legal framework that makes it difficult to reestablish coherent government and law enforcement.

This legal intricacy is made much more difficult by a variety of variables. To start, there is an insufficiency of sufficient judicial training inside the formal institutions, which weakens both their efficacy and their legitimacy. According to Peschka and Emery

(2011), a fundamental problem is the widespread mistrust that the general public has toward these formal institutions, which often prompts individuals to seek out more conventional or religious forms of justice. Last but not least, some Islamic forces want to enforce a more fundamentalist interpretation of sharia law, which adds still another layer of complication and stress to an already fractured legal environment. However, it lacks the capacity to look beyond arbitration and see the root causes of conflict in order to avoid the re-occurrence of a conflict. Moreover, actors are hesitant in investing time, human and financial resources in this process though lately a few international players have joined like the UN and AMISOM with aim of restructuring of the legal systems in Somalia (AMISOM, 2013). This study therefore seeks to analyse the role played by the international community in restructuring the legal systems in Somalia towards building greater respect and protection for human rights.

## **1.2 Statement of the Problem**

Countries emerging from conflicts like Somalia are faced with challenge of dealing with fragile legal system. Somalia is characterized by lack of universal law to bind the society together which often results to lawlessness. In addition, the indigenous Somali legal system is inconsistent with civil laws which further make it hard to harmonize the legal framework system of the land. Thus, rebuilding Somalia's formal justice system is a highly challenging, complex, and long-term undertaking. As a result, the country turns toward the international community through agencies like the United Nations for support and bilateral organization for support in restructuring its legal framework (Ahmed, 2014; Giorgetti, 2014; Kristina, 2005). However, Baker (2014) and AMISOM, (2013) argue these actors are hesitant in investing time, human and financial resources to the fragile legal system in Somalia. In addition, it is not empirically clear what are the roles played

by the international community in matters related to legal restructuring. The current study sought to fill these knowledge gaps by analysing the role played by the international community in the restructuring of the legal system in Somalia.

### **1.3 Objective of the Study**

The general objective of the study was to analyse the role played by the international community in the restructuring of the legal system in Somalia, mainland. The specific objectives of the study were:

- i. To assess the status of the immediate Somali mainland legal systems.
- ii. To investigate the role of international community in restructuring the legal system in Somalia, mainland.
- iii. To examine the key international players and their purpose in restructuring of justice sector in Somalia, mainland.

### **1.4 Research Questions**

- i. What is the status of the immediate Somali mainland Legal systems?
- ii. What is the role of international community in restructuring the legal system in Somalia, mainland?
- iii. Who are the key international players and what is their purpose in restructuring of justice sector in Somalia, mainland?

### **1.5 Rationale and Justification of the Study**

Weak legal system framework in Somalia remains the major hurdle to sustain growth, peace and long lasting social-economic stability of the country. There have been many actors attempting to remedy the situation in Somalia by helping in the restructuring of the legal system framework including UN, AMISON and NGOs. However, due to the

complexities to march the local xeer laws in Somali with modern laws, coupled with civil conflict and religion ideologies, it the actors become hesitant in this noble process. It is against this that the prosed study sought to determine the status of the Somali Legal systems, examine the role of international community in restructuring the legal system in Somalia and also the determine the role of the Key International players in restructuring the justice sector in Somalia.

### **1.6 Significance of the Study**

This study could be important for the government of Somalia, the contribution it makes to diplomacy, and the work of future scholars. This research could be helpful to the Somali administration, particularly with regard to issues concerning the establishment of a judicial system. The results of the research may also be enlightening to the Somali government on the involvement of other stakeholders in the restructuring of the legal system in Somalia. These stakeholders include the community, governmental institutions, NGOs, and other stakeholders. In addition, the research may provide light on the difficulties and opportunities involved in harmonizing the informal justice systems, as well as how international organizations might work with local communities to include them into the organization of institutions responsible for rule of law and justice. This information could be gleaned from the study. This research could also lead to a better understanding of the link between the role of the international community and engaging the conventional governance mechanisms.

Academically, this study holds several merits. First, it enriches the existing body of literature concerning the functionality of informal justice systems in post-conflict states. By focusing on the role of the international community in engaging with these systems,

the study adds an important dimension that is often overlooked but is crucial for understanding international relations and development initiatives.

The study serves as a fertile ground for academic debate and future research. It offers scholars a complex, controversial yet highly relevant subject matter that intersects law, governance, international relations, and development studies. This multi-disciplinarity is expected to catalyse intellectual discussions and stimulate further research in these interconnected fields.

the research fills a noticeable gap in contemporary academic literature. While there has been some focus on the challenges faced by countries in transition from conflict to stability, little scholarly work has specifically examined the role of international bodies in shaping the justice sector. Therefore, this study serves as a critical resource for understanding how to formalize informal justice systems through a harmonized approach. This, in turn, could fortify the overarching formal justice systems in Somalia and other similarly situated nations.

### **1.7 Scope of the Study**

The study opined to determine the status of the Somali Legal systems, examine the role of international community in restructuring the legal system in Somalia, mainland and determine the role of Key International players with initiatives in the Justice sector, examine their programs and their purpose of fit in restructuring the justice sector in Somalia, mainland. The scope of this research was confined to examining the legal system of Somalia and the involvement of the international community and other stakeholders in the process of reconstructing the legal framework. Special emphasis was placed on Somali legal experts, statute law, case law, the findings of several studies on

the legal and judicial sector, and the reports of commissions formed over the years to assess various facets of the sector in Somalia.

### **1.8 Limitation of the Study**

This study was limited to analysis of the role played by the international community in the restructuring of the legal system in Somalia mainland and it only focused on Somali government officers, legal experts, scholar from City University of Mogadishu, law reform officials, NGO representative (UN), civil group official and clergyman. The variables of focus were status of the immediate Somali mainland legal systems, international community, Key International players with initiatives in the Justice sector and restructuring the legal system in Somalia, mainland. This study specifically focused at key respondents of interest who are knowledgeable about Somali legal system, status of the immediate Somali legal systems, role of international community and key international players in the restructuring of Somali legal system. study pertains to the availability of participants due to their busy schedules. To counteract this, the researcher took the proactive step of issuing written appointment letters well in advance. This approach not only respects the participants' time but also enhances the likelihood of their availability for the study, thus potentially increasing the response rate.

Another limitation is the potential unwillingness of some participants to partake in the study. This could stem from various concerns, such as mistrust or fear of the potential misuse of their information. The researcher attempted to alleviate this by ensuring the confidentiality of participants' identities and stressing that the collected data is strictly for academic research purposes.

A further constraint may come from the participants themselves, in the form of withholding or skewing information, either intentionally or subconsciously. To mitigate

the impact of this limitation on the research findings, the study emphasized the importance of candidness. Participants were encouraged to be as forthright and honest as possible during their contributions, thereby reducing the likelihood of biased or incomplete data.



## 1.9 Operational Definition of Key Terms

<b>International community:</b>	Refers to external parties including foreign countries, diplomatic bodies, non-governmental organizations and other external parties involved in legal restructuring as in the context of the study.
<b>Justice sector:</b>	Defines the justice system of a country or territory, organization and dispensation of judicial services.
<b>Key International players:</b>	Refers to external entities like foreign nations, non-governmental organizations like the UN, other foreign public institutions, which are of importance in the legal restructuring of laws in a country in conflict or emerging from conflict as in the context of the study.
<b>Legal requirements:</b>	Legislation and Acts employed to guide the public behaviour and activities.
<b>Legal system:</b>	Defines the structure, formation and interpretation of the legal formwork of a country or territory.
<b>Restructuring the legal system:</b>	It is the act of reviewing, inserting new clauses, deleting some existing clauses and aligning the laws of the land as per the socioeconomic and political issues of a country.
<b>Mainland</b>	Used in the study to refer to Somalia country excluding Somaliland and Puntland.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

The chapter provides a structured overview of pertinent theories and the conceptual framework that underlie the study. Within this context, it elaborates on the theoretical framework, drawing connections to empirical literature to underscore the relevance and applicability of the chosen theories. Furthermore, this chapter identifies gaps in existing research that the current study aims to address. By doing so, it establishes the academic necessity of this research and positions it within a broader scholarly discourse.

#### **2.2 Empirical literature**

The subsequent section is dedicated to the review of empirical literature, which encompasses studies previously conducted by other scholars in the relevant field. This body of literature serves as an empirical foundation for the study and is organized in alignment with the study's objectives. By examining and critiquing these pre-existing works, this section not only lends credence to the current study but also identifies areas that have been insufficiently explored, thereby elucidating the research gaps that this study aims to fill.

##### **2.2.1 The status of the immediate Somalia, mainland Legal systems**

The complex and multi-layered nature of Somalia's legal landscape poses a unique set of challenges for scholars, policymakers, and the international community. Multiple, conflicting sources of law—including state law, customary 'xeer' law, and Islamic Sharia—create a volatile situation in which determination of jurisdiction becomes a major issue (Le Sage, 2005; Contini, 1967). Moreover, the historical legacy of colonial

rule has left the Somali legal system with additional complexities in the form of British common law and Italian continental law, making harmonization an uphill task (Bradbury et al., 2003).

International interventions have, in principle, sought to create a robust, coherent legal system for Somalia. These interventions emphasize a variety of strategies: consensus-building among different stakeholders, educational and infrastructural support to the judicial system, and empowerment of the Somali public through legal aid and awareness programs (Wauters, 2013). However, the legal system remains fragile, undermined by a pervasive culture of disrespect for rule of law and ongoing jurisdictional conflicts among local authorities (Maru, 2008).

Menkhaus (2003) stresses the significance of gaining a knowledge of the social contracts that serve as the foundation for traditional Somali communities throughout his research. He contends that any effort to organize or unify the Somali legal system must have a high level of sensitivity to the underlying social contexts in order to be successful. This demonstrates the need for a "bottom-up" approach, as opposed to a "top-down" method, which has often been criticized for its lack of input from locals and an awareness of their context (Lewis, 2002; Menkhaus, 2003).

The engagement of foreign organizations such as the United Nations has occasionally resulted in a donor-driven strategy, in which the demands and realities of donors from outside the region are prioritized above those of the local community. According to Powell (2014), although foreign help is essential, the focus of such support should be on enhancing the functioning of existing local institutions rather than imposing new external frameworks. This is particularly important given the context of Somalia, where foreign

operations have sometimes been regarded as neo-colonial undertakings, consequently limiting their efficacy and acceptability (Harper, 2012). This is especially pertinent given the situation of Somalia.

Scholars such as Ingiriis (2016) highlight the significance of "localized peacebuilding," which proposes a shift away from a "one-size-fits-all" international policy and toward more tailored, localized efforts that are informed by the people who will be most impacted by them. These efforts are informed by the people who will be most affected by them. The objective here is not to completely give up on international participation; rather, it is to readjust such involvement in a way that shows respect for the realities and norms of the local community.

Therefore, in order for a unified legal system to take root in Somalia, there would need to be a collaborative effort on the part of foreign organizations, Somalia's local administrations, and the country's civil society. This strategy should strive to balance the formal laws with the existing, deeply rooted informal institutions, and it should do so in a manner that respects the cultural and social complexities that are unique to the Somali people (Gardner & El Bushra, 2004).

Scholars have also weighed in on the issue. Hersi's 2009 study on the Somaliland legal system revealed that traditional xeer law continues to be dominant, with formal laws often being disregarded. Maru (2008) suggests that harmonizing the legal system in Somalia is possible but stresses that this could be achieved only by allowing customary law and Islamic courts to operate within an overarching framework, such as the Transitional Federal Charter (TFC).

Extremist groups in the country further complicate the situation. Their insistence that xeer is the only acceptable legal system reflects a broader resistance against the perceived intrusion of foreign norms and the undermining of local customs. This perception poses yet another layer of challenges in the ongoing efforts to restore and formalize rule of law in Somalia (Hoehne, 2006).

### **2.2.2 The role of international community in restructuring the legal system in Somalia, mainland**

The international community has been actively involved in helping Somalia recover from the scourge of civil war through supplying urgent humanitarian aid and orchestrating initiatives focused on peace and reconciliation (Ahmed, 2014). Additionally, these international actors have collaborated with the Federal Government of Somalia to institute policies aimed at establishing rule of law within the country.

Somalia's history is fraught with turmoil, experiencing brief intervals of peace amid prolonged periods of strife, including domestic conflicts, external invasions, and civil wars, culminating in the collapse of the state in 1991. This lawlessness has now persisted for more than three decades (Giorgetti, 2010). Despite this volatile backdrop and beyond the realms of customary and Sharia law, the essence of Somali statutory legal culture remains, albeit in a fragmented state. Both local and international actors must work diligently to rehabilitate it. Nonetheless, unique Somali statutory traditions persist and form a base on which a legal framework can gradually be built—one that most Somalis will find acceptable, that is consistent with Somali customary law, and that is rooted in moderate ideologies while promoting institutional growth and human rights (Lyons & Samatar, 2010).

According to a study by Giorgetti (2014), Somalia's post-conflict rebuilding should incorporate a strong component of international law for the country to reintegrate successfully into the global community. However, the study falls short in explaining the role the international community could play in reshaping Somalia's legal infrastructure. Moreover, the research relies solely on secondary sources without incorporating primary data, such as interviews or semi-structured questionnaires, thereby presenting a methodological void.

According to Menkhaus (2003), the duty of the international community is not limited to assisting in the reconstruction of the formal legal system; rather, it entails gaining an understanding of and incorporating into the formal system informal justice systems that are functional and broadly recognized, such as Xeer. Because the present parallel systems lead to confusion and, more often than not, conflict (Menkhaus, 2003), this would require taking a "hybrid" approach, which would combine formal and informal systems.

According to Harper (2012), it is essential for any interventions to be culturally sensitive and anchored on an awareness of the traditions and norms that are prevalent in Somalia. In light of the fact that the local populace often regards foreign legal frameworks as being forced and illegitimate, the international community has to engage closely with local leaders to guarantee that the changes are both successful and acceptable (Harper, 2012).

According to Bryden and Brickhill (2010), the participation of the international community is essential; nevertheless, it is necessary for this engagement to be planned and consistent in order to be effective. According to Bryden and Brickhill (2010), the absence of a unified international strategy often results in a duplication of efforts and

sometimes even works to undermine the goals of developing a legal system that is capable of performing its functions.

According to Powell (2014), including the rights and needs of women into the judicial system is an underemphasized component of the problem. In light of the fact that traditional Somali legal systems might have patriarchal tendencies, it is essential for foreign interventions to take gender sensitivities into account while formulating and carrying out plans for legal reform (Powell, 2014).

Basing on theoretical and practical analysis, Ahmed, (2014) studied constitution-making in Somali from 1960–2013. Ahmed, (2014) established that the colonisation of Somalia by different powers, British (Somaliland), French (Djibouti) and Italians (Somalia proper) which resulted to varied international legal framework that made it hard to come up with legal system. Likewise, Sannerholm, (2013) indicated that though the international community has been playing role of restructuring the Somali legal framework system, the role by the international community has not been very explicit in in restructuring the Somalia legal system featured by varied foreign legal traits.

### **2.2.3 Key International players in the justice sector, their programs and their purpose of fit in restructuring the justice sector in Somalia, mainland**

The restructuring of legal framework/ system in any country requires the effort of many key players. Some of the key players are people, siting government, NGOs, other private/public institutions, and international communities like the UN, women and youth groups among other groups (Sannerholm, 2007). Strengthening the justice system at the

federal and state levels is a critical element for consolidating Somalia's overall federal system, supporting the peaceful resolution of disputes and addressing criminal accountability necessary for sustaining peace (Bruton & Williams, 2014). Progress on the further development and implementation of an inclusive institutional and organizational framework for Somalia's justice system, including the judiciary and courts with the involvement of key stakeholders, ideally enshrined in the revised federal constitution, state constitutions and relevant legislation, will put in place a strong platform for building trust in state institutions among Somalis (Bagayoko, et al., 2016). Proper coordination with actors may ensure that the justice system being developed aligns with issues affecting the people of Somalia.

The formal justice system, the informal justice system, and hybrid mechanisms are the primary players operating within the justice sector. According to Isser (2011), formal mechanisms get both their structure and their authority from the laws, rules, and regulations that are enacted by the government. They function as an integral component of the government and get funding from the state. According to M'Cormack (2017), their job is to interpret the law, find a resolution to any controversies that may arise about the law, and establish who is responsible for any infractions of the law. In governmental structures with a federal structure, the authority of a particular federal institution within the nation-state may also be the source of the formal judicial procedures.

Prominent figures in the formal justice system often encompass judicial authorities like judges, prosecuting lawyers, defense counsels, and other legal staff who facilitate the court's operations, as well as professionals offering court-required services to victims (Baker, 2014). Additionally, the formal justice sphere sometimes extends to non-judicial methods such as mediation, arbitration, or restorative justice practices (Ganzglass, 2015).

Personnel in law enforcement, including the police, frequently collaborate with both formal and informal justice mechanisms.

Contrastingly, informal justice mechanisms draw their authority from societal or communal frameworks rather than governmental structures. These can encompass cultural or religious groups, traditional systems, or local associations (Lima & Gomez, 2020). Community-chosen authorities often serve at the core of the informal justice mechanism, officiating in varied settings, ranging from formalized court-like environments to casual community spaces or private residences (Ahmed, et al., 2020). These individuals might be remunerated by the disputing parties, an external organization, or offer their services pro bono as a community obligation (Baker, 2014). Community members and the broader public also frequently engage in these informal procedures and in the implementation of the resultant decisions.

According to Johnson (2016), the functioning of the legal sector is also significantly impacted by the education and training of those who work in the field. In order to maintain a competent court system, it is essential to have institutions that provide specialized training for judges, attorneys, and legal assistants. In addition, international organizations often provide specific training in order to enhance the ability of the formal justice system in countries that are afflicted by violence, such as Somalia (UNDP, 2018).

When it comes to the informal justice processes, a research conducted by Menkhaus (2014) found that informal systems, notably in Somalia, often serve as essential safety nets for the settlement of disputes. This is especially true in situations when the formal system is either insufficient or not trustworthy. According to Peterson (2017), there have

been certain instances in which informal systems have been effectively merged with formal institutions in order to increase community confidence and local ownership.

Studies have shown that groups within civil society may play an important role as intermediates between the general public and institutions within the justice system (Smith & Williams, 2015). This finding relates to the part that civil society plays in the process of influencing the justice system. They can make it easier for the people to become involved in the process of policy change and can serve as watchdogs to guarantee that the government is held accountable in areas pertaining to justice (CIVICUS, 2019).

Last but not least, the role of the international community often goes beyond only providing financial and institutional help. For instance, the African Union's mission in Somalia (known officially as AMISOM) has been actively engaged in training law enforcement officials to standardize methods and procedures across areas (African Union, 2020). According to Jones and Elgin-Cossart (2011), the purpose of these initiatives is to both strengthen the formal justice sector and align it more closely with traditional Somali traditions in the hopes of constructing an overall system that is more harmonious and effective.

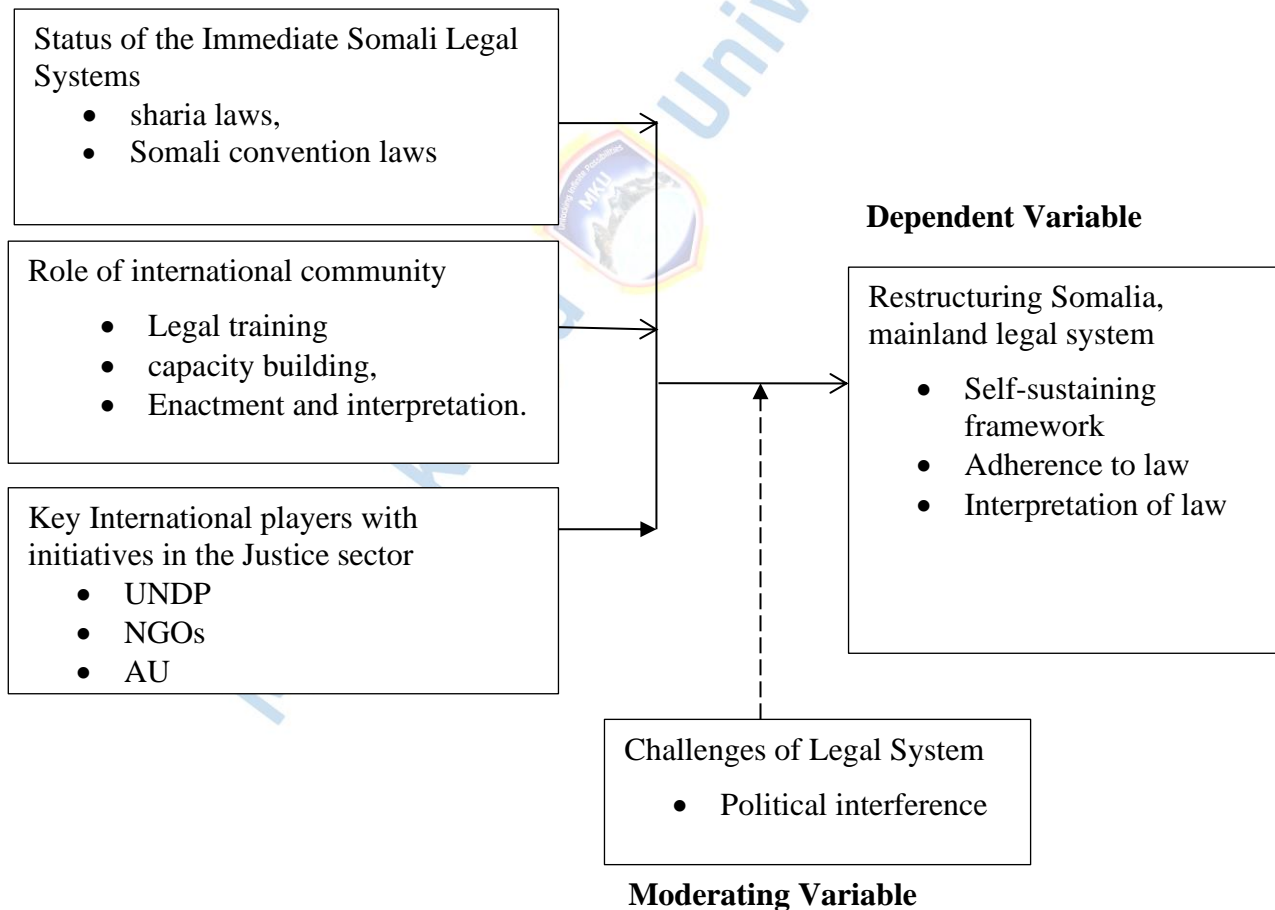
Using a participatory approach, Rama et al. (2012) conducted research that focused on bolstering civil society in Somalia through the involvement of key entities like the EU and DfID. While the study acknowledged the pivotal role of civil society in nation-building efforts—especially in legitimizing the constitutional process and state authorities—it left unexplored the specific contributions of civil society to the justice sector (Rama, et al., 2012). Similarly, a study by ICAI (2017) on UK aid's impact in conflict-ridden Somalia found agreement among major stakeholders, such as

international organizations and other donors, on the importance of socio-economic aid. Nevertheless, this research fell short of analyzing how these key international contributors are actively influencing the justice sector in the country.

### 2.3 Conceptual Framework

A conceptual framework, also known as a diagrammatic depiction, is one that illustrates the connections between different factors. The conceptual framework for how the variables of the research relate to one another is shown in figure 1.

#### Independent Variables



**Figure 1: Conceptual Framework**

**Source: Researcher, (2021)**

The independent variables of the study include the status of the immediate Somali legal systems, role of international community and key international players with initiatives in the justice sector. The dependent variable is restructuring Somalia, mainland legal system. It is projected that status of the immediate Somali legal systems, role of international community and key international players with initiatives in the justice sector will have significant influence in the restructuring Somalia, mainland legal system. It is also theorized that political interference influences the role played by the international community in the restructuring of the legal system in Somalia, mainland.

## **2.4 Theoretical literature Review**

This study was guided by three theories namely: The theory of Change, Institutional Theory and Stakeholder theory.

### **2.4.1 Theory of change**

The Theory of Change originated in the 1990s from the disciplines of program theory and evaluation, serving as a novel approach for scrutinizing the theoretical foundations of social and political change initiatives (Weiss, 1995). Rather than solely assessing a program's efficacy, the Theory of Change also delves into the mechanisms that make the program effective (Stachowiak, 2013). This concept is deeply embedded in various academic fields such as environmental and organizational psychology and has increasingly been linked to sociology and political science (Clark, 2004).

Weiss (1995) advanced the Theory of Change as a framework for elucidating the small, incremental steps that culminate in achieving a larger, overarching goal, as well as the linkages between activities and the subsequent outcomes at each phase. Brest (2010) urged architects of intricate community-based policies to articulate the theories of change

that inform their work, arguing that this clarification would both enhance evaluation plans and reinforce claims of anticipated outcomes. Vogel (2012) defines the Theory of Change as a deliberate model delineating how a given initiative, be it a policy, strategy, or program, leads to intended outcomes through a sequence of early and intermediate results. The concept is versatile, with different forms including discursive, procedural, content-based, attitudinal, and behavioral applications.

In the middle of the 1990s, an innovative framework called the Theory of Change was developed with the purpose of investigating the fundamental concepts that lie behind efforts that are aimed at social and political change (Weiss, 1995). It goes beyond just measuring the efficacy of a program to investigate the operational procedures that contribute to its success (Stachowiak, 2013). Interdisciplinarity is at the heart of this theory, which draws inspiration from areas such as environmental and organizational psychology while also gaining ground in sociology and political science (Clark, 2004).

Weiss (1995) developed an enlarged version of the Theory of Change as an explanation model for the step-by-step processes and activities that are related with reaching a more comprehensive goal. Brest (2010) urged those responsible for the planning of community-based projects to provide a detailed explanation of their theories of change in order to strengthen their assessment frameworks and provide evidence to support their forecasts of the outcomes. According to Vogel (2012), the Theory of Change is conceived of as a deliberate model that maps out how an effort, whether it be a policy or program, successively results in desirable early and intermediate outcomes.

Smith (2018) has stated that the Theory of Change is especially useful for conflict-resolution efforts because it provides a systematic framework to understanding the

complex interaction between diverse actions and the effects of those interventions. Because of its adaptability, the theory may be used in a variety of ways, including those that are discursive, procedural, content-based, attitude-based, and behavioral (Jackson, 2016).

The data analysis within the Theory of Change methodology holds the potential to integrate both process and effectiveness metrics into a unified assessment, thereby aiding in understanding the impact of an intervention in specific contexts and its suitability for expansion or adaptation. The Theory of Change serves as a useful tool for both planning and evaluating the achievement of intended results and impacts. In the context of the present research, the Theory of Change provides valuable insights into the process of overhauling the legal system to address societal concerns and issues.

#### **2.4.2 Institutional Theory**

Many academics, like Meyer and Rowan (1977) and DiMaggio and Powell (1991), have contributed to the Institutional Theory's development by doing in-depth study and developing the concept further. This theoretical approach investigates the persistent components of social architecture by investigating how institutions such as rules, norms, and routines obtain power as social behaviour standards (Meyer & Rowan, 1977). (Deephouse & Suchman, 2008) The Institutional Theory sheds light on how these components first manifest themselves, how they spread, how they are accepted, how they develop, and how they finally fade away.

Institutions are designed to be long-lasting social structures, and they are made up of cognitive-cultural, normative, and regulatory elements. They contribute stability and significance to the relationships of society, in addition to the resources and activities that

they provide. According to Dacin (1997), the spread of these institutions is accomplished by a wide variety of methods, including symbolic systems, relational frameworks, routines, and artifacts. According to the research of Lammers et al. (2017), even while institutions intrinsically represent stability, they are nevertheless prone to changes that may be either subtle or sudden.

According to Scott (1995), in order for an organization to be legitimate, it must comply to both its structural and its procedural institutional isomorphism. Conforming to the prevailing environmental norms and regulations is essential for an organization's continued existence. DiMaggio et al. (2004) drew attention to the fact that Institutional Theory places a strong premium on rational myths, isomorphism, and organizational legitimacy. According to Scott (1995), one of the most important tenets of this theory is the act of imitation, which is when businesses, rather than attempting to maximize the effectiveness of their decisions, look to other similar organizations for pointers on appropriate business procedures.

The Institutional Theory turns out to be really helpful. It investigates the characteristics of social structure that are both stable and subject to change, necessitating attention not just to the social consensus and conformity but also to the parts of social structure that are subject to change and disagreement. A robust legal structure would have its foundation on norms, rules, and schemas that have been in place for some time. This requires looking at how these building pieces come into being, how they spread, how they get accepted, how they change through time, and occasionally how they become.

### 2.4.3 Stakeholder Theory

Formulated by Freeman in 1984, Stakeholder Theory posits that the responsibility for generating value within a company is not limited to shareholders but extends to a broader set of entities referred to as stakeholders (Freeman, Wicks, & Parmar, 2004). In this context, stakeholders consist of various groups such as customers, suppliers, employees, and organizational leaders (Freeman et al., 2010). The theory asserts that examining business challenges through the framework of relationships between the organization and its stakeholders can lead to more effective problem-solving.

Viewed through the stakeholder lens, a business is a complex network of interrelationships among different groups that have an interest in its activities (Harrison et al., 2010). It falls under the purview of executives to skilfully manage and shape these relationships to maximize value creation for all stakeholders, while also overseeing the distribution of said value (Daramola, 2015). In instances where the interests of stakeholders' clash, executives are tasked with reconceptualizing issues in a way that addresses the needs of a wider array of stakeholders. In doing so, the potential for enhanced value creation for each stakeholder group is increased. Stakeholder Theory thus acknowledges that an organization's decision-making impacts a multitude of connected groups.

Taking Freeman's initial idea as a foundation, the Stakeholder Theory has developed to include an ethical perspective into the management of stakeholder relationships. This emphasizes the fact that ethical management may contribute to increased long-term value creation (Donaldson & Preston, 1995). This theory was built on Freeman's original idea. According to Carroll and Buchholtz (2014), ethical concerns are not only extra

obligations; rather, they are an essential component of stakeholder management and, as a consequence, value generation. In addition, the theory has been used in the field of corporate social responsibility (CSR), which proposes that businesses have a duty to factor in societal and environmental considerations in their decision-making process (Carroll, 1991). This interpretation of the idea was developed by Carroll.

According to Kaplan and Norton (1996), the Balanced Scorecard is often used as a tool to align an organization's performance indicators with its stakeholder goals. This is done from the standpoint of strategic management. This strategy makes it possible for executives to strike a balance between the competing interests of many stakeholders while still working toward shared corporate objectives. In addition, research conducted by Mitchell, Agle, and Wood (1997) presents the notion of stakeholder salience. This concept assists businesses in prioritizing their connections with stakeholders based on characteristics such as power, legitimacy, and urgency.

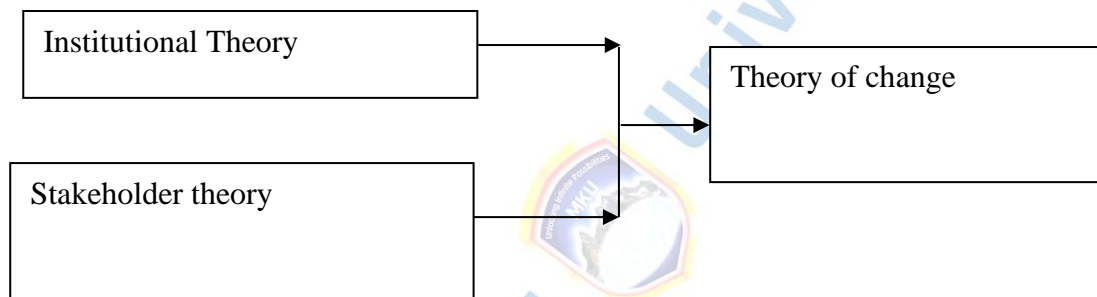
According to Crane and Matten (2016), the Stakeholder Theory has been steadily integrated into a variety of business disciplines, ranging from ethics to strategic management. This is due to the theory's ability to provide an all-encompassing perspective on the interactions that exist inside organizations. The increasing breadth of the application of the stakeholder theory reaffirms the need for executives to effectively manage a wide variety of interests and requirements, hence providing many pathways for the possible generation of value.

This theory was considered relevant to the study. Stakeholder theory was important in understanding the role played by various stakeholders in the development of lag system framework. As a theory of management, Stakeholder Theory concerns itself with matters

related to morals and ethics in organizational processes. The restructuring of legal framework/ system in any country requires the effort of many key players. Some of the key players are people, sitting government, NGOs, other private/public institutions, and international communities like the UN, women and youth groups among other groups.

## 2.5 Theoretical Framework

Theories play a significant role in facilitating the researcher to appreciate both the theoretical and contextual implication of a study. Figure 2.2 displays the theoretical framework for the current study.



**Figure 2: Theoretical Framework**

The theories that guided the study are theory of Change, Institutional Theory and Stakeholder theory. Stakeholder's theory advocates the involvement of all stakeholders in social process like policymaking or law restructuring. Institutional theory is relevant in explaining the process of reviewing social norms, values and polices in the process of restructuring or enacting legal framework of a country. A theory of change is a useful framework for planning activities and for evaluating whether desired outcomes and impacts have been achieved. In the context of this study, theory of change informs the processes in restructuring legal system framework in line with societal needs/issues.

## **2.6 Research Gaps**

Several research gaps are evident regarding the role played by the international community in the restructuring of the legal system particularly in the context of the study, Somalia. A study by Giorgetti (2014) on the application International Law in Somalia's Post-Conflict Reconstruction Giorgetti (2014) failed to indicate the role of the international community in the restructuring of the legal system in Somalia presenting conceptual gap. According to Ahmed (2014), an examination of the process of constitution-making in Somalia spanning from 1960 to 2013 reveals the intricate nature of Somalia's colonial history. The region was under the administration of different colonial powers, namely the British in Somaliland, the French in Djibouti, and the Italians in Somalia proper. This diverse colonial influence resulted in the establishment of distinct international legal frameworks, posing significant challenges in the development of a unified legal system. The many colonial administrations and their respective administrative and governance traditions engendered distinct colonial legacies among the populations of various territories. Despite the involvement of the international community in the reconstruction of Somalia's legal framework system, their position in this process has not been clearly defined or stated.

In their research, Mbote and Akech (2011) conducted a study on the justice sector and the rule of law in Kenya, using both primary and secondary data. Their findings indicate that Kenya has implemented substantial measures to establish the judiciary as a genuine protector of the rule of law. Nevertheless, the majority of Kenyans continue to face significant barriers in obtaining access to justice. The research examined the legal systems of Kenya and Somalia, highlighting the contextual disparity between the two. In

their study, Rama et al. (2012) conducted an investigation on the enhancement of civil society in Somalia. The researchers identified various potential roles of civil society organizations, which encompassed state-building activities. These roles included grounding the constitutional process and facilitating the establishment of a legitimate state and government. Additionally, civil society organizations were found to contribute to peace processes by addressing policy issues that impact people's lives and conflict factors. Furthermore, they played a crucial role in promoting the active involvement of local actors in both international and locally led peace processes. Lastly, civil society organizations were found to advocate for international policies pertaining to external conflict factors. Nevertheless, the research failed to provide an indication of the specific ways in which the civil society is contributing to the development and transformation of the judicial system in Somalia. The Institute of Chartered Accountants of India (ICAI) performed a research study in 2017 that focused on the provision of UK assistance in a nation ravaged by violence, with the aim of mitigating conflict and fragility in Somalia. Nevertheless, the research failed to provide insights into the specific contributions of major foreign actors in influencing the development of the judicial system in Somalia.

## **2.7 Recap of literature Review**

The chapter provided an overview of many hypotheses that serve as the foundation for the research. The research encompasses many ideas, including the theory of Change, Institutional Theory, and Stakeholder theory. The literature study revealed empirical evidence suggesting that there are gaps in information about the extent to which the international community is involved in the restructuring of legal systems. The assessment further identified conceptual, contextual, and methodological deficiencies in the existing studies. The following section outlines the research methods used in this study.

## CHAPTER THREE

### RESEARCH METHODOLOGY

#### 3.1 Introduction

The chapter outlines the methodology that guided the study in answering the research questions. The methodology adopted was largely informed by the nature of data to be collected. A research design selected best suitable for qualitative study. The location where the study was conducted was also presented in this chapter. The target population was set out. In addition, a description of research instrument to collect data, method of analysing and presenting collected data are also outlined in this chapter. Ethics to guide all process of preparing for the study, collecting data, engaging respondents and handling of data are also outlined in the chapter.

#### 3.2 Research design

When considering the use of case study technique, it is crucial to acknowledge its conformity with Yin's (2003) assertion that case studies are especially advantageous in research contexts where the boundaries between the phenomena being studied, and its environment are not immediately discernible. The technique used in this study enables a comprehensive analysis of the complicated activities within the Somali Legal systems, taking into account their complex nature and the participation of foreign parties (Denzin & Lincoln, 2005).

The utilization of the case study methodology enables the use of triangulation, which involves the incorporation of many approaches or data sources in research to cultivate a full comprehension of phenomena (Patton, 1999). This aspect has special significance in research pertaining to international community engagement, since it enables a

comprehensive examination of the many components involved, including socio-political dynamics and the intricacies of legal reorganization.

Stake (1995) asserts that case studies provide substantial advantages in the investigation and comprehension of underexplored subject matter. The present circumstances in Somalia align with the aforementioned characterization, particularly when considering the involvement of foreign actors in the process of legal system reformation, which may not have been comprehensively recorded.

Flyvbjerg (2006) presents a counterargument to the prevailing notion that case studies serve just as an initial approach to develop ideas for further systematic examination. The author posits that a case study has inherent value due to its distinctive insights, particularly when it presents a counterexample known as a "black swan" that challenges existing theoretical frameworks. The distinctiveness of the Somali environment lends significance to the potential value of the insights derived from this case study, which may contribute to the advancement of both theoretical understanding and practical applications in the field of international law and governance.

### **3.3 Location of the study**

The research was carried out in Somalia, specifically focused on the legal system framework in place inside the country. The term "Somalia mainland" refers to the original State of Somalia, which does not include Somaliland and Puntland. These regions now have their own systems of state administration, although they are not officially recognized as separate nations by the United Nations. The absence of adequate access to a just and equitable judicial system is a significant challenge for contemporary Somalia as it strives to achieve peace and rebuilding. The task of reconstructing Somalia's formal judicial system is an arduous, intricate, and protracted endeavor. Indeed, the

nation has been devoid of efficacious formal judicial institutions for a period exceeding twenty years. The establishment of justice, including the reformation of its institutions, their efficacy, and the restoration of public confidence in them, is an essential prerequisite for the establishment of peace and the promotion of sustainable development in post-conflict rebuilding efforts inside nations that have been deeply impacted by prolonged conflicts. Somalia is a nation located in the Horn of Africa that has seen significant conflict and warfare. The nation encompasses a landmass of 637,657 square kilometers. Somalia shares its boundaries with the Indian Ocean to the East and South, Kenya to the West, Ethiopia to the Northwest, and Djibouti to the North.

### **3.4 Data Collection Instruments and Procedures**

Data collection covered issues related to Somali Legal systems, the role of international community in restructuring the legal system in Somalia and the Key International players in restructuring the justice sector in Somalia, mainland. Data collection will be based on two major methods, document analyses and in-depth interviews.

Document analyses involved in-depth analyses and synthesis of published materials. The study relied on statutory law, case law, the reports of various studies on the legal and justice sector, commission's reports and other relevant material in Somalia, mainland. In addition, the study relied on documented material items related to legal system framework, the role of international community in restructuring the legal system and the role Key International players in restructuring the justice sector elsewhere across the globe.

Interviews are appropriate when gathering information by interacting one by one with an individual at a time. Interviews was used to collect data from legal experts, law reform

officials, legal experts from Somali government, legal scholars, NGOs representatives and civil group officials. Due to the geographical dispersion of the research groups, it was necessary to conduct interviews individually, since only one group could be accessed at a time. The inclusion of an interview facilitated a more comprehensive exploration of the subject matter, mostly attributable to the extended duration of verbal interaction. Interviews serve as a helpful means of acquiring insights into individuals' perspectives, understandings, and experiences.

Interview sessions were conducted with a panel of individuals including two legal specialists from the government, namely the attorney general and solicitor general, as well as a legal scholar affiliated with City University of Mogadishu. Additionally, two officials involved in law reform, a representative from a non-governmental organization (specifically the United Nations), a civic group official, and a cleric were also interviewed. These interviews took place at the separate offices of each participant. Interviews serve as a valuable means of obtaining valuable insights into individuals' perceptions, understandings, and experiences pertaining to a specific phenomenon. They can significantly contribute to the comprehensive collection of data and enhance our understanding of various aspects, such as the Somali Legal systems, the involvement of the international community in the restructuring of Somalia's legal system, and the key international actors involved in the reform of the justice sector in Somalia. The in-depth interview schedule is attached in appendix I.

### **3.5 Target Population**

Population is described as aggregate items to be studied, and a complete enumeration of all items is known as the census inquiry. Target population describes the universal collection of items, people, objects or events to be studied (Kern et al., 2016). Somalia

mainland has a population of 12,316,895 million people (UNFPA, 2014). Moreover, it is not logically possible to study the entire population under consideration because of limited time and resources. The study thus focused on key respondents of interest who are knowledgeable about Somali legal system, status of the immediate Somali legal systems, role of international community and key international players in the restructuring of Somali legal system. Thus, the study purposively targeted 30 participants comprising 4 government legal experts (attorney general and solicitor general), 2 legal scholars from City University of Mogadishu, 3 law reform officials, 9 NGO and UN representatives, 7 civil group officials and 5 clergymen.

### **3.6 Sampling procedure and Sample size**

The study focused on key respondents who are knowledgeable about Somali legal system, status of the immediate Somali legal systems. The respondents included government legal experts, legal scholars from City University of Mogadishu, law reform officials, NGO and UN representatives, civil group officials and clergymen. Moreover, the study is qualitative relying on interviews. In that regard, the target respondents have to be small and manageable. Thus, purposive sampling was used to select the 4 government legal experts, 2 legal scholars from City University of Mogadishu, 3 law reform officials, 9 NGO and UN representatives, 7 civil group officials and 5 clergymen. Purposive sampling is suitable when the target population is not readily available at the time of study. Prior appointment has to be made before accessing the study population.

**Table 1 Population and Sample**

Category	Number
Govt Legal Experts	4
Legal Scholars	2
Law reform officials	3
NGO/UN staff representatives	9
Civil Groups Officials	7
Clergymen	5
Total	30

### **3.7 Data Collection Instruments**

The study employed Interview Schedule for data collection among all the participants.

Interviews are a qualitative research method that relies on asking questions in order to collect data from individuals or groups. Interviews help researchers to understand the experiences, perspectives, and behaviors of the participants, as well as to gather contextual and subjective information on the research topic. Interviews also allow researchers to clarify and validate their understanding of the participants' responses, and to uncover unanticipated insights or emerging themes.

The interview guide used was structured into sections including the details on coding and the specific questions probed to the interviewees.

### **3.8 Data Analysis and Presentation**

This study heavily relied on qualitative data to be collected through in-depth interviews. Qualitative data are non-numerical in nature. Content analysis using NVivo was employed to analyse qualitative data. Content analysis involved identifying, analysing and interpreting patterns of meaning within qualitative data and reporting them in prose form. Qualitative data was transcribed by replaying the tape-recorded interviews and transcript conversations from the participants. The text transcript data was synthesised similar ideas were put together based on the themes outlined in the research objectives. Results based on qualitative data was presented in prose form. Quotation of key statements as said by respondents was conducted. The quotations of statements contained the date when data collection happened and unique identifiers of participants.

### **3.9 Ethical considerations**

An official authorization letter issued by Mount Kenya University will be used to get a research permission from the State of Higher Education in Somalia. The respondents/participants were asked to provide their permission indicating their voluntary agreement to take part in the research. At the commencement of the data collection, participants were duly notified that their involvement in the process was optional and that they had the prerogative to withdraw from the exercise should they see the inquiries as encroaching upon their privacy. The whole of the gathered data was only used for the sake of scholarly investigation. To ensure the confidentiality of the participants, a system of uniquely generated codes, referred to as Key Informant Interviews (KII1 through KII8), was used to maintain anonymity. Table 3.1 presents the classification scheme used for the purpose of representing the key informant interviews.

Confidentiality was rigorously maintained in this research, with a strong commitment to integrity and respect for the personal information provided by the participants throughout the data collecting process. The responders were provided with a consent form that included comprehensive details about the objective of the research. The intention behind this action was deliberate, aiming to inform the participants that the data they provide would be handled with utmost secrecy. It is important to note that the data will only be used for academic reasons, in accordance with the agreement between the researcher and the participants. The researcher also allowed for a question-and-answer session prior to distributing the surveys.

The researcher used measures to guarantee the secure management of obtained data, therefore maintaining the anonymity of respondents inside the researcher's records. The analyzed data was retained in computer files for a duration that allows for further examination or follow-up, if necessary, in the context of the research. The analyzed data was given in support of academic accreditation, as the final report was archived in a bound document and restricted to authorized individuals designated by the University. Upon the conclusion of the data collection phase, the researcher will proceed to distribute the debriefing form to every individual who participated in the study. The purpose of this approach is to enhance the participants' comprehension of the study's significance.

**Table 2: Coding System**

<b>In-depth interviewee</b>	<b>Code</b>
4 Government legal experts	KII 1-KII 4
2 Legal scholars from City University of Mogadishu	KII 5-KII 6
3 Somali Law reform officials	KII 7-KII 9
9 UN & NGO representatives	KII 10- KII 18
7 Civil group officials	KII 19- KII 25
5 Clergymen	KII 25- KII 30



## CHAPTER FOUR

### RESEARCH FINDINGS AND DISCUSSIONS

#### 4.0 Introduction

The purpose of this study was to analyse the role played by the international community in the restructuring of the legal system in Somalia, mainland. Specifically, the study sought to: assess the status of the immediate Somali mainland legal systems, investigate the role of international community in restructuring the legal system in Somalia, mainland and examine the Key International players with initiatives in the Justice sector, identify their programs and their purpose of fit in restructuring the justice sector in Somalia, mainland.

#### 4.1 Response Rate

The investigator aimed to gauge the rate at which respondents returned the completed research tools. Kothari (2004) defines this return rate as the ratio of research instruments that were fully completed and returned to the researcher once they had been given to the participants. For this study, a targeted sample of 30 individuals was chosen, which included 4 legal experts from the government, 2 academicians in law from the City University of Mogadishu, 3 officials involved in law reform, 9 representatives from NGOs and the UN, 7 officials from civil groups, and 5 clergy members.

For the purpose of data analysis, only the returned questionnaires were utilized. According to Bailey, Singarayer and Rhodes (2000), a response rate of 50% or higher is sufficient, and a rate above 70% is deemed very good. In this study, the response rate was 86.8%, making it more than adequate for data interpretation. After the initial stage of data coding and cleaning, some questionnaires had gaps in certain critical areas,

especially regarding major research variables. For these incomplete sections, a midpoint value was allocated on the relevant scales, as advised by Gillham (2008). The study's response rate is illustrated in Table 3.

**Table 3: Response Rate**

<b>Response</b>		<b>%</b>
Interviewed	30	100
Not Interviewed	0	0
Total Administered	30	100

**Source: Filed Data, 2023**

In light of the data presented in Table 3, all 30 individuals chosen for interviews consented to take part in the study, resulting in a 100% response rate. This is regarded as an exceptional rate of participation. As stated by Bailey, Singarayer, and Rhodes (2000), a response rate above 50% is considered sufficient, while a rate exceeding 70% is deemed very good. Therefore, with a response rate of 100%, the study achieved an excellent benchmark for subsequent analysis. In terms of gender distribution among the participants, a majority of 79.8% were male, compared to a minority of 20.2% who were female. This indicates a considerable gender imbalance within the study's participant sample. This gender disparity suggests that the study's sample was predominantly composed of male individuals, showing that most of the legal personnel in the country are male. Additionally, most of the respondents (68.9%) were aged between 40-50 years old and most of them were holders of bachelor's degrees as highest level of academic qualifications.

#### **4.2 Status of the Immediate Somali Mainland Legal Systems**

The first objective was to assess the status of the immediate Somali mainland legal systems. The KII were asked to explain the status of the Somali Legal systems. Based on

the responses from the respondents, it is evident that the immediate legal systems in Somalia mainland face numerous challenges and complexities. The country has been grappling with decades of political instability, armed conflict, and the absence of a centralized government, which has severely impacted the rule of law and the functioning of legal institutions. Somalia's legal system is characterized by a combination of customary law, Islamic law, and remnants of colonial-era legal frameworks. However, these systems often lack coherence and consistency, leading to fragmented and contradictory legal practices.

Additionally, the weak capacity and limited resources of the judicial sector, coupled with corruption and impunity, further hinder access to justice for the population. The good news is that efforts have been made to reform and rebuild the legal system, with international assistance playing a role, but progress has been slow and uneven. Strengthening the rule of law and establishing an effective and inclusive legal framework remain critical priorities for Somalia's mainland legal systems to ensure stability, promote human rights, and foster socio-economic development.

In an interview session with government legal experts, KII 1 and 2 said:

*“The Somali legal system, a complex tapestry of overlapping and often conflicting legal traditions, reflects the nation's diverse historical and cultural influences. As a country situated in the Horn of Africa, Somalia has endured a tumultuous history marked by colonial rule, civil war, and ongoing instability. This has resulted in a fragmented legal landscape that intertwines customary, Islamic, and formal legal frameworks” [KII 1, 2, 2023].*

Also, the respondents explained that:

*“At the core of the Somali legal system is Xeer, a traditional, customary law that has been practiced by Somali clans for centuries. Xeer is unwritten, passed down orally through generations, and based on consensus and negotiation. It emphasizes restorative justice, aiming to resolve disputes and maintain harmony within communities. However, its reliance on clan structures can contribute to perpetuation of existing power dynamics and inequalities. Islam has also played*

*a pivotal role in shaping the Somali legal system. Islamic law, or Sharia, is deeply ingrained in Somali culture and is often used in conjunction with Xeer to resolve personal and family disputes. Sharia is particularly important in areas related to marriage, divorce, inheritance, and religious matters, and offers some level of consistency and universality across the diverse regions of Somalia’ [KII 2,3, 2023].*

Moreover, Legal scholars from City University of Mogadishu gage their input by indicating that:

*In the 20th century, formal legal structures were introduced by colonial powers, particularly Italy and Britain, and later reinforced by the post-independence Somali government. These structures, based on European civil and common law, were intended to standardize legal proceedings and ensure a more centralized approach to governance. However, the formal legal system has struggled to gain widespread acceptance, especially in rural areas where Xeer and Sharia continue to dominate. The protracted civil war and the collapse of the central government in 1991 further complicated the Somali legal system. The absence of a unified national government has led to the emergence of regional and local administrations, each with their own legal systems and varying degrees of adherence to Xeer, Sharia, and formal law. This has created a patchwork of legal jurisdictions that can be confusing and inconsistent [KII 5, 6, 2023].*

The respondents further explained that:

*In recent years, efforts have been made to rebuild the Somali legal system and integrate its various components. The establishment of the Federal Government of Somalia in 2012 marked a significant step toward reestablishing a functioning legal framework. Nevertheless, the process of reconciling and harmonizing customary, Islamic, and formal legal systems remain a formidable challenge. The Somali legal system is a multifaceted and fluid entity, characterized by its customary, Islamic, and formal legal traditions. Though each of these traditions offers its own strengths and insights, their coexistence and intersection have resulted in a convoluted legal landscape that is difficult to navigate. As Somalia continues to strive for stability and unity, the integration and harmonization of its diverse legal systems will be a critical step toward a more just and equitable society [KII 7, 8, 9, 2023].*

In an interview with UN & NGO representatives, KII 10, 11 and 12 explained that:

*“Over the past several decades, Somalia has experienced civil war, political fragmentation, and the rise of various Islamist groups, all of which have had a significant impact on the country's legal landscape. As a result, the legal system in Somalia today is a patchwork of customary, religious, and statutory law, with varying degrees of influence and enforcement depending on the region and the*

*actors involved. Despite the introduction of modern statutory laws and the influence of Islamic law, Xeer continues to be an essential part of the legal framework in Somalia, particularly in rural areas where the central government has limited reach and control'' [KII 10, 11, 12, 2023].*

In a further interview with civil group officials, KII 19, 20, 21 and 22 said that:

*‘‘The statutory law in Somalia is derived from a mixture of colonial-era legal codes, post-independence legislation, and various regional laws. The country's legal system is officially based on a combination of civil law and Islamic law, with the 1962 Somali Penal Code and the 1974 Somali Civil Code forming the basis of the country's statutory laws. However, the ongoing political fragmentation, lack of a strong central government, and the proliferation of regional administrations have resulted in a disjointed and inconsistent application of statutory law across the country. The Somali legal system is a complex and evolving mix of customary, religious, and statutory law, with its status heavily influenced by the country's history and ongoing political instability’’ [KII 19, 20, 22, 2023].*

The respondents were also asked to indicate the number of types of legal systems available in Somalia (Probe, sharia laws, Somali convention laws). Based on their responses, the legal system of the country consists of multiple types of legal frameworks. Firstly, customary law, also known as "Xeer," is a traditional system of justice derived from Somali customs and practices. It encompasses a range of customary norms and rules that govern various aspects of life, including dispute resolution and property rights. Secondly, Sharia law, derived from Islamic principles, holds significant influence in the country. It governs personal matters, family law, and aspects of criminal justice. Lastly, remnants of colonial-era legal systems and international conventions have also influenced Somalia's legal landscape. These include laws inherited from the Italian colonial period and international conventions ratified by the Somali government.

In an interview session with government legal experts, KII 1,2,3,4 explained that:

*‘‘There are three primary types of legal systems in Somalia: the Sharia laws, Somali customary law (referred to as Xeer), and statutory laws, which include both Somali conventional laws and international legal obligations. These legal systems often coexist and sometimes overlap in the administration of justice in the country. Sharia law, derived from the Islamic religious text, the Quran, and the teachings of the Prophet*

*Muhammad, is a fundamental aspect of Somali legal culture. Sharia laws govern various aspects of life, including family matters, inheritance, and commercial transactions' [KII 1, 2, 3, 4; 2023].*

KII 3 and 4 further indicated that:

*“In Somalia, Sharia law is often applied in parallel with other legal systems, particularly in matters of personal status such as marriage, divorce, and inheritance. The application of Sharia law is primarily through religious courts, which handle cases dealing with family law and inheritance matters. Somali customary law, known as Xeer, is a traditional and indigenous system of law that has been practiced in Somalia for centuries. Xeer is based on the cultural norms and values of the Somali people and is primarily enforced by elders in rural communities” [KII 3, 4; 2023].*

In a separate interview with Legal scholars from City University of Mogadishu, KII 5, 6 explained that:

*“This legal system covers a wide range of issues, such as property rights, land disputes, and the resolution of conflicts between clans. Although Xeer is not codified, it is widely recognized and respected by the Somali people, and its principles are often incorporated into other legal systems in the country. Statutory laws in Somalia include both Somali conventional laws and international legal obligations. Conventional laws are a product of the modern Somali state and are often based on pre-existing legal traditions, such as those of colonial-era Italian and British Somaliland. Statutory laws are created and enforced by the central government, addressing various aspects of governance, such as criminal law, civil law, and administrative law. Additionally, Somalia is a signatory to several international treaties and conventions, which also contribute to its legal framework” [KII 5, 6; 2023].*

To reinforce this, KII 7, 8, 9 indicated that:

*“In Somalia there are three main different types of legal systems and these different legal systems are not always clearly demarcated, and they can sometimes compete or conflict with each other. In recent years, efforts have been made to harmonize the various legal systems in Somalia, particularly through the development of a new constitution and legal reforms. Despite these challenges, Somalia's diverse legal systems reflect the rich cultural and historical heritage of the country and provide valuable insights into the development of law and justice in the Somali context” [KII 7, 8, 9].*

Furthermore, in an interview with UN & NGO representatives, KII 10, 11, 12, 13 explained that:

*The legal framework of Somalia comprises three main systems; Sharia law, Somali customary law (Xeer), and statutory laws, which include Somali conventional laws and international legal obligations. These three systems, although distinct, are deeply interwoven and have shaped our legal culture for centuries. The fact that they coexist demonstrates the flexibility and resilience of our legal framework. Each system has its unique strengths and caters to different aspects of society, allowing for a more comprehensive and self-sustaining approach to law and justice. Regarding adherence, the Somali legal system benefits from the strong support of the Somali people.*

Additionally, in an interview KII 14, 15, 16 and 19 explained that:

*“Xeer, in particular, has deep roots in Somali culture and is respected by the local communities. This customary law is enforced by the elders, who have the trust and confidence of the people. Similarly, Sharia law is widely adhered to due to the strong religious beliefs of the majority of the population. Statutory laws, on the other hand, are reinforced by the central government and are gradually gaining more acceptance as Somalia continues to build a stable and functioning state. In terms of interpretation, the Somali legal system has developed a unique way of integrating the different legal systems into its jurisprudence. For instance, Sharia principles are often incorporated into statutory laws, and Xeer is sometimes used to complement Sharia and conventional laws, particularly in cases where there is no direct provision in the latter systems. This fluidity in interpretation allows the Somali legal system to cater to the diverse needs of its people, ensuring that justice is served in various contexts [KII 14, 15, 16, 19; 2023].*

The current study aligns with the views expressed by Menkhaus (2003), who underscores the necessity of understanding the social contracts intrinsic to traditional Somali communities. According to Menkhaus, any effective effort to build a cohesive and functioning legal system in Somalia must be deeply rooted in an awareness of the essential social dynamics at play. This perspective resonates with the "bottom-up" strategy that the current study supports, as opposed to the often-criticized "top-down" approach that inadequately incorporates local perspectives (Lewis, 2002; Menkhaus, 2003).

Similarly, this study is in agreement with Powell (2014), who emphasizes that while foreign assistance is significant, the focus should be on strengthening existing local

institutions instead of introducing new, externally-imposed frameworks. This is particularly relevant in the unique context of Somalia, where international interventions can sometimes be perceived as neo-colonial, thereby reducing their effectiveness and acceptability (Harper, 2012).

The study also finds concordance with academic scholarship, notably from Ingiriis (2016), on the importance of "localized peacebuilding." This entails a shift from one-size-fits-all foreign policy to a more customized approach developed in consultation with those most affected by these policies. The aim is to reframe foreign involvement in a manner that respects local conditions and traditions.

Therefore, in line with the views of Gardner & El Bushra (2004), the current study posits that the creation of a stable legal framework in Somalia demands a synergistic approach that includes international actors, local government, and civil society. This approach should strive for a balanced integration of formal legal frameworks and the informal institutions deeply ingrained in Somali society, taking into account the unique cultural and social nuances of the Somali population.

#### **4.3 Role of International Community in Restructuring the Legal System**

The second objective of the study was to investigate the role of international community in restructuring the legal system in Somalia, mainland. The interviewees were asked to give their opinions with regards to the roles international community play in restructuring the legal system in Somalia by probing legal training/capacity building, enactment and interpretation. Based on the responses, there was consensus that the international community has played a crucial role in supporting the restructuring of Somalia's legal system through various avenues. One significant aspect is legal training and capacity building initiatives. The respondents were in agreement that international organizations,

donor countries, and non-governmental entities have provided technical assistance, training programs, and scholarships to Somali legal professionals to enhance their knowledge and skills in areas such as legislative drafting, legal interpretation, and court administration. Additionally, there was general consensus on the fact that the international community has supported the enactment and interpretation of legal frameworks by providing legal expertise and guidance during the drafting of legislation and constitutional reforms. They have also facilitated discussions and consultations to ensure inclusive and participatory processes, taking into account the needs and aspirations of the Somali people.

In an interview session with government legal experts, KII 1,2,3,4 explained that:

*“The international community has played a significant role in helping Somalia restructure its legal system, particularly in the aftermath of the civil war and the subsequent period of political instability. As Somalia continues to rebuild its institutions and improve governance, the support of the international community has been crucial in addressing some of the key challenges facing the country's legal system” [KII 1, 2, 3, 4; 2023].*

Additionally, an interview with legal scholars from City University of Mogadishu, KII

5, 6 asserted that:

*“Additionally, the international community has supported the establishment of legal institutions in Somalia, such as law schools and legal aid centers. By helping to create an environment where legal professionals can access quality education and training, international actors are fostering the development of a more robust and efficient legal system in the country. One of the main areas where international actors have contributed is legal training and capacity building. Various international organizations, including the United Nations, the European Union, and other bilateral partners, have been actively involved in providing technical assistance and training programs for Somali legal professionals. These programs focus on enhancing the knowledge and skills of judges, prosecutors, defense lawyers, and law enforcement officers, with the aim of strengthening the overall capacity of the Somali legal system” [KII 5, 6; 2023].*

In a separate interview with Somali Law reform officials, KII 7, 8, 9 explained that:

*“The international community is contributes towards the provision of financial assistance and resources for legal reforms. This includes funding for the development and implementation of new laws and regulations, as well as for initiatives aimed at harmonizing the various legal systems that coexist in Somalia, such as Sharia law, Xeer, and statutory laws. Also, the enactment and interpretation of laws in Somalia have benefited from international support. Through partnerships with local institutions, international legal experts have been able to share their knowledge and experience, assisting Somali lawmakers and legal professionals in drafting and interpreting legislation. This has helped to ensure that new laws are in line with international standards and best practices, and that they are effectively implemented and enforced [KII 7,8,9;2023].*

In a separate interview with UN & NGO representatives, the respondents indicated that:

*“The international community has played a crucial role in promoting human rights and the rule of law in Somalia. By advocating for the adoption of international human rights conventions and providing technical assistance for their implementation, international actors are helping to create a legal framework that protects the rights of all Somali citizens. The international community has also been instrumental in facilitating dialogue and cooperation between the different stakeholders involved in the Somali legal system. Through various forums and initiatives, international actors have encouraged collaboration between the central government, regional administrations, and traditional authorities, which is essential for the harmonization and overall effectiveness of the country's legal framework” [KII 10, 12, 17, 18].*

Additionally, in an interview with civil group officials, KII 19, 20, 24, 25 explained that:

*“The international community has played a vital role in supporting the restructuring of the legal system in Somalia. Through capacity building, financial assistance, and technical expertise, international actors have helped to enhance the performance and resilience of the Somali legal system. As Somalia continues to navigate the challenges of rebuilding its institutions and improving governance, the ongoing engagement and support of the international community will remain crucial for the development of a robust and effective legal framework in the country” [KII 19, 20, 24, 25; 2023].*

In an interview session with Clergymen, KII 26,27,29,30 explained that:

*“The international community has provided legal training and capacity-building programs for Somali legal professionals and law enforcement agencies. This support has been essential in equipping the country with the necessary skills and knowledge to establish, develop, and maintain a functioning legal system. Training programs and workshops, often facilitated by international organizations, NGOs, and foreign governments, have focused on various aspects of law, such as criminal justice, human rights, and the rule of law. These*

*initiatives have contributed to the development of a more competent and professional legal workforce in Somalia. As a signatory to several international treaties and conventions, Somalia is obliged to incorporate these international legal obligations into its national legal framework. Foreign governments and international organizations have provided valuable assistance to Somalia in drafting and implementing legislation that is consistent with its international commitments. This collaboration has resulted in the establishment of new laws and regulations in various sectors, such as human rights, gender equality, and environmental protection'' [KII26, 27, 29, 30; 2023].*

The current research is in accord with the findings of Giorgetti (2014), who argues for the inclusion of international law as an essential part of Somalia's post-conflict rebuilding efforts. However, this study aims to fill the methodological gap noted in Giorgetti's work, which relies exclusively on secondary data, by incorporating primary data and outlining specific roles for the international community in shaping Somalia's legal infrastructure.

This research also resonates with Menkhaus (2003), who suggests that the international community's role is not merely to rebuild the formal legal system but to understand and incorporate existing informal justice systems like Xeer. Menkhaus advocates for a "hybrid" approach that blends these systems to mitigate confusion and conflict, a perspective that aligns with this study's findings.

Harper's (2012) emphasis on cultural sensitivity and engagement with local leaders also finds agreement in this research. According to Harper, there is a local perception that externally imposed legal frameworks are illegitimate and forceful. As such, this study recommends close engagement with local leadership to ensure that legal reforms are both effective and accepted by the community.

In agreement with Bryden and Brickhill (2010), this research supports the idea that international involvement should be coordinated and consistent. Bryden and Brickhill critique the lack of a unified international approach, which can lead to duplicative efforts

and even counterproductive outcomes. Our study argues for a harmonized strategy to make international involvement more effective in building a functional legal system.

Finally, the study concurs with Powell (2014) regarding the importance of considering gender sensitivities, especially given that traditional Somali legal frameworks may exhibit patriarchal biases. Powell stresses the need to integrate women's rights and needs into any judicial reform efforts, a component that this research also emphasizes in its findings and recommendations.

#### **4.4 Key International Players with Initiatives in the Justice Sector**

The third goal of this study was to analyze the Key International actors involved in initiatives within the judicial sector. The aim was to identify their programs and determine how they contribute to the reform of the judicial system in mainland Somalia. During the interview, participants were asked to identify prominent international actors who have played a significant role in the reform of Somalia's justice system. The analysis of the replies indicates the active participation of several prominent foreign actors in the process of reforming the judicial system in Somalia. The United Nations (UN) has been actively involved in providing help to Somalia's judicial system via several projects, including the United Nations Assistance Mission in Somalia (UNSOM) and the Rule of Law and Security Institutions Group (ROLSIG).

The European Union (EU) has allocated substantial financial and technical resources to bolster the capabilities of Somalia's judicial systems. The African Union (AU) has been instrumental in promoting stability and facilitating judicial sector reform in Somalia via its peacekeeping initiative, the African Union Mission in Somalia (AMISOM). Countries that provide financial support and technical knowledge, such as the United States, United Kingdom, and Norway, have played a crucial role in facilitating the implementation of

justice sector initiatives. International organizations such as the International Development Law Organization (IDLO) and the United Nations Development Programme (UNDP) have provided assistance in the areas of capacity development, legislative drafting, and the advancement of access to justice in Somalia.

In an interview session with government legal experts, KII 1,2,3,4 explained that:

*“The reformation of the justice sector in Somalia has been a collaborative effort involving several key international players. These individuals have played significant roles in providing financial, technical, and capacity-building assistance to bolster the efficacy and efficiency of the judicial system in Somalia. The United Nations has played a leading role in spearheading initiatives aimed at reforming the judicial system in Somalia. The United Nations (UN) has extended its assistance in Somalia by means of several agencies, including the United Nations Development Programme (UNDP), the United Nations Assistance Mission in Somalia (UNSOM), and the United Nations Office on Drugs and Crime (UNODC). This support has been primarily directed towards capacity enhancement, infrastructure advancement, and the implementation of transitional justice mechanisms.” [KII 1,2 3,4; 2023].*

In a separate interview with legal scholars from City University of Mogadishu, KII 5, 6 indicated that:

*“The European Union (EU) has been another significant player in supporting the justice sector reform in Somalia. Through its various instruments, such as the European Development Fund, the EU has provided substantial financial and technical assistance to Somalia. The EU has focused on areas such as capacity-building, legal infrastructure development, and support for the harmonization of legal systems. Additionally, the EU has been active in promoting human rights, gender equality, and the fight against corruption in Somalia's justice sector” [KII5,6;2023].*

Moreover, most of the respondents explained that:

*The African Union (AU) has also played an important role in supporting the reformation of the justice sector in Somalia. The AU has provided technical assistance and capacity-building initiatives, particularly through the African Union Mission in Somalia (AMISOM). AMISOM has been involved in enhancing security and stability in the country, which are prerequisites for a functioning justice system. The mission has also contributed to the training of Somali police and security forces, helping to build a more professional and competent law enforcement sector. Also, the United States has been a key bilateral partner in the justice sector reform process in Somalia. The U.S. government has provided financial and technical support, as well as capacity-building initiatives, aimed at*

*strengthening the rule of law and promoting good governance. This assistance has covered areas such as legal training, infrastructure development, and the establishment of specialized courts to handle terrorism and corruption cases [KII 7, 10, 16, 20, 24, 25; 2023].*

In an interview session with UN & NGO representatives, KII 10, 14, 17, 18 explained that:

*‘‘In addition, the United Kingdom has been heavily engaged in assisting Somalia in its efforts to improve its judicial system via direct participation. The United Kingdom has offered financial and technical aid in areas such as legal training, capacity-building, and support for the harmonization of legal systems via the Department for International Development (DFID) and the Foreign, Commonwealth & Development Office (FCDO). These organizations are responsible for the UK's international development efforts. In addition, the United Kingdom has been an important player in the advancement of human rights and the battle against corruption in Somalia. In addition to this, they said that Turkey has established itself as an important actor in the process of reforming the judicial system in Somalia. Turkey, which has a deep historical and cultural tie to the nation, has offered major financial and technical aid to enable the establishment of a judicial system that is both more robust and more efficient. This support has included the construction and rehabilitation of courthouses, prisons, and other legal infrastructure, as well as capacity-building initiatives for legal professionals and law enforcement agencies’’ [KII 10,14,17,18; 2023].*

Finally, interviews with civil group officials and clergymen yielded similar responses and KII 19, 23,25,28,30 explained that:

*‘‘Several non-governmental organizations (NGOs) and civil society organizations have been actively involved in the reformation of the justice sector in Somalia. These organizations have played a vital role in areas such as legal aid, human rights advocacy, and the promotion of access to justice for vulnerable populations. Some of the notable NGOs active in this area include the International Legal Foundation, the Danish Refugee Council, and the Legal Action Worldwide. Moreover, the reformation of the justice sector in Somalia has been a collaborative effort involving various international players, each contributing their unique expertise and resources. The combined efforts of the UN, EU, AU, individual countries, and NGOs have been crucial in supporting the development of a more stable, efficient, and effective legal’’ [KII19, 23, 25,28,30; 2023].*

The respondents were further asked to indicate the roles of the Key International players in restructuring the justice sector in Somalia. Most of the respondents explained that:

*‘‘The restructuring of the justice sector in Somalia is a collaborative effort involving multiple key international players, including governments, intergovernmental organizations, and non-governmental organizations. Through its many organizations and missions, including the United Nations Assistance*

*Mission in Somalia (UNSOM) and the United Nations Development Programme (UNDP), the United Nations has been instrumental in the process of reforming Somalia's judicial system. These organizations provide practical aid, assistance in capacity-building, and resources in order to facilitate the establishment of institutions that uphold the rule of law and improve access to justice for the Somali people. In addition, the African Union Mission in Somalia (AMISOM), which has been very helpful in supplying the Somali security forces with security, training, and logistical assistance, has played an important role. This has helped create an environment conducive to the implementation of justice sector reforms'' [KII1, 2, 14, 18, 22, 29, 30; 2023].*

Moreover, KII 19, 20, 21, 25 explained that:

*‘‘The EU has been a significant financial and technical contributor to Somalia's justice sector reform through various programs, such as the European Union Training Mission Somalia (EUTM-S) and the Instrument contributing to Stability and Peace (IcSP). These initiatives aim to strengthen the capacity of the Somali judicial system, law enforcement agencies, and other rule of law institutions. The United States government, via its various agencies such as the United States Agency for International Development (USAID) and the Department of State, has given financial assistance, capacity building, and technical support for the development and reform of the justice sector in Somalia. This support has been provided for the development and reform of the justice system. The United Kingdom's Department for International Development (DFID) and Foreign, Commonwealth, and Development Office (FCDO) have provided financial assistance to a number of Somalia-based programs with the goals of enhancing the country's governance, access to justice, and overall sense of safety.’’ [KII 19, 20, 21, 25; 2023].*

The current study aligns with Bagayoko et al. (2016) in emphasizing the necessity for the further development and implementation of an inclusive organizational framework for Somalia's justice system. This involves coordination among various stakeholders and is ideally enshrined in federal and state constitutions as well as legislation, to ensure alignment with the needs of the Somali populace.

Our research also concurs with Isser (2011) and M'Cormack (2017) on the role of formal justice mechanisms, which derive their authority from governmental structures and aim to resolve legal disputes and interpret laws. Similarly, Baker (2014) and Ganzglass (2015) outline the roles of prominent figures in the formal justice system, including

judges and lawyers, as well as alternative dispute resolution methods like mediation, a view this study shares.

In contrast, this study supports the perspective of Lima & Gomez (2020) and Ahmed et al. (2020) regarding informal justice mechanisms. These systems draw their authority from social or communal frameworks and may operate in various settings ranging from court-like environments to casual community spaces.

Johnson's (2016) emphasis on the significance of education and training in the legal sector finds agreement in this research, as does UNDP (2018), which discusses the role of international organizations in providing specialized training to enhance the formal justice system in conflict-ridden areas like Somalia.

Furthermore, the study supports Menkhaus (2014) and Peterson (2017) regarding the role of informal systems as vital safety nets, especially when formal systems are insufficient or untrustworthy. Our study similarly notes that a merging of informal and formal systems can enhance community trust and ownership.

The findings also align with Smith & Williams (2015) and CIVICUS (2019) about the critical role civil society plays as intermediaries between the general public and justice institutions. Civil society organizations can act as facilitators in policy change processes and as watchdogs to ensure governmental accountability. Lastly, this research is in agreement with African Union (2020) and Jones and Elgin-Cossart (2011) regarding the multi-dimensional role of international involvement, which goes beyond financial and institutional support to include training and alignment of the formal justice sector with traditional Somali systems for greater harmony and efficacy.

## CHAPTER FIVE

### SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 Introduction

This chapter offers a consolidated presentation of the study's key findings, conclusions, and recommendations. These are derived from a comprehensive review of relevant literature as well as the specific objectives that guided the research.

#### 5.2 Summary of Findings

The purpose of the study was to analyse the role played by the international community in the restructuring of the legal system in Somalia, mainland. The specific objectives of the study were: To assess the status of the immediate Somali mainland legal systems, to investigate the role of international community in restructuring the legal system in Somalia, mainland and to examine the Key international players with initiatives in the Justice sector, identify their programs and their purpose of fit in restructuring the justice sector in Somalia, mainland. The results were presented on the basis of the specific objectives.

##### 5.2.1 Status of the Immediate Somali Mainland Legal Systems

The first objective was to assess the status of the immediate Somali mainland legal systems. The findings from the interviews revealed that the Somali legal system is a complex and hybrid structure that combines elements of customary law, Islamic law (Sharia), and formal statutory law inherited from the colonial era. The prolonged civil war and the absence of a central government for several years have significantly weakened the legal infrastructure and contributed to the fragmentation of the judicial system. However, it was established that since the establishment of the Federal

Government of Somalia in 2012, efforts have been made to strengthen and restructure the justice sector and harmonize the different sources of law in the country.

Additionally, it was revealed from the interviews that Customary law, known as Xeer, is the most prevalent and accessible form of dispute resolution in Somalia, particularly in rural areas where the formal judicial system is weak or non-existent. The study discovered that Xeer is administered by traditional elders and primarily focuses on mediation, reconciliation, and compensation. While it has proven effective in resolving local disputes and maintaining social order, it faces challenges in addressing human rights issues, gender equality, and consistency in application. Islamic law (Sharia) is also recognized as a primary source of law in Somalia, influencing the legal framework and governing matters such as family law, inheritance, and personal status.

Moreover, the findings revealed that efforts to restructure and strengthen the Somali legal system have focused on developing and implementing new legislation, rebuilding and reinforcing the capacity of legal institutions, and promoting access to justice. International actors, including the United Nations, the European Union, and various non-governmental organizations, have provided significant support in these endeavours. However, the process remains a work in progress, with the legal system still facing numerous challenges such as political interference, lack of resources, inadequate infrastructure, insufficient training and capacity among legal professionals, and limited public trust in the formal justice system.

### **5.2.2 Role of International Community in Restructuring the Legal System**

The second goal of the study was to find out what the international community could do to help fix the justice system in central Somalia. Review results showed that the foreign community has been busy in giving legal training and building up the ability of Somali

legal workers and organizations. This study established that Key actors like the United Nations Development Programme (UNDP), the European Union (EU), and the United States Agency for International Development (USAID) have implemented programs focused on training judges, prosecutors, lawyers, and police officers in various aspects of the law, human rights, and professional ethics. These initiatives aim to strengthen the skills and knowledge of legal professionals, enhance the quality of legal services, and promote the rule of law in Somalia. Moreover it was found out that capacity building extends to improving institutional infrastructure and providing necessary resources, such as legal texts and materials, to facilitate the effective functioning of the justice sector.

Additionally, the interviews revealed that the international community is playing a crucial role in supporting the enactment of new legislation in Somalia. This support takes the form of technical assistance, drafting expertise, and financial resources, which are provided by international organizations, foreign governments, and NGOs. The objective is to develop and implement laws that are consistent with international human rights standards, address contemporary legal issues, and harmonize the various sources of law in the country. The process often involves consultations with Somali stakeholders, ensuring that the enacted laws are responsive to the unique context and needs of the society while adhering to international legal norms.

Finally, the findings indicated that international actors also contribute to the interpretation and application of law in Somalia through various means, such as supporting legal research, providing expert advice on complex legal issues, and facilitating knowledge exchange between Somali legal professionals and their counterparts in other jurisdictions. Additionally, international organizations, like the UN, may also offer guidance on the interpretation of international law and its integration into

domestic legal systems. This support aims to promote a consistent and coherent application of the law, enhance the legitimacy of the legal system, and foster public trust in the judiciary. Furthermore, international actors may engage in monitoring and advocacy efforts to ensure that human rights standards are respected and enforced by Somali legal institutions.

### **5.2.3 Key International Players with Initiatives in the Justice Sector**

The third objective was to examine the key international players with initiatives in the justice sector, identify their programs and their purpose of fit in restructuring the justice sector in Somalia, mainland. The findings indicate that the United Nations (UN) serves as a central international entity actively engaged in overhauling Somalia's justice sector via multiple arms such as the United Nations Assistance Mission in Somalia (UNSOM) and the United Nations Development Programme (UNDP). These sub-entities focus on capacity building, technical aid, and resource allocation to fortify rule of law institutions and facilitate judicial accessibility for Somali citizens. The African Union (AU), mainly via the African Union Mission in Somalia (AMISOM), has also made significant contributions in this domain by offering security, educational programs, and logistical assistance, thereby fostering an environment suitable for justice reforms.

European Union (EU) emerges as a notable contributor to these reforms, both technically and financially, through specific initiatives like the European Union Training Mission Somalia (EUTM-S) and the Instrument contributing to Stability and Peace (IcSP). These programs are designed to bolster the efficacy of Somalia's judicial, law enforcement, and other legal entities. Financial and technical aid from the United States government is funneled through the United States Agency for International Development (USAID) and the Department of State to further foster judicial reforms in Somalia.

The United Kingdom (UK) has been actively involved in this reform process through its Department for International Development (DFID) and Foreign, Commonwealth and Development Office (FCDO), centering their efforts on enhancing security, governance, and justice accessibility in Somalia. Apart from these government bodies, a variety of both international and domestic non-governmental organizations (NGOs) have also participated in revamping Somalia's justice sector. These organizations often work in partnership with government institutions, providing technical assistance, capacity building, and resources necessary for the development and implementation of justice sector reforms. They also play a crucial role in monitoring and advocating for human rights standards, which helps ensure that the reformed justice sector adheres to international norms.

### **5.3 Conclusion**

Based on the finding emanating from the interviews conducted, this study concludes that the Somali mainland legal system remains a complex and evolving amalgamation of customary law, Islamic law, and formal statutory law. While significant progress has been made in recent years to restructure and strengthen the justice sector, numerous challenges persist, including political interference, resource constraints, inadequate infrastructure, and limited public trust in the formal system.

The study also concludes that the international community has played an essential role in supporting the reformation process, providing financial assistance, capacity building, and technical expertise. As these efforts continue, it is crucial to prioritize the harmonization of the different sources of law, adherence to human rights standards, and the development of a legal system that is accessible, transparent, and responsive to the unique needs of the Somali people.

Also, the international community has played a critical role in the restructuring of the legal system in mainland Somalia by providing financial assistance, technical expertise, and capacity-building support. Key international actors, such as the United Nations, African Union, European Union, United States, United Kingdom, and various non-governmental organizations, have collaborated with Somali stakeholders to develop and implement new legislation, strengthen rule of law institutions, and improve access to justice. While significant progress has been made, continued engagement and support from the international community will be essential in overcoming the remaining challenges and ensuring the establishment of a stable, effective, and inclusive justice system in Somalia.

Finally, the study concludes that key international players such as the United Nations, African Union, European Union, United States, United Kingdom, and various non-governmental organizations have been actively involved in restructuring the justice sector in mainland Somalia through various initiatives and programs.

The efforts, such as UNSOM, UNDP, AMISOM, EUTM-S, IcSP, USAID, and DFID, have been providing financial assistance, technical expertise, and capacity-building support to Somali institutions and professionals. The overarching purpose of these initiatives is to strengthen the rule of law, harmonize the different sources of law, improve access to justice, and ensure adherence to international human rights standards. Through their collaborative engagement, these international actors contribute significantly to the development of a more stable, transparent, and effective justice system in Somalia.

#### **5.4 Recommendations**

Informed by the findings and the conclusions, this study recommends that to enhance the immediate Somali mainland legal systems, stakeholders should focus on harmonizing the various sources of law, ensuring consistency in the application of customary law, Islamic law, and statutory law. Additionally, strengthening the capacity of legal institutions and professionals should continue to be a priority, with ongoing training, resources, and infrastructure support.

It is also essential to promote transparency, accountability, and independence within the judicial system to foster public trust and confidence. Moreover, efforts should be made by the government of Somalia to ensure that the reformed legal system adheres to international human rights standards, with particular attention given to addressing gender equality and the protection of vulnerable populations. The need of collaborating with foreign partners in order to achieve these aims and cultivate a fair and inclusive legal system in Somalia will persist.

Moreover, to facilitate the successful reorganization of the legal framework in mainland Somalia, it is imperative for the global community to sustain its provision of financial aid, technical proficiency, and capacity-building help, all the while cultivating robust collaborations with Somali stakeholders. The primary focus of this partnership should be on implementing a well-coordinated and enduring strategy that demonstrates due regard for the specific circumstances and requirements of the local setting.

Additionally, international actors should prioritize monitoring and advocating for human rights standards, ensuring that the reformed justice sector adheres to international norms. Encouraging transparency, accountability, and independence within the judicial system should also be a focus. Lastly, the international community should support efforts to

improve access to justice, particularly for vulnerable populations, by strengthening the availability and quality of legal services across the country.

### **5.6 Suggestion for Further Studies**

The current study analysed of the role of international community in restructuring Somalia's regional governments' legal system: a case of Somalia mainland. Comparative analysis should be conducted to investigate the approaches and strategies employed by different international actors in supporting the restructuring process, identifying best practices and lessons learned that can be applied in the Somali context. Future studies should also consider comprehensively evaluating the international community's interventions in the Somali legal system, focusing on their effectiveness, sustainability, and long-term impact on the rule of law, access to justice, and human rights in the region.

This study also suggest that future studies should examine the mechanisms and platforms used by the international community to coordinate their efforts in restructuring the Somali legal system, and suggest improvements to enhance synergies and avoid duplication of efforts. Finally, future studies should examine the role of the international community in supporting transitional justice and reconciliation processes in Somalia's regional governments, focusing on initiatives aimed at addressing the legacy of conflict, fostering social cohesion, and promoting accountability for past human rights violations.

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## APPENDICES

### **Appendix I: Letter of Introduction**

**Dear Sir/Madam,**

#### **RE: REQUEST TO COLLECT DATA**

I am a student of International Relations of Mount Kenya University conducting a study on the role played by the international community in the restructuring of the legal system in Somalia. I am required to collect data and so I am requesting for your consent to participate in the study. I will respect and protect any information you may share by adhering to the privacy and confidentiality relating to research ethics. Your name will not be written on any of the materials and only the researcher will have access to the information you will share. Kindly note that your participation in this research is voluntary and you may change your mind and withdraw from participation in the research at any time, before and during the study. Please note that I or my institution will not pay or give any reward for your participation in the study. The data are only meant for academic research only and not for any other purpose including commercial use.

Thank you in advance.

Kind regards,

**Ibrahim Mohamed Diriye**

**MIRD/2018/36322**

## **Appendix II: Consent Form for Participation**

### Participants Consent

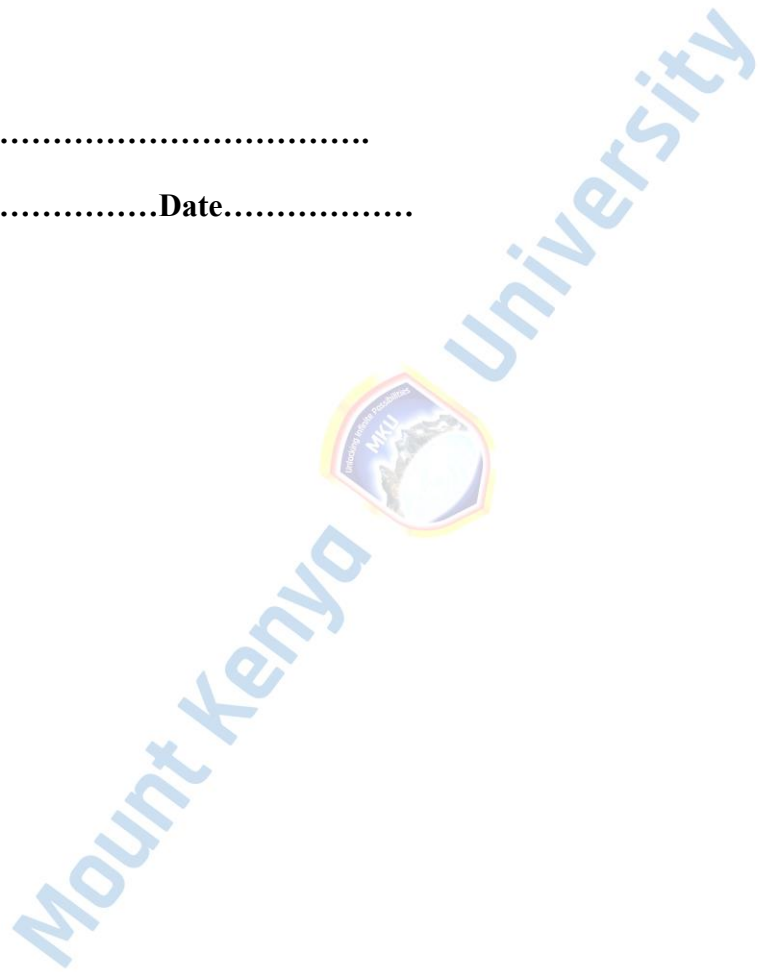
I freely give my consent to participate in this research study and have been given a copy of this form for my information

Signature.....Date.....

Researcher

**Name**.....

**Signature**.....**Date**.....



**Appendix III: Interview Schedule**

Interviewee no \_\_\_\_\_

Date \_\_\_\_\_

1. How would you explain the status of the Somali Legal systems?

.....  
.....  
.....

How many types of legal systems are available in Somalia? (Probe, sharia laws, Somali convention laws)

.....  
.....  
.....

How will do you explain the robustness of Somali Legal system? (Probe, self-sustaining framework, adherence and interpretation)

.....  
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According to you, what roles do international community play in restructuring the legal system in Somalia? Probe legal training/capacity building, enactment and interpretation.

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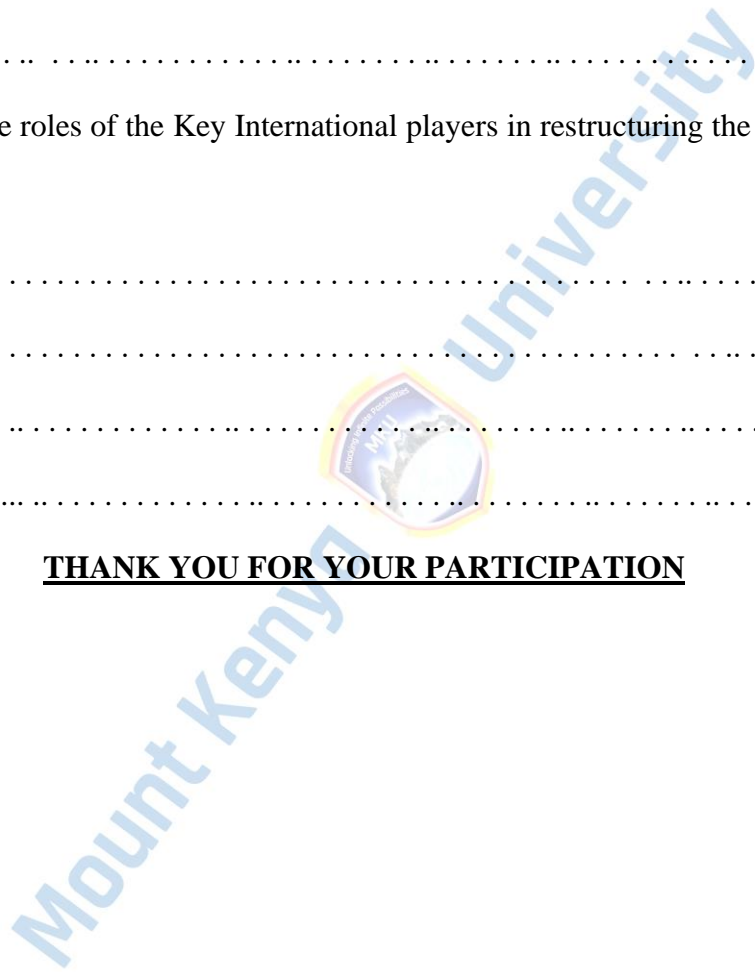
2. What are some of Key International players involved in the reformation of the Justice sector in Somalia?

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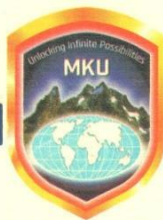
What are the roles of the Key International players in restructuring the justice sector in Somalia?

.....  
.....  
.....  
.....

**THANK YOU FOR YOUR PARTICIPATION**



## Appendix IV: ERC Permit



# Mount Kenya University

REF: MKU/ISERC/2606  
TO: IBRAHIM MOHAMED DIRIYE

Date: 01 March 2023

REG: MIRD/2018/36322

Dear Sir/Madam,

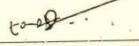
**RE: ANALYSIS OF THE ROLE OF INTERNATIONAL COMMUNITY IN RESTRUCTURING SOMALIA'S REGIONAL GOVERNMENTS LEGAL SYSTEM: A CASE OF SOMALIA MAINLAND**

This is to inform you that **Mount Kenya University** has reviewed and approved your above research proposal. Your application approval number is **1679**. The approval period is **01/03/2023 - 28/02/2024**.

This approval is subject to compliance with the following requirements;

- i. Only approved documents including informed consents, study instruments, MTA will be used
- ii. All changes including amendments, deviations and violations are submitted for review and approval by **Mount Kenya University**
- iii. Death and life threatening problems and serious adverse events or unexpected adverse events whether related or unrelated to the study must be reported to **Mount Kenya University** within 72 hours of notification
- iv. Any changes, anticipated or otherwise that may increase the risks or affect the safety or welfare of study participants and others or affect the integrity of the research must be reported to **Mount Kenya University** within 72 hours
- v. Clearance for export of biological specimens must be obtained from relevant institutions
- vi. Submission of a request for renewal of approval at least 60 days prior to expiry of the approval period. Attach a comprehensive progress report to support the renewal
- vii. Submission of an executive summary report within 90 days upon completion of the study to **Mount Kenya University**

Prior to commencing your study, you will be expected to comply with any additional requirements from the relevant authorities in the country where this study will be conducted.

Yours sincerely,  
  
**Dr. Peter G. Kirira**  
Chairman, Mount Kenya University ISERC

**Mount Kenya University**  
Ethics Review Committee  
P. O. Box 342 - 0100, Thika

Main Campus, General Koro Road, P.O. Box 342 01000 Thika

## Appendix V: Introduction Letter



### DIRECTORATE OF GRADUATE STUDIES

MIRD/2018/36322

3<sup>rd</sup> March, 2023

*National Commission for Science, Technology & Innovation (NACOSTI)*  
*Off Waiyaki, Upper Kabete*  
*P.O Box 30623- 00100*  
*NAIROBI, KENYA*

Dear Sir/Madam,

**RE: IBRAHIM MOHAMED DIRIYE - REGISTRATION NO. MIRD/2018/36322**

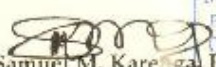
The purpose of this letter is to introduce the above named student who is pursuing Master of Arts in International Relations and Diplomacy in the Institute of Security Studies, Justice and Ethics in the school of Social Sciences.

The title of the research is "Analysis of the Role of International Community in Restructuring Somalia's Regional Governments Legal System: A Case of Somalia Mainland."

It has been cleared by the University's Ethics Review Committee (Certificate attached) and now has to proceed to the field to collect data between March, 2023 and May, 2023.

Any assistance accorded to the student will be highly appreciated.

Thank you.

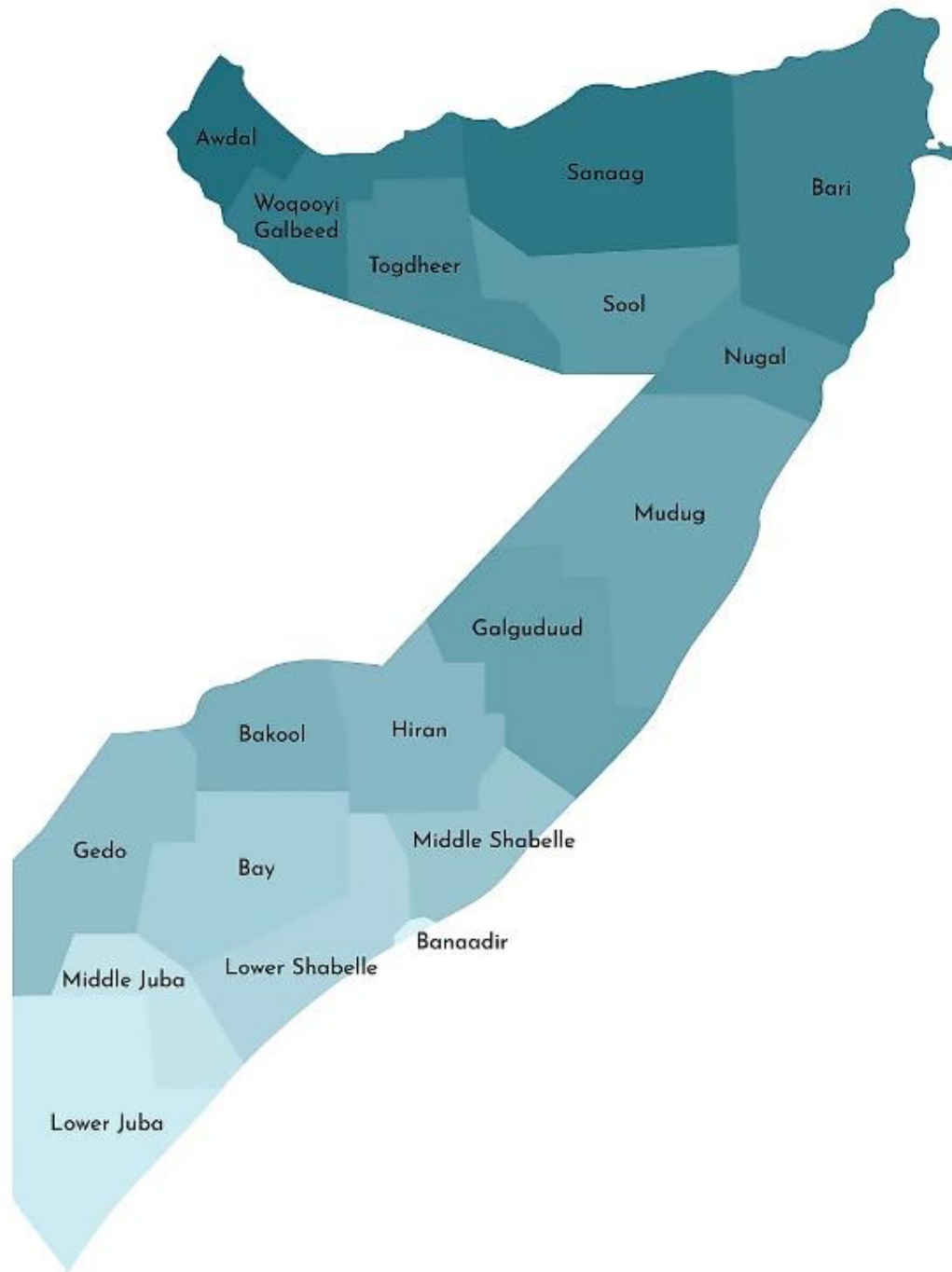
  
Dr. Samuel M. Karega, Ph.D.  
Director, Graduate Studies

Mount Kenya University  
P.O. Box 42-01000, Thika  
Office of the Director  
Graduate Studies

Enc.



## Appendix VII: Map Of Study Area (Somalia)



ANALYSIS OF THE ROLE OF  
INTERNATIONAL COMMUNITY  
IN RESTRUCTURING SOMALIA'S  
REGIONAL GOVERNMENTS  
LEGAL SYSTEM: A CASE OF  
SOMALIA MAINLAND

*by Ibrahim Mohamed Diriye*

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Submission date: 11-Sep-2023 08:04PM (UTC+0300)

Submission ID: 2163318477

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Word count: 21366

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# ANALYSIS OF THE ROLE OF INTERNATIONAL COMMUNITY IN RESTRUCTURING SOMALIA'S REGIONAL GOVERNMENTS LEGAL SYSTEM: A CASE OF SOMALIA MAINLAND

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challenges of implementation", European  
Security, 2012

Publication

160

R. Sannerholm. "Legal, Judicial and  
Administrative Reforms in Post-Conflict  
Societies: Beyond the Rule of Law Template",  
Journal of Conflict and Security Law, 2007

Publication

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