

Practice Project Title: A Legal Opinion on Intellectual Property and the Developing World: Should the Republic of Somaliland Adopt the UK's Approach to Protecting and Enforcing Intellectual Property Rights?

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Abstract

There is a growing interest in the importance of intellectual property and its relation to economic growth. The protection of innovation provides an environment for creators to thrive. Further, international trade and relations is pivotal in the development of a state, particularly for an emerging country such as the Republic of Somaliland. This paper questions whether the current system of protecting and enforcing intellectual property rights can justly apply to the developing world. This paper involves an analysis of the UK approach to protecting trademark, copyright, and patent law to find the direct implementation of UK legislation is not feasible. Thus, there is a renewed need to discuss the justification of adopting a robust intellectual property system for developing countries. Instead, this paper offers alternative solutions such as adopting certain tropes of the UK approach alongside pre-existing indigenous and customary laws.

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Summary of Findings and Opinion

In the advent of an increasingly globalised world and digitisation, intellectual property (IP) protection has become a focal point of discussion. Particularly, harmonising the global approach to protecting and enforcing rights. This legal opinion examines how to develop an appropriate IP system in the Republic of Somaliland. This legal opinion specifically addresses whether Somaliland should adopt the UK's approach to protecting and enforcing intellectual property rights (IPRs). Furthermore, it will also address whether alternative solutions are feasible if adopting the UK approach is not viable.

Chapter 1 establishes the context of Somaliland and sets the foundation for the recommendations submitted by this opinion. The principal conclusion of this study is that the current state of Somaliland's development does not provide for a robust system of protecting IPRs. Instead, I submit that different solutions for protecting IP should be adopted by reflecting the different stages of growth in Somaliland. At present, it does not suit Somaliland to protect IPRs. The best solution is to enable an environment for copy culture to thrive allowing for technology, educational material, and medicine to be replicated and accessible at much lower costs. An IP system should be created, only when Somaliland's economy has developed enough to be able to afford granting IPRs.

Chapter 2 examines the possibility of legal transplants. I submit that it would be wise to utilise soft or weak legal transplants from the UK to Somaliland. This means adopting certain tropes of the UK approach as opposed to direct implementation of UK legislation. For example, adopting a registration system for trademarks and creating a database of traditional knowledge to cross-reference patent claims. Thus, I submit that soft legal transplants are most advantageous and should be done with caution. Further, it is crucial to incorporate indigenous and customary laws alongside transplantation of UK systems. This will enable the creation of an organic IP system that reflects the purpose, culture, and philosophy of Somaliland.

Chapters 3, 4 and 5 present what this system should then look like if IPRs are granted. For trademarks, the solution would be adopting interim measures such as a reservation of trademarks mechanism until a formal registration system is created. More importantly, Somaliland should join the African Regional Intellectual Property Organisation (ARIPO) and ratify the Banjul Protocol on Marks 1993. This will enable the protection of marks in

Somaliland to be compatible with TRIPs and other international instruments. As well as saving on administrative costs by pooling resources. For copyright, this study submits it is not advisable nor functional to adopt any aspect of the UK approach. This is because the existing copyright system in Somaliland, which although may not be enforced, mirrors the French author's rights system. As a result, it is best to build on this civil law tradition and not to reverse back to the British copyright tradition. For patents, I submit that it should not be adopted until Somaliland's economy develops enough to be able to afford granting monopoly rights. This is because there are vast humanitarian and economic considerations. Only when these are addressed, can Somaliland ratify the Harare Protocol 1982. This allows for ARIPO to process patent applications on their behalf and be aligned with the Patent Cooperation Treaty 1970.

The creation of an effective IP system in Somaliland and the protection of traditional knowledge will enable Somaliland to become an international player. Primarily, this is because 'intellectual property is the fuel that can power [a] region's economic growth'¹. This is especially important in Somaliland's bid to gain international recognition. A key consideration in this study is the importance of gaining international recognition and whether reunification with South Somalia will hinder or advance efforts to create a coherent IP system. I submit that reunification with South Somalia will only impede Somaliland's efforts in securing stability. Reunification will only serve the interests of South Somalia by extending their authority and will not be well received in the North. Thus, sparking a feeling of betrayal and posing a great risk of rebel movement. Potentially, opening the door for a second civil war. It is hoped this study will provide functional solutions for the Government of the Republic of Somaliland in a bid to foster and protect innovation.

Chapter 1: Setting the Context of Somaliland

The purpose of this chapter is to outline the historical development of Somaliland and the various IP issues that arise. This chapter establishes that Somaliland does not have the institutional capacity, nor is it economically developed enough to adopt an extensive IP system of protection, as seen in the UK.

¹ TEDx Talks, *How Intellectual Property Powers Economic Growth*
<<https://www.youtube.com/watch?v=1e5HKDJnkw8>> accessed 27th August 2021.

1.1 Introduction of Intellectual Property Issues:

One must understand that heritage, culture, and the law is very different in every community. To understand how IP should be treated in Somaliland, it best to understand the fabrics underpinning Somali culture. ‘Aqoon la’aan wa iftiin la’aan’ is a Somali proverb that translates to ‘the absence of knowledge, is the absence of light’. This sentiment goes to the root of Somaliland’s nomadic culture and lifestyle, where oral traditions form the basis of society. Somaliland, often referred to as the ‘Nation of Poets’², has a rich appreciation for the arts. Poetry and music play a central role in the functioning of modern-day society, from forming laws to conflict resolution.

Another part of Somaliland’s vast culture is the knowledge concerning medicinal value of plants and other substances such as black seed oil³. Traditional medicinal practices were developed to treat illnesses such as hepatitis, measles, broken bones, and chicken pox⁴. Other substances were developed for aesthetic use, such as *qasil*⁵. This traditional knowledge is also disclosed through oral traditions. These were then regulated by customary laws enforced by elders in the community⁶. Oral traditions are sources of early creativity and innovation not just in Somaliland, but the wider African community.

Traditional knowledge refers to information that is developed, sustained, and passed through generations within a community, which forms part of their identity⁷. Traditional cultural expressions refer to ‘expressions of folklore’⁸ such as music, dance, architecture, and many

² Twin Cities Public Television, ‘*Somalia: A Nation of Poets*’ <<https://www.tpt.org/somalia-a-nation-of-poets/>> accessed 22nd September 2021.

³ Amanda Montell, ‘*This Somali Spice Might Be the Secret to Looking 25 Forever*’ (Byrdie, 2nd April 2020) <<https://www.byrdie.com/somali-women-skin-tips>> accessed 11th September 2021.

⁴ Toby Lewis, ‘*Somali*’ (EthnoMed, March 2009) <<https://ethnomed.org/culture/somali/>> accessed 17th September 2021.

⁵ Ibid (n 3).

⁶ Abdurahman A. Osman ‘Shuke’, ‘*Order Out of Chaos: Somali Customary Law in Puntland and Somaliland*’ (2010) 21 Accord <<https://www.c-r.org/accord/somalia/order-out-chaos-somali-customary-law-puntland-and-somaliland>> accessed 19th September 2021.

⁷ Background Briefs: Traditional Knowledge and Intellectual Property WIPO

<https://www.wipo.int/pressroom/en/briefs/tk_ip.html> accessed 15th September 2021.

⁸ Ibid.

other artistic expressions. Genetic resources refer to biological resources which may not be patentable but provide a basis for inventions⁹.

The prominent issue is that traditional knowledge, which roots from oral traditions, is not protected by the standard IP systems that currently exist. This creates increasing tension between what belongs exclusively to indigenous communities, what is part of the public domain and what can be profited from via IPRs. The central question this legal opinion addresses is whether the developed world IP systems and agreements can justly apply to the developing world, with specific reference to Somaliland. In doing so, we must also look at the role customary law plays and whether it can be expanded upon to provide effective protection. These issues and questions arise as the existing systems of protecting IP creations was formulated during the industrialisation of the West¹⁰. For example, knowing the identity of the author or creator is vital to establishing any IP right. This proves particularly difficult when looking at traditional knowledge as often a single author is unknown due to oral traditions and community creations. Consequently, the current system is based on the unique demands and needs of the developed, technologically advanced world.

WIPO has divided the IP issues concerning traditional knowledge into two key brackets, defensive and positive protection¹¹. Defensive protection refers to methods that prevent third parties from obtaining unsubstantiated IPRs over traditional knowledge. To avoid this, WIPO have made amendments to WIPO-administered patent systems¹². Several countries have made databases that can be used as evidence of prior art to anticipate patent claims. Positive protection refers to preventing unauthorised use and active exploitation¹³.

1.2 Political Background:

⁹ Ibid, The term traditional knowledge will be used to refer to the above definitions.

¹⁰ Ibid (n 7).

¹¹ Ibid (n 7).

¹² For an explanation of the amendments, see WIPO, *International Patent Classification System* <<https://www.wipo.int/classifications/ipc/ipcpub/?notion=scheme&version=20210101&symbol=none&menuLang=en&lang=en&viewmode=f&fipcpcc=no&showdeleted=yes&indexes=no&headings=yes¬es=yes&direction=o2n&initial=A&cwid=none&tree=no&searchmode=smart>> and WIPO, the *Patent Cooperation Treaty Minimum Documentation* <<https://www.wipo.int/export/sites/www/standards/en/pdf/04-01-01.pdf>> accessed 2nd September 2021.

¹³ WIPO formed the *Intergovernmental Committee on Intellectual Property and Genetic Resources* in 2000 and reached an agreement in 2009 that traditional knowledge should be granted effective protection; see Ibid (n 7).

The Republic of Somaliland was established as a British protectorate in 1888¹⁴. British Somaliland gained independence and merged with Italian Somaliland to form ‘*Somali Weyn*’ (Greater Somalia) in 1960, following 5 days of independence from British rule¹⁵. The unification was motivated by a dream to unite all Somali speaking nations in the Horn of Africa¹⁶.

The North-West, formerly British Somaliland, was dissatisfied with the concentration of power in South Somalia. There was a long felt want for recognition of their political and economic needs, highlighting the stark differences across this single nation. Consequently, a *modus vivendi* was established with South Somalia¹⁷ which saw Mohammed Ibrahim Egal as the first Prime Minister of North-West Somalia (Somaliland) in 1967.

However, this victory was short lived as a military coup d’état saw Major General Mohammed Siad Barre seize power¹⁸. This was the beginning of a new age for North-West Somalia as Barre led a brutal ethnic cleansing of the *Ishaq* clan in which he instructed soldiers to ‘kill all but the crows’¹⁹. Barre employed ‘a fusion of terrible governance ideas imported from China, North Korea and Nasserite Egypt’²⁰. In conversation with Colonel Hussein Haji Nur, there was a full civil war by 1988 that lasted until January 1991²¹. It was by the joint efforts of the Somali diaspora based in London and soldiers on the ground which

¹⁴ ‘*Somaliland Profile*’ BBC News (17th August 2017) <<https://www.bbc.co.uk/news/world-africa-14115069>> accessed 3rd September 2021.

¹⁵ *ibid.*

¹⁶ Gordon Waterfield, ‘*Trouble in the Horn of Africa? The British Somali Case*’ [1956] 32(1) International Affairs (Royal Institute of International Affairs 1944-) 52-60.

¹⁷ ‘*Memorandum From the Director of the Office of Northern African Affairs (Newsom) to the Assistant Secretary of State for African Affairs*’, *Foreign Relations of the United States* (26th August 1963) <<https://history.state.gov/historicaldocuments/frus1961-63v21/d298>> accessed 22nd September 2021.

¹⁸ David H. Shinn, ‘*Somaliland: The Little Country that Could*’ *Africa Notes* (November 2002) <https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/media/csis/pubs/anotes_0211.pdf> accessed 22nd September 2021.

¹⁹ Al Jazeera English, ‘*Somaliland: Kill All but the Crows*’ <<https://www.youtube.com/watch?v=JNBtlc2wHU8&t=201s>> accessed 16th September 2021.

²⁰ Joshua Keating, ‘*When is a Nation Not a Nation? Somaliland’s dream of Independence*’ *The Guardian* (20th July 2018) <<https://www.theguardian.com/news/2018/jul/20/when-is-a-nation-not-a-nation-somalilands-dream-of-independence>> accessed 5th September 2021.

²¹ Interview on the Somali Civil War (5th August 2021).

resulted in Barre's control being toppled. At the same time, British Somaliland fought against 'Ethiopian imperialism' to prevent the expansion of their border²².

The Republic of Somaliland declared its autonomy and unilateral independence²³ in 1991 and has since had 6 peaceful elections²⁴. Whilst there is controversy surrounding political stability in Somaliland, Somali people have been described to have a 'highly democratic political organisation'²⁵. The electoral system is monitored by an independent body, the *National Electoral Commission*, which was established in 2000²⁶. Following a referendum in 2001, over 97% of the population voted to affirm Somaliland's self-declared independence²⁷. Despite declaring independence, ensuring stability, and holding free and fair elections for the last 29 years, Somaliland has failed to secure international recognition²⁸.

1.3 Economic Status:

Due to the lack of international recognition, Somaliland has received no foreign assistance²⁹. Many have argued state formation was dependent on building a viable tax base³⁰. The World Bank estimated Somaliland's GDP per capita at \$348/£267 in 2012, this makes it the fourth-

²² Rawle Knox, 'Parties Talk of Coming Struggle with Ethiopia' (1959) 2(25) Periodicals: South African Political Organisations 8.

²³ Khadar Mariano, 'The Somaliland Dream: Dialogue Between Generations' *Horn Diplomat* (16th May 2018) <<https://www.horndiplomat.com/2018/05/16/the-somaliland-dream-dialogue-between-generations/>> accessed 4th September 2021.

²⁴ John Campbell, 'Somaliland Peacefully Elects and Swear in Another President' *Council on Foreign Relations* (9th January 2018) <<https://www.cfr.org/blog/somaliland-peacefully-elects-and-swears-another-president>> accessed 14th August 2021.

²⁵ I. M. Lewis, 'Modern Political Movements in Somaliland, I.' (1958) 28(3) *Africa: Journal of International African Institute* 244-261.

²⁶ Mohamoud Hussien Farah, 'Research the Somaliland Legal System' *Global Lex* (June 2020) <<https://www.nyulawglobal.org/globalex/Somaliland1.html#ElectionsLegalFramework>> accessed 8th September 2021.

²⁷ Ibid (n 18).

²⁸ Claire Felter, 'Somaliland: The Horn of Africa's Breakaway State' *Council on Foreign Relations* (1st February 2018) <<https://www.cfr.org/background/somaliland-horn-africas-breakaway-state>> accessed 8th September 2021.

²⁹ Alison Brown, Peter Mackie and Kate Dickenson, 'The Informal Economy in Civil War: Hargeisa – Somaliland' *Cardiff University* (2017) <https://www.cardiff.ac.uk/__data/assets/pdf_file/0007/1057732/The-informal-economy-in-civil-war-Hargeisa.pdf> accessed 17th July 2021.

³⁰ N Eubank, 'Taxation, Political Accountability and Foreign Aid: Lessons from Somaliland' (2010) *Journal of Development Studies* 48(4) 465-480.

poorest country in the world³¹. A large portion of the economy is based on livestock export to Saudi Arabia, which is estimated to account for 70% of jobs³².

Similarly, to other African nations many depend on remittance sent from the diaspora living in Britain, US, and others. It is estimated 54% of the country's GDP stems from the average \$100-\$500 sent for household maintenance³³. This total increased to \$500-\$900 million annually by 2019³⁴. The support from an 'active diaspora'³⁵ has resulted in a flourishing private sector. This private sector is dominated by informal micro, small and medium enterprises. The informal economy provides an estimated 77% of total employment in the capital, Hargeisa³⁶. It is key to note most enterprises are indigenously owned and family run³⁷. Economic growth is stunted by the lack of legislative frameworks, adequate infrastructure, and banking institutions³⁸.

Despite the unique economic constraints Somaliland faces, the economy is on the rise³⁹. During his annual address to the nation, President Musa Bihi stated the country surged 4.5% in fiscal 2019. This demonstrates clear indication of efforts and capabilities of the National Revenue Authority⁴⁰.

³¹ Sarah McGregor, 'World Bank Gets First Measure of 'Unequal' Somaliland Economy' *Bloomberg* (29th January 2014) <<https://www.bloomberg.com/news/articles/2014-01-29/world-bank-gets-first-measure-of-unequal-somaliland-economy>> accessed 22nd September 2021.

³² Jason Patinkin, 'Meat for Mecca: Somaliland Exports Livestock for the Hajj' *VOA* (1st September 2016) <<https://www.voanews.com/a/meat-for-mecca-somaliland-exports-livestock-for-the-hajj/3489292.html>> accessed 15th September 2021.

³³ 'The Role of Remittance in the Economic Development of Somaliland' *UN-OHRLLS* <<http://unohrlls.org/news/the-role-of-remittance-in-the-economic-development-of-somaliland/>> accessed 22nd September 2021.

³⁴ Greg Mills, John Githongo, John Steenhuisen, Abbasali Haji, Chipokota Mwanawasa and Tendai Biti, 'Somaliland: The Power of Democracy' *Rusi* (4th June 2021) <<https://rusi.org/explore-our-research/publications/commentary/somaliland-power-democracy>> accessed 5th September 2021.

³⁵ *ibid* (n 18).

³⁶ World Bank, 'Doing Business in Hargeisa' Washington: World Bank Publications (2012) <<https://openknowledge.worldbank.org/bitstream/handle/10986/13418/74663.pdf?sequence=1&isAllowed=y>> accessed 22nd September 2021.

³⁷ David Akopyan, 'The Role of Somali Women in the Private Sector' *Somalia: United Nations Development Programme* (20th November 2014) <https://www.so.undp.org/content/somalia/en/home/library/womens_empowerment/publication_2211.html> accessed 22nd September 2021.

³⁸ *Ibid* (n 36).

³⁹ Odindo Ayieko, 'Somaliland Economic Growth on the Rise' *EABW News* (20th February 2020) <<https://www.busiweek.com/somaliland-economic-growth-on-the-rise/>> accessed 21st September 2021.

⁴⁰ *ibid*.

1.4 Legal System:

There are four main stages that have contributed to the development of RS's current legal system. Customary law was primarily enforced alongside Islamic law following the introduction of Islam in the 7th century⁴¹. During the protectorate era, common law based on British Ordinances governed formal and state related aspects of life. The formation of Greater Somalia introduced Italian civil law which repealed the pre-existing British common law. The Barre dictatorship from 1970 – 1991 saw oppressive legislation being formed through military decrees. This era saw a retraction of customary and Islamic laws. A Civil Code and Civil Procedure Code was established. Lastly, the Somaliland Republic era from 1991 – till present has been skilful in integrating traditional governance through the resurgence of customary and Islamic laws and a constitution that entrenches human rights, in the process of democratisation⁴².

This chapter sets the foundation for the solutions postulated by this legal opinion. In essence, Somaliland has not progressed far enough economically to be able to afford adopting an extensive IP system seen in the UK. Instead, the principal finding of this legal opinion is to adopt IP protection that incorporates the various legal orders at play. The following chapters demonstrate how a hybrid system of protecting and enforcing IPRs can be practically applied. Further, I submit only when Somaliland has progressed economically can IP systems be adopted.

⁴¹ *ibid* (n 26).

⁴² I Jhazbhay, 'Somaliland: Africa's best kept secret, a challenge to the international community?' (2003) *African Security Review* 12(4) 77-82.

Chapter 2: Possibility of Legal Transplants

To address whether Somaliland should adopt the UK's approach, an important concept to discuss is the possibility of legal transplants. This chapter will examine the concept of legal pluralism and legal transplants to evaluate the mechanics of transposing legal systems. In my opinion, effective governance in a state with two or more legal systems simultaneously operating is completely viable. Throughout history we have seen evidence of both strong and weak legal pluralism⁴³, which will be discussed. One notable example is a colonial state's failure to recognise pre-existing laws⁴⁴. With regards to legal transplants, I submit the most successful approach, and arguably most ethical, would be soft legal transplants. This would involve transposing laws and recognising the pre-existing laws by incorporating them when necessary.

2.1 What is Legal Pluralism?

Legal pluralism refers to two or more legal systems operating in the same social field or geographical territory⁴⁵. To understand the different competing legal systems, we must define the term 'law'. Often definitions of law are placed on a spectrum ranging from those that favour legal centralism to legal pluralism. Donald Black's legal centralism approach defines law as 'governmental social control'⁴⁶. In Eugen Ehrlich's opinion, 'law is a rule which assigns to each and every member of the association his position in the community and his duties'⁴⁷. This position adopts a legal pluralist viewpoint. Other scholars have taken the middle ground as seen with A.R. Radcliffe Brown, wherein the law is defined as 'social control through systematic application of the force of politically organised society'⁴⁸. I submit a definition of law which favours legal pluralism as more tenable. As, there are various non-state-based laws that stem from several sources, such as laws stemming from religion or customary practices. This legal opinion aligns with Tamanaha's viewpoint that

⁴³ J Griffiths, 'What is Legal Pluralism?' (1986) *Journal of Legal Pluralism* 24 1–55.

⁴⁴ Margaret Davies, 'Legal Pluralism' (2010) *The Oxford Handbook of Empirical Legal Research* 816–822.

⁴⁵ Ibid.

⁴⁶ Donald Black, *The Social Structure of Right and Wrong* (1993) Academic Press.

⁴⁷ Mikhail Antonov, 'Eugen Ehrlich - State Law and Law Enforcement in Societal Systems' *National Research University Higher School of Economics* (2014).

⁴⁸ A.R. Radcliffe-Brown, 'On the Concept of Function in Social Science' (1935) *American Anthropologist* 37(3) 394–402.

there can be ‘multiple uncoordinated, coexisting or overlapping bodies of law’⁴⁹ in a single jurisdiction, as evident in Somaliland. This includes customary law, Sharia law, common law and civil law traditions. Currently, application of common law was suspended upon reunification with South Somalia whereby the Somali Civil Code⁵⁰ was established.

However, this means that there are several claims to authority. The key issue to determine is which claim to authority should be granted the most legitimacy. More importantly, when it comes to governing IP creations, which body will be granted autonomy?

In my opinion, it seems clear that the creation and regulation of IP will be subject to sharia law. This is the same position adopted when looking to apply other legal orders (common, customary, or civil law). I anticipate that any IP creation will be subject to a caveat of not contravening moral obligations asserted by Sharia law. For example, an artist seeking copyright protection for an image that depicts a holy figure would be rejected. Until an intellectual property office (IPO) is established, I submit that customary law is used to resolve any dispute surrounding all IPRs. This is because currently it is only through customary law that one may acquire an IPRs, such as a trademark. Upon creation of an IPO that can regulate the applications, registration system and disputes, would there then be a transition to applying civil law. Namely, this is because as Somaliland develops economically it is more favourable to align IP laws with the international community. Subsequently, this would enable trade relations to develop seamlessly as seen in Malta.

2.2. What are Legal Transplants?

Legal transplants refer to the moving of a law from one country or legal jurisdiction to another⁵¹. This process involves borrowing from various jurisdictions to learn from other systems and expand on a country’s substantive laws. The concept of legal transplants is often cited when explaining the influence of Roman Law on Western European countries,

⁴⁹ B.Z. Tamanaha, ‘*Understanding Legal Pluralism: Past to Present, Local to Global*’ (2008) Sydney Law Review 30 375–411.

⁵⁰ Law No.37 of 2 June 1973.

⁵¹ Alan Watson, *Legal Transplants: An Approach to Comparative Literature* (2nd edn, University of Georgia Press 1993).

excluding England and Scandinavia⁵². The contract of sale replicates the Roman contract established in the second century A.D.⁵³ The influence of Roman Law was most prevalent in civil law countries where the distinction between private and public law stems from a distinction made by Romans⁵⁴. The longevity of legal transplantation is evident in the revival of Roman Law in Western Europe during the Middle Ages⁵⁵. Moreover, further examples of legal transplants can be found regarding the Babylonian Code of Hammurabi based in Persia during the 17th century⁵⁶.

Watson presents the concept of legal transplants by first attempting to define 'law'. In the author's opinion, law and society are not as closely linked as originally anticipated. I submit Vago is more convincing when he states the 'law reflects the intellectual, social, economic and political climate of its time'⁵⁷. The law effectively acts as a mirror to reflect society's status quo. Further, Friedman asserts 'legal systems do not float in some cultural void, free of space and time and social context'⁵⁸. This is correctly demonstrated through society's changing attitude towards taboo subjects. For example, the acceptance and legalisation of same-sex marriages. Marx asserts 'your jurisprudence is but the will of your class made into a law for all'⁵⁹. This provides insight into the influence class can have on the creation of law. In particular, the author highlights the interests of the financially elite being dominant. I argue the relevance of Marx's perspective is amplified when looking at Somaliland. This is because Somalia's adult literacy rate of 40%, inclusive of Somaliland, is the third-lowest rate compared to ten bordering sub-Saharan countries⁶⁰. Thus, this creates a natural divide amongst those that can afford a private education, who then become lawmakers, and those who cannot. Essentially, creating a discord between the haves and the have-nots.

⁵² Alan Watson, 'From Legal Transplants to Legal Formats' (1995) *The American Journal of Comparative Law* 43(3) 469-476.

⁵³ Alan Watson, 'Comparative Law and Legal Change' (1978) *The Cambridge Law Journal* 37(2) 313-336.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid (n 51).

⁵⁷ Steven Vago, Adie Nelson, Veronica Nelson, Steven E. Barkan, *Law and Society* (5th edn, Routledge 2017).

⁵⁸ James Nolan, *Legal Accents, Legal Borrowing: The International Problem-Solving Court Movement* (Princeton University Press 2009) Ch 2.

⁵⁹ Andrew Vincent, 'Marx and Law' (1993) *Journal of Law and Society* 20(4) 371-397.

⁶⁰ Mohammed Hassan, 'Literacy in Somalia: A Struggle to Rebuild the System Broken by War' *Development Aid* (23rd July 2020) < <https://www.developmentaid.org/#/news-stream/post/70249/literacy-in-somalia-a-struggle-to-rebuild-the-system-broken-by-war> > accessed 16th September 2021.

Contemporary examples of Marx's theory are evident in the UK when looking at the treatment of transnational corporations and the lack of tax paid⁶¹.

As previously mentioned, Vago's mirror theory is based on the idea that the law changes due to external causes, as it does not have the capacity to change itself. Whilst Watson refutes this theory, claiming it prevents legal transplants from being possible, this legal opinion agrees with Ewald. Ewald attempted to, and rather successfully, reconcile Watson's approach and Vago's mirror theory by stipulating it is best to accept a 'weak' theory of legal transplants⁶². Subsequently, this means to accept that the law is not a precise mirror to society but rather replicates an element of society. In essence, the law should not be merely reduced to external factors such as society, politics, or religion. However, the law should not be ignorant of the role each of these factors plays in its formation. It is because of this 'weak' connection between law and society that enables successful legal transplants.

The success of a legal transplant depends on several factors. For example, whether the imported law serves the purpose it was transposed for and whether the imported rule is compatible with the receiving legal system⁶³. I submit that Somaliland adopts Ewald's approach of incorporating a weak legal transplant of UK IP laws. The primary reason being the UK and Somaliland have fundamentally different philosophies in every aspect. This includes norms, values, societal structure, and motivations to innovate. This stark contrast pre-empts any attempt of a successful legal transplant.

I argue the guideline to formulate a successful legal transplant depends on the importer's motivation. If one can align the imported laws with a functioning legal environment and the intention of fostering innovation, I submit there is a higher likelihood of a favourable outcome⁶⁴. Miller highlights a typology of legal transplants which are based on the importer's motivations⁶⁵. The most relevant example to Somaliland refers to the importer's intention to

⁶¹ 'Amazon Pays £290m in UK Tax as Sales Surge to £14bn' BBC News (9th September 2020) < <https://www.bbc.co.uk/news/business-54082273> > accessed 13th September 2021.

⁶² William Ewald, 'Comparative Jurisprudence (II): The Logic of Legal Transplants' (1995) *The American Journal of Comparative Law* 43(4) 489-510.

⁶³ Ahmad A. Alshorbagy, 'On the Failure of a Legal Transplant: The Case of Egyptian Takeover Law' (2013) *Indiana International & Comparative Law Review* 22(237) 237-266.

⁶⁴ Ibid.

⁶⁵ Johnathan Miller, 'A Typology of Legal Transplants' (2003) *The American Journal of Comparative Law* 51(4) 839-886.

save time, money and fill the gaps in their lack of legal expertise. Evidence can be drawn from Japan wherein German law of contracts was adopted prior to WW1⁶⁶. The type of legal transplantation that Somaliland should avoid, refers to externally dictated transplants that are often a feature of colonial systems, post-war impositions, and conditions of modern trade. For instance, the imposition of common law during the British Empire. This category overlaps with a legitimacy-generating transplant whereby there is a desire to export laws of a country that is idolised. Again, this type of legal transplantation should be avoided.

On the other hand, there is a convincing argument that can be made in adopting the ‘copy culture’ evident in the US during the 19th century. This would mean allowing piracy to thrive at the expense of international authors. Charles Dickens advocated for copyright protection as Americans were able to enjoy his work without owing royalty. The lack of copyright protection prevented authors from earning a living⁶⁷. Despite this, the idea of introducing copyright law was met with much resistance⁶⁸. The same copy culture is evident in China as ‘intellectual property law, and in particular copyright, has never taken hold’⁶⁹. Some have attributed China’s attitude towards IP to their ‘long tradition of valuing rote learning over original thought’⁷⁰. This stems from the influence Confucius had on the development of China and its culture. As copy culture stems from his mantra that works of great scholars and artists should be freely accessible and shared⁷¹. This principle was central to Chinese culture and when copyright was developed in the 17/1800s, it was met with much resistance. This is because the relevance of Confucius’ principles was sorely misunderstood⁷². Thus, any attempt to transpose western concepts of IP protection was doomed for failure from the outset. This was because of the incompatibility of Chinese legal values and the system created by the West.

⁶⁶ Bernd Martin and Peter Wetzler, *The German Role in the Modernisation of Japan – The Pitfall of Blind Acculturation* (1990) 33(1) 77-88.

⁶⁷ Kathryn Goldman, *Charles Dickens and the American Copyright Problem* Creative Law Centre <<https://creativelawcenter.com/dickens-american-copyright/>> accessed 13th September 2021.

⁶⁸ *When Charles Dickens Fell Out with America* BBC News (14th February 2012) <<https://www.bbc.co.uk/news/magazine-17017791>> accessed 14th September 2021.

⁶⁹ Jonathan Ocko, *Copying, Culture and Control: Chinese Intellectual Property Law in Historical Context* (1996) Yale Journal of Law & the Humanities 8(2) 559-578.

⁷⁰ Austin Williams, *The Origins of China’s Copyright Culture* Global <<https://www.global-briefing.org/2014/01/the-origins-of-chinas-copycat-culture/>> accessed 15th September 2021.

⁷¹ Alford William, *To Steal a Book is an Elegant Offense: Intellectual Property Law in Chinese Civilisation* (Stanford University Press 1995).

⁷² Ibid.

To adopt a similar copy culture means to depart or delay the process of a soft legal transplant. This would be until Somaliland is in a stable economic position to offer comprehensive IPRs. However, the limitations of this approach should be noted. Namely, doubts surrounding whether this sets the correct tone. For instance, after Dickens proposed introducing copyright law, he went on to write a scathing review of his travels in the US. Can Somaliland afford the negative backlash that comes with copy culture which could hinder its trade relations?

Nonetheless, I submit that copy culture has proven to kick-start economies and allow local businesses to obtain access to technology at a low retail price, that would otherwise be unavailable⁷³. Some countries, like Somaliland, have lived with their culture for centuries and to expect an immediate adjustment to Western developments is both impractical and disparaging.

The question then becomes whether having IP protection that permits certain copying, via licences, and prohibits other types of copying is better or worse than a system that leaves copying as a free for all. I submit an IP system that allows for licensing will only be functional if there is a compulsory licensing mechanism that offers licensing at a low price. Otherwise, access to resources is limited and subject to monopoly pricing. This would make it affordable for Somaliland to access resources such as the COVID-19 vaccine. Unless this is possible, I submit that an environment that permits copying free for all is most advantageous until the economy has developed enough to afford IP protection.

⁷³ Jean-Frederic Morin and Edward Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' (2014) *International Studies Quarterly* 58(4) 781-792.

Chapter 3: Trademarks

The purpose of this chapter is to illustrate the current mechanism of protecting trademarks in Somaliland and examining whether it is fit for purpose. I argue that the current constitutional provisions are functional but require an effective enforcement mechanism. The form of this effective mechanism takes influence from the UK system. This is because trademark protection is founded on a universal principle of not deceiving consumers. Thus, it is easier to transplant laws when they are founded in common principles. Further, suggestions of re-joining South Somalia in a bid to harmonise the approach of protecting trademarks will only create a hostile environment for innovators in the North. Instead, it is more advantageous to adopt interim measures such as a reservation of trademark system until Somaliland can join ARIPO and ratify the Banjul Protocol 1993.

3.1 History of Trademark in Somaliland

The earliest example of marking is the branding of animals⁷⁴, which remains a tradition in Somaliland today. The main use is henna markings on livestock used to differentiate ownership. Inscriptions are another form of early marking⁷⁵. This tradition is also seen in Somaliland with the discovery of the *Laas Geel* rock art in 2002⁷⁶.

Whilst Somaliland was a British Protectorate, the Trademarks Act 1938 applied in the registration and protection of trademarks. However, this was repealed once the SDR was formed by application of Italian laws⁷⁷. Registrations of trademarks were administered by various ministries. The Trademarks and Patents Amendment Law 1987 outlined new requirements of trademark protection under the application of Italian law in SDR. This included:

- Fees to be paid in dollars unless requested otherwise

⁷⁴ S.A Diamond, 'The Historical Development of Trademarks' (Scribd) <<https://www.scribd.com/document/228633579/The-Historical-Development-of-Trademarks>> accessed 22nd September 2021.

⁷⁵ Benjamin Paster, 'Trademarks – Their Early History' Compiler Press (1969) <<http://www.compilerpress.ca/Library/Paster%20Trademarks%20Early%20History%20TMR%201969.htm>> accessed 18th September 2021.

⁷⁶ See appendix for illustration.

⁷⁷ Italian Trademark Law Royal Decree 929-1942.

- Period for trademark registration was for 10 years (*Article 4(2)*)

As Somaliland is now an independent country (1991 – onwards), any developments made in South Somalia concerning the protection of trademarks would not be automatically applicable. This means the reopening of the Trademark Office in 2019 in South Somalia has no bearing. The Ministry of Commerce and Industry issued the Ministerial Decree 1/2019. This stated that trademark registrations are permitted again. As a result, single class applications are being accepted and valid for 10 years from the filing date. This can be renewed indefinitely every 10 years subject to conditions⁷⁸.

Nonetheless, the lack of modern trademark laws in Somaliland does not mean that one can use IP freely. There are constitutional provisions that can provide remedies for infringement of IP rights. *Article 16 (2)* asserts ‘the law shall determine rights to authoring, creating and inventing’, which recognises the protection of IP rights. Further, *Article 130 (5)* affirms that laws from the SDR that applied pre-independence *can* apply if they do not conflict with the Sharia and fundamental freedoms found in the Somaliland Constitution. However, I submit if these laws are to be used, they should be revised first before application is to occur. This is because the Italian laws were implemented when central authority was placed in South Somalia.

However, there have been no registrations of trademarks since 1989. Instead, trademark protection can be granted through the issuing of precautionary notices. This refers to⁷⁹:

- Publishing a cautionary notice in the English newspaper *The Horn Tribute* which is published weekly
- Publishing the same notice in the online newspaper *The SomalilandSun*, which is then made available in the Somalia Trademark Office within two working days
- Publishing the notice in Somali in the above-named newspapers (both in print and online)

⁷⁸Ines Sequeira, ‘*Somalia: Trademark Registration in Somalia and Somaliland – What You Need to Know*’ *Mondaq* (31st December 2020) <<https://www.mondaq.com/trademark/1021152/trademark-registration-in-somalia-and-somaliland-what-you-need-to-know>> accessed 14th September 2021.

⁷⁹ *Ibid*.

There are several requirements for a qualifying cautionary notice which includes a clear copy of the mark, a list of relevant goods/services that the mark applies to (subject to *Nice Classification*) and the name and address of the trademark owner⁸⁰. It is advised to republish this notice every two to three years⁸¹. If one has fulfilled the above requirements and believes their mark has been infringed, both civil and criminal action can be issued.

Under the Somaliland Civil Procedure Code 1973, a civil claim can be made to the Regional or District Court subject to conditions⁸². Criminal prosecution can be sought under the Penal Code 1963 *Article 397*. This prohibits the selling or circulating of any product that is likely to deceive the consumer. More importantly, it does not matter if the product was registered in Somaliland or internationally. The objective of this provision is to protect the public from the bad faith of traders. Despite these provisions, it is evident that marks are being used without the permission of trademark proprietors. Whilst we may not be able to access statistics regarding how many trademark infringement cases are brought each year, we can see the wide use of altered international marks which are grounds for infringement. For example, the KFC logo and wordmark have been used but the acronym has been given a new meaning⁸³.

3.2 Functions of Trademarks in UK and Somaliland

Trademarks are traditionally used to signal the origin of a particular good or service. However, the qualifying criteria and function of a trademark has developed. Landes and Posner assert the origin function of a trademark is of paramount importance⁸⁴. As it lowers the consumer search cost and provides incentives for proprietors. Further, this prevents others from free-riding trademarks, which would cause it to lose value. However, they also assert that the purpose of trademark protection includes acting as an advertising tool. This is due to the added value that trademark protection attracts. Schechter long asserted that the advertising function should also be protected⁸⁵. Additionally, protection should extend to preserving its distinctive nature from dilution. *L'Oréal v Bellure*⁸⁶ recognised other functions

⁸⁰ See appendix for example.

⁸¹ Ibid (n 78).

⁸² Under *Articles 160, 167 and 176*.

⁸³ See appendix for example.

⁸⁴ W. Landes and R. Posner, '*Trademark Law: An Economic perspective*' (1987) 30 *Journal of Law and Economics* 268-70.

⁸⁵ F.I. Schechter, '*The Rationale Basis for Trademark Protection*' (1926) 40 *Harvard Law Review* 818-19.

⁸⁶ C-487/07 [2009] ECR I-5185.

trademarks can serve such as communication, advertising, and investment. This should also be protected. Recognition that a trademark can fulfil some or all these functions is important in considering how far they may be protected against the use by 3rd parties⁸⁷. This study accepts that the functions of trademarks are vague but asserts that the origin function remains the focal point⁸⁸.

When looking at trademarks in Somaliland, it is important to consider what functions would be served. The primary function would be denoting origin of the product or service. This is because Somaliland comprises various rural towns, which are rather disjointed. Whilst a national marketplace that connects the cities is growing, at present there are micro economies in each city. Thus, it is inevitable that the origin function will have a primary role in establishing trademark protection. Secondly, and perhaps more importantly, is the investment function. Given Somaliland being the fourth-poorest country in the world, any local investment made in a sign requires robust protection. This is because the money being invested into creating a business brand is often the only money they have got left. Thus, this creates quite a high imbalance between the risk and reward ratio for the local businessman or woman. Therefore, reinforcing my submission that existing Somaliland constitutional provisions should be more rigorously enforced to provide trademark proprietors security.

3.3 Adopting the UK System

To assess whether Somaliland should adopt the UK trademark system, we must examine whether Somaliland has the institutional capacity to do so. This refers to the four key areas of trademark law:

3.3.1 Registration

In the UK, the process of registering a mark is simple whereby an application is made to the UKIPO. Here, the application will be examined to assess whether it fulfils statutory requirements for registration. When making the application, the trademark proprietor is

⁸⁷ Tanya Aplin and Jennifer Davis, *'Intellectual Property Law: Text, Cases and Materials'* (3rd edn, Oxford 2017) Ch 6.

⁸⁸ *Ibid.*

advised to consider these requirements and to search the Trademark Register. This is to avoid wasting time and expenses.

The current institutional capacity in Somaliland does not provide for this registration system. This is because there is no Republic of Somaliland IPO that can act as a base for all trademark applications. Instead, there is only the option of issuing precautionary notices. I submit Somaliland would benefit from having a formal registration system. A registration system in general provides for a streamlined, efficient process that eliminates the bureaucracy associated with the precautionary notices. More importantly, a trademark registration system asserts the exclusive rights of the trademark proprietor allowing for the use of products with security of protection. This enables the core function of trademarks to be fulfilled as it serves as a marker of quality in the product or service, informs the consumer of its origin and builds goodwill⁸⁹. Further, it offers protection from infringement as the register serves as notice to potential future trademark owners of the existing marks and thus, delineates the perimeters of protection. The next step for Somaliland is to establish an IPO to enforce this registration system alongside the existing constitutional provisions.

3.3.2 Enforcement

In the UK, once a trademark registration is granted it is left to the individual to monitor any misuse. Here, the key concern is how Somaliland can enforce the rights of trademark proprietors. There are strategies a trademark proprietor can adopt such as displaying your rights through the ‘®’ symbol or abbreviation ‘RTM’ (for registered trademarks). This is based on the assumption an IPO office is established and the mark is registered. For unregistered marks, the issuing of precautionary notices continues to serve as a method of displaying one’s rights.

However, there must be a complimentary mechanism of enforcement. This involves there being laws to determine infringing behaviour and a body to enforce the laws once infringed. Following the duty to protect IPRs imposed by *Article 16(2)*, we are already informed that there is a responsibility to protect. The issue now is whether there is a sufficient judicial

⁸⁹ TME, ‘*The Essential Functions of a Trademark*’ *AI Law* (28th November 2020) <<https://ai-law.co.uk/the-essential-functions-of-a-trademark/>> accessed 22nd September 2021.

branch that can prevent the infringing use via court orders and compensate for damages.

When making a civil claim, the claimant must issue pre-action letters to the alleged infringer as per *Article 118 Civil Procedure Code 1973*. At the litigation stage, the Somaliland court structure allows for such disputes to be held. The District Court deals with all civil claims up to 3 million Somaliland shillings (approximately £4,000); anything exceeding this amount is handled by the Regional Court and the Regional Appeal Court. Nonetheless, an area for improvement, that takes direct influence from the UK system, is to develop a specialised court to deal with IP issues. As seen in the UK with the Intellectual Property List of Business and Property Courts. Consequently, this will allow for a coherent and specialised approach to IP.

3.3.3 Commercialisation

The commercialisation of a mark is of crucial importance to the licensor and licensee. This is because the trademark proprietor can earn money through fees and the licensee is able to utilise the mark. Furthermore, this enables the mark to reach wider audiences and gain traction. However, the licensed use should be regulated to prevent any harm to the trademark proprietor. In the UK, it is not compulsory to register a trademark licence⁹⁰. Despite this, I argue that Somaliland should create an obligation to register. The main reason is that it provides a record to act as evidence when or if infringement proceedings are to occur. Subsequently, this would assist the courts in litigation. The registration of a trademark licence would occur through the same mechanism, via precautionary notices and the Somaliland IPO once established.

3.3.4 International Standards

Whether to comply with international standards is often a contentious issue for developing countries. This is because international instruments are drafted from the default position of the technological advanced world, which does not take into account the global south. However, for Somaliland the issue is more complex. This is in reference to the bid to gain international recognition as a country. A large contributory factor to achieving this aim

⁹⁰ Mewburn Ellis, 'Trademark: Licensing' <<https://www.mewburn.com/law-practice-library/trade-marks-licensing>> accessed 20th September 2021.

is complying with international standards. For a developing country that is recognised, one may doubt whether this is necessary. But for an emerging country that must find a way to become an international player, compliance is gold. Namely, this is because it would attract foreign investment. For example, the licensing of Coca-Cola manufacturing to Somaliland Beverage Industries resulted in a \$17 million investment wherein 90% of workers are locals⁹¹. More importantly, there is a large intake of graduates who can profit from their education⁹². Thus, I submit the best approach for Somaliland is to become compliant with international instruments. This can be achieved by acceding to ARIPO and ratifying the Banjul Protocol.

3.4 Alternative Solutions

3.4.1 Precautionary Notices

One interim measure is the creation of a government led website that stores all past and future precautionary notices. When an individual posts a precautionary notice in an online newspaper, it would be automatically reloaded to this government website. However, it is important to note that this would exclude cautionary notices published in print. A solution for this is to have the print cautionary notice filed and authenticated at local council level ('*Degaanka Hoosee*'). This would serve as a registry system and index for those looking to seek trademark protection. In addition, when a Somaliland Trademark Office is established the groundwork of starting a registration system is avoided because of this mechanism.

3.4.2 Harmonising Approach with South Somalia

Another interim measure refers to Somaliland's option to adopt the laws of South Somalia, pursuant to *Article 130 (5)*, until the issuance of their own regulation. The same approach was adopted by the new state of South Sudan when it was recognised as an independent state from the Republic of Sudan in 2011. Consequently, this meant any registrations made via the

⁹¹ Katrina Manson, '*Coca-Cola Boosts Somaliland Economy*' *Financial Times* (17th May 2011) <<https://www.ft.com/content/35ab85bc-80ca-11e0-8351-00144feabdc0>> accessed 14th September 2021.

⁹² '*SBI Sets Pace for Industrialisation in Unrecognised Somaliland*' *EABW News* (27th May 2019) <<https://www.busiweek.com/sbi-sets-pace-for-industrialization-in-unrecognized-somaliland/>> accessed 12th September 2021.

Sudan office would be valid in the newly declared South Sudan⁹³. Nonetheless, it should be noted that adopting the laws of South Somalia, even for an interim period, may be perceived as treacherous by the public. Given the search for independence and recognition for the last 30 years, it is doubtful whether this solution will be well-received.

Instead, a reservation system can be adopted until a formal procedure is established. This ‘Reservation of a Trademark’⁹⁴ would allow an unregistered mark to be reserved in the applicant’s name and prevent others from using it provided there is no prior ownership.

3.4.3 Enforcing Existing Constitutional Provisions

I argue that a more practical solution, that caters to the spirit of being an independent state, is to utilise the existing constitutional provisions. Namely, the duty imposed under *Article 16* (2). Moreover, there is a forceful argument to be made to use other existing provisions in Somaliland. *Article 160* states ‘every fault which causes injury to another person imposes an obligation for payment of damages by the person who committed it’. This enables an individual to bring a claim similar to passing off before Somaliland courts without there being a registered trademark. The damages to be awarded are subject to the judge’s discretion. Also, claims for unjust enrichment can be established. Thus, I submit that the use of all existing provisions created by independent Somaliland should be used as an interim measure of protecting and enforcing trademarks.

3.4.4 Future Measures

With the backdrop of gaining international recognition, a pivotal future measure for Somaliland is to become compliant with international standards and instruments. This can be achieved by joining ARIPO and ratifying the Banjul Protocol. This will enable Somaliland to pool resources and save on administrative costs whilst maintaining a position that is compatible with TRIPs and other international instruments. Thus, this would enable

⁹³ ‘Sudan’ Country Index <https://www.country-index.com/country_surveys.aspx?ID=65> accessed 10th September 2021.

⁹⁴ ‘South Sudan – Reservation of Trademarks’ LYSAGHT (13th June 2017) <<http://www.lysaght.co.uk/news/ip-developments/south-sudan-%E2%80%93-reservation-trade-marks>> accessed 23rd September 2021.

Somaliland to open its economy to international brands who would want to expand their market into new territory.

3.5 Recommendations

For these reasons, I suggest that the best solution for Somaliland is to continue the application of existing constitutional provisions as it aligns with the sentiment and core value of being an independent state. The key method of improving this approach is to enhance the mechanism of enforcement of these provisions. Namely, this can be achieved by the creation of a Trademark Office so that an accurate and centralised record of marks is maintained. This will be aided by adopting the reservation of a trademark system seen in Sudan. Lastly, whilst international recognition is being sought, it is desirable to enter into bilateral agreements with neighbouring countries, such as Ethiopia and Kenya. Acknowledgement and the ability to enter into agreements with other states helps to further state recognition efforts.

Chapter 4: Copyright Law

The purpose of this chapter is to outline how a copyright system would have practical function in Somaliland. This will be achieved by looking at the history of copyright law in Somaliland with reference to the impact of British and Italian imperialism. This discussion serves as a foundation to establish what philosophy best serves the protection of works. This legal opinion proposes a myriad of solutions that can be used at different stages of development. Namely, the use of existing copyright laws in the interim until a Somali-centric, more specifically Somaliland-centric, copyright system can be developed. The end goal for Somaliland and copyright is to create a system that finds an appropriate balance between competing interests. These interests being granting sufficient protection to the author and public interest in accessing works (both domestic and foreign). I submit that the French author's rights system alongside the use of existing customary laws provides sufficient balance. Thus, it is more pragmatic to build upon an author's rights system than to return to the British copyright tradition.

4.1 History of Copyright Law in Republic of Somaliland

Xuquuqda Qoraaga or *Xuquuqda Allifaha* (copyright law) refers to rights conferred to original literary and artistic works. Notably, this refers to the same definition adopted in the UK. Owing to the fact, Somaliland was British protectorate in 1888 after the Statute of Anne (1709). As a result, all laws regarding copyright that were granted in the UK were by extension applicable to Somaliland. However, there is a large discrepancy between the rights granted and those that were enforced. Namely, that none of the copyright laws were applied in the period from 1888 till 1973. As previously mentioned, the Somali Civil Code was established in 1973 after Somaliland re-joined South Somalia.

4.1.1 British Protectorate Somaliland

The Copyright Act 1911 was extended to British colonies and protectorates including Somaliland. This Act required the Chief of Customs to regulate any infringing work that may be imported. Apart from this duty, there were no additional ordinances granted to implement the Act. There was no mechanism established in relation to registration, enforcement or settling disputes. This Act was modified by the Copyright Act 1956, the application of which

includes Somaliland. The last ordinance issued in Somaliland concerned the extension of the 1956 Act to all countries in Her Majesty's jurisdiction that the 1911 Act was granted. However, in August 1960 independent Somaliland had published an index of applicable laws which did not reference the 1956 Act⁹⁵. Thus, we can assume that the 1956 Act was never applied in independent Somaliland.

4.1.2 Independent Somaliland

Following Somaliland's independence from British rule, the State of Somaliland Constitution was formed. Section 54 (1) affirmed that all existing law at the time independence was granted will still be applicable. This only applies to the extent that it is 'modified, repealed or revoked by a competent authority'. Consequently, this means the 1911 Act is still applicable but to be enforced. Further, in the *Somaliland and Somalia Act of Union 1961* we can see the objective of section 54 (1) is still applicable as it was reinforced by Article 3(1). This stated that the laws that exist in both jurisdictions will be relevant in their respective administrations. It is key to note here that British protectorates were bound by the duties established by the Berne Convention and the Universal Copyright Convention. This is because these principles were applicable in Somaliland at the time of independence despite not being directly referenced in the index of laws. At this time, Somalia and Somaliland were known as a single state named the *Somali Democratic Republic* (SDR). The SDR had acceded the WIPO Convention in 1982⁹⁶ but has not yet ratified any further WIPO treaties. The SDR did accede to the *Organisation of African Unity Cultural Charter for Africa 1977* whereby Article 25 stipulates African governments must create 'national and inter-African laws and regulation guaranteeing the protection of copyright'. This is the first instance where we see a requirement for copyright laws to be formulated and enforced. This is because during Somaliland's protectorate era the focus was preventing the importing of infringing goods. However, Article 25 highlights a shift in focus where now African countries are required to protect copyright. If the SDR made active steps to fulfil their duty under *Article 25*, we would have seen a thriving Somali-centric IP system.

4.1.3 Introduction of Italian Civil Code

⁹⁵ 'Somaliland Copyright Law' <http://www.somalilandlaw.com/somaliland_copyright_law.html#Title> accessed 1st September 2021.

⁹⁶ WIPO <https://www.wipo.int/directory/en/details.jsp?country_code=SO> accessed 24th September 2021.

The 1970s introduced a major shift in Somaliland's legal system in that the Italian trademark and patent laws (1955) were introduced. Subsequently, all former laws that were applicable during Somaliland's protectorate era were automatically repealed. Following this, the SDR introduced *Sharciga Xuquuqda Qoraaga* (Copyright Law 1977)⁹⁷ which was the first copyright law to come into existence. Rather confusingly, this new law (1977) had failed to expressly mention the revocation of all former IP laws applicable in Somaliland. Instead, *Article 93* prevents the application of laws which are found to be incompatible and conflict. I submit that more clarity would have been achieved if the legislature had delineated the scope of each provision. Namely, the scope of the Italian civil codes and the new *Sharciga Xuquuqda Qoraaga* in relation to pre-existing Somaliland legislation. Instead, this probes an examination of every pre-existing article to assess whether it is compatible⁹⁸.

4.1.4 The Republic of Somaliland and the 1977 Copyright Law

A key question that arises is looking at whether this 1977 law applies to today's Somaliland. There are several provisions in the Republic of Somaliland Constitution (2000) which outline the state's duty to provide copyright protection. For instance, *Article 16 (1)* and (2) assert that the state has a responsibility to 'promote knowledge and literature', 'encourage creativity and research' and determine 'rights to authoring, creating and inventing'. This applies to both copyright and neighbouring rights. More importantly, *Article 130(5)* states that any laws from before 1991 that have not been repealed will remain in force unless they conflict with the Sharia. As the SDR 1977 law was created in a Sharia compliant manner, we can assume that it still applies.

As Somaliland has no modern IP laws that effectively enforce and protect copyright works, I submit that the 1977 Copyright law be used in the interim. This would be until a coherent body of law can be created that reflects the philosophy of Somaliland, especially now that it is separated from the SDR. Ibrahim Jama stipulates, to which I agree, that the application of the 1977 Copyright law will only work if improvements are made⁹⁹. For example, abolishing

⁹⁷ No. Law No.66 7th September 1977.

⁹⁸ *ibid* (n 95).

⁹⁹ *ibid*

the compulsory registration requirement. This is because a body to regulate applications does not exist, and it is in direct conflict with Article 16 (1) and (2)¹⁰⁰.

4.2 Philosophy and Justifications of Copyright

The foundation of creating an effective copyright system is adopting a philosophy that is compatible with the specific jurisdiction. This legal opinion will assess the four major justifications used and discuss which theory best suits Somaliland. When adopting a copyright philosophy, one should consider in what sense the justifications are being used. For example, whether we are adopting a justification in the descriptive or normative sense¹⁰¹. A descriptive sense refers to formulating each copyright principle to reflect any rationale. This means there can be more than one philosophy at play. This differs to a normative sense in which we find the most persuasive rationale and build copyright principles around it. In my opinion, it is difficult to choose a single theory that Somaliland will be bound by. This is because I submit each copyright philosophy will be relevant at different stages as each provides a separate purpose. A harm-based theory of unjust enrichment will not allow Somaliland to adopt a copy culture as an interim measure to boost the economy. However, a natural rights theory that enables one to take from the commons and add their own labour or value seems fitting for a developing country. Therefore, the most fitting philosophical justification is directly dependent on which solution Somaliland adopts.

4.2.1 Economic Justification

This theory is based on the view that copyright content is both non-rivalrous and non-excludable¹⁰². These are both attributes of public good. Non-rivalrous refers to whether one's enjoyment of a copyright work detracts from another's enjoyment of that same work. For example, a book can be read by all without diminishing the expression in any way. Non-excludable refers to the difficulty of being able to exclude others from using a work. For instance, if an article is released into the public domain, it is harder to exclude others from using it compared to the book example. Consequently, this gives rise to a free-rider problem

¹⁰⁰ Ibid.

¹⁰¹ Ibid (n 87) Ch 2.

¹⁰² F Raven, 'Copyright and Public Goods: An Argument for Thin Copyright Protection' (2005) MC Journal 8(3).

wherein a third party can copy the copyright work and sell it at a much lower price¹⁰³. This significantly reduces the overall price of the work. This theory is premised on the idea that without assurance of recouping cost of creation, there will be a disincentive to create and disseminate work in the future.

This theory assumes that financial incentives are needed to spark innovation. However, this is not the case as many individuals create for reasons that are non-monetary. For example, in many developing countries where there is no system of remuneration for creation, copyright works are still being created¹⁰⁴. An example can be drawn from Somaliland whereby at present there is no functional copyright system but there is an emerging film and television industry. To the extent, the term ‘Somaliwood’ was coined¹⁰⁵. Additionally, some argue one may rely on contractual measures to prevent copying, but this is ruled out by privity of contract rules. A more concerning implication of this justification is the fact copyright owners are granted monopoly over pricing. By being able to charge a high price, access to the work is reduced. This drawback is particularly salient with Somaliland when looking at access to educational books. Similarly, copyright protection increases the cost of creating future works. For instance, the author is granted control over permitting translations. The translation of educational books for developing countries, like Somaliland, is at an increased cost that is unaffordable. Thus, the economic justification is not fitting for Somaliland as it cannot afford to grant such protection.

4.2.2 Natural Rights

This justification is based on Locke's labour theory that was exclusively concerned with property rights. Despite this, some scholars have adopted this theory to justify copyright law. The concept of this theory is that a person may appropriate property by mixing their own labour with objects from the commons¹⁰⁶. Labour is central to this theory in that it reflects a just reward for appropriating property. This is because labour adds value to an object which

¹⁰³ Tejvan Pettinger, ‘Free Rider Problem’ *Economics Help* (22nd May 2019) <<https://www.economicshelp.org/blog/1626/economics/free-rider-problem/>> accessed 7th September 2021.

¹⁰⁴ Ibid (n 87) Ch 2.

¹⁰⁵ Sara Smith, ‘Somaliwood: Columbus has Become a Haven for Somali Filmmaking’ *Hiraan Online* (19th April 2007) <https://www.hiiraan.com/news2/2007/may/somaliwood_columbus_has_become_a_haven_for_somali_film_making.aspx> accessed on 29th August 2021.

¹⁰⁶ Karl Olivecrona, ‘Locke’s Theory of Appropriation’ (1974) *The Philosophical Quarterly* 24(96) 220-234.

creates social value, and thus is deserving of a reward. When looking at intellectual labour, one may be able to appropriate intangible objects by mixing intellectual labour with something from the commons.

A concerning aspect of this theory is the concept of intellectual labour. This is because to be able to grant copyright as a reward for intellectual labour, we must establish a minimum threshold for labour¹⁰⁷. Moreover, it is difficult to separate pre-existing ideas from the labour invested by an individual. This means if there are general ideas in the common, we cannot really say that the work belongs to the author. This is one justification that is favourable in theory but is not entirely pragmatic. Whilst this theory enables the development of derivative and future works, in favour of Somaliland, it fails to convincingly provide a justification.

4.2.3 Personality Based Justification

This argument is based on the Kantian view that a copyright work is the embodiment of the author's personality. As a result, a work is the author's spiritual child and should be protected as it is the extension of the author's personality¹⁰⁸. Hegel elaborated this concept by asserting personality is the manifestation of the will in which our personalities can achieve concrete existence¹⁰⁹. Thus, copyright becomes a key facilitator to ensuring that we can manifest ourselves externally.

This theory proves unhelpful as it does not inform us of how much control authors should be given over their work¹¹⁰. For instance, there can be creations that reflect the author's expression but are simultaneously relevant to another author's expression¹¹¹. This makes it difficult to draw a balance between the expression of the author and the subsequent user. This is because the concept of personality is extremely vague, which makes it difficult to decipher whether the personality of multiple contributors is included¹¹². For example, this justification does not provide aid when looking at the protection of traditional knowledge. Additionally,

¹⁰⁷ Ibid (n 87) Ch 2.

¹⁰⁸ Gillian Davies and Kevin Garnett, *'Moral Rights'* (2nd edn, Sweet & Maxwell 2016) para 3-005.

¹⁰⁹ Christopher S. Yoo, *'Rethinking Copyright and Personhood'* (2019) Faculty Scholarship at Penn Law 423.

¹¹⁰ Ibid (n 87) Ch2.

¹¹¹ Donald Richards, *'The Ideology of Intellectual Property Rights in the International Economy'* (2002) Review of Social Economy 60(4) 521-541.

¹¹² Ibid (n 109).

this theory raises practical issues concerning digital creations such as how does one discern personality from technical works?¹¹³

4.2.4 Unjust Enrichment

There is an argument to be made in the unauthorised use of a work causing harm to the creator of that work. This is because the unauthorised user receives the benefit of use or in other words, reaping what they have not sown. Spence criticised this theory asserting it is not actually clear what harm the author would suffer¹¹⁴. In the author's opinion, if a work became an important part of the community's social or cultural life, it would be more harmful to exclude others from using it. This legal opinion affirms Spence's criticism particularly because if we look to find what makes unjust enrichment unfair, we are led back to an economic or utilitarian justification of copyright.

4.3 Alternative to Current Copyright System in Somaliland

Whilst one solution may be to make the appropriate changes to existing IP laws in Somaliland, it is key to assess the viability of other solutions. This includes a reversal to the UK copyright system. Alternatively, one may see it more fitting to adopt the author's rights approach seen in France as it already mirrors the existing Italian Civil Code. Also, there is the possibility of adopting an Afro-centric copyright system that is indigenous to Somaliland. I submit that each of the different solutions are only fit for purpose at different stages of development. For instance, looking at the current stage of Somaliland's economy it is best to maintain *Sharciga Xuquuqda Qoraaga (1977)* on the condition of Ibrahim Jama's proposed modifications. Moreover, this would enable an environment that can facilitate copy culture, as previously seen in America and China, to boost the economy. I submit that until Somaliland is in a financially secure position, whereby they can afford to grant a higher level of IP protection, the status quo should remain. In addition, it is only when the economy is secure enough should an author's right system be adopted where author's form the foundation of protection.

¹¹³ Mark Perry and Thomas Margoni, 'From Music Tracks to Google Maps: Who Owns Computer-generated Works?' (2010) Law and Publications 27.

¹¹⁴ M.Spence, 'Justifying Copyright' in D. McClean and K. Schubert, *Dear Images Art, Copyright and Culture* (Ridinghouse 2002) 389-403.

4.3.1 Full Incorporation of UK Approach

Basic Acquisition of Rights

Copyright in the UK can be acquired automatically without paying a fee or submitting work to a register. The UK adopts a closed list definition of copyright protected works whereby your work must fit one of the eight available categories. Once a qualifying copyright work is created, the author is granted control over the work in relation to their exclusive economic rights. For example, renting, performing, or distributing. Another key component are the moral rights afforded to the author such as the right of integrity and paternity. It is important to note that the rights granted are subject to exceptions and limitations.

Criticism of Adopting UK Approach

There are numerous reasons why Somaliland should not reverse to the UK approach. First, I submit that there is an incompatibility of philosophy. Whilst it is argued the UK does not have a clear-cut philosophy, I submit that the UK approach is orientated towards an economic justification. In which, rights follow the money¹¹⁵. This is because the current IP system in the UK is based on the unique needs of a technologically developed country. Any IP system that would be introduced to Somaliland needs to be contextualised. I advise this is best possible by incorporating the local customary laws. In essence, this would incorporate international standards whilst maintaining indigenous rules. In practice, this would involve the House of Elders into the drafting process so that laws which were part of an oral tradition can now be codified. Consequently, this would create a hybrid system which accurately reflects society and culture in Somaliland.

Another reason looks at the substantive UK provisions and its shortfalls. There are many areas of UK copyright law that remain contentious issues such as the concept of moral rights. Following international obligations, the UK is bound to protect moral rights which refer to

¹¹⁵ Makeen Makeen, 'The Evolution and Scope of the Public Performance Right of Musical Works under International, US and Egyptian Copyright Laws' (2018) Journal. Of the Copyright Society of the USA 65(2) 169-202.

the right of integrity and paternity¹¹⁶. However, the UK extends moral right protection to include rights that are not stricto sensu moral rights¹¹⁷. This includes the right to privacy in certain photographs and the right of false attribution. Even when looking at the two moral rights the UK is obliged to protect, they fall short of doing so. For instance, to enjoy the right of paternity one must assign this right in contract¹¹⁸. This is in direct conflict with *Article 5 (2)* of the Berne Convention. This article prohibits formalities as a prerequisite for protection. Thus, if there is a reversal to the UK approach it will result in the transplantation of the errors in their system too. To avoid this, I propose to not adopt the UK Copyright system.

4.3.2 Adopting French Author's Rights

The existing *Sharciga Xuquuqda Qoraaga 1977*, which was transferred during the SDR period, is drafted in a manner that suits an author's rights tradition. From *Article 2*, we are informed of the type of works protected and the requirement of originality. It states works created by 'author's using their mind' which is language that reflects the French approach to originality. Whilst there is no express reference to the term 'original', it is implied. Further, when looking at the moral rights provision (*Xuquuqda Macnawiga ah*) both rights of integrity and paternity are granted. Interestingly, *Article 15 (3)* and *(4)* informs us that these rights are inalienable and not assignable. Again, this mirrors the French approach under *Article 121-1* whereby moral rights are deemed perpetual, inalienable, and imprescriptible¹¹⁹. Another area of similarity is how cinematographic works are protected. In France, there is an assumed list of authors under *Article 14* who are regarded as the authors unless rebutted¹²⁰. Under the 1977 Law, there is no express reference to a single cinematographic works author. Instead, there is an assumption of who the first owners are that can similarly be rebutted under *Article 7*.

4.4 Recommendations

¹¹⁶ Berne Convention, Article 6bis.

¹¹⁷ J. Ginsburg, 'Moral Rights in the Common Law System' (1990) 1 Ent.L.R 121, 128-9.

¹¹⁸ Ibid.

¹¹⁹ Raymond Sarrute, 'Current Theory on the Moral Right of Authors and Artists under French Law' (1968) 16(4) 465-486.

¹²⁰ Ibid.

A key point to note is often meaning is lost in translation from English to Somali. This is often because there is no exact word for word translation. For example, the term literary is not well defined under the 1977 law¹²¹. Given the large similarity between the existing 1977 law and the civil law traditions, it is more advantageous to incorporate an author's rights system as opposed to the UK approach. However, this proposal is subject to removing the requirement of registration. Under *Article 91 (1)*, copyright protection cannot be gained unless the work is submitted to a register. Currently, this proves difficult as after the civil war (1991 – onwards) there is no registration system or office. Moreover, to be compliant with international standards it is best to remove this formality as it is a step towards attracting foreign investment. Namely, this is because 'harmonising IP internationally allows for developing countries to benefit from capital flow from international trade'¹²² that would not otherwise be available. To reaffirm, Somaliland becoming internationally compliant goes alongside customary laws.

¹²¹ Ibid (n 95).

¹²² Ibid (n 1).

Chapter 5: Patent

The purpose of this chapter is to examine the current mechanism of fostering and protecting innovation in Somaliland. In doing so, we find that this mechanism does not exist. To overcome this, an analysis of the applicability of the patent system to developing countries is provided. The primary conclusion is that the western concept of the patent system does not benefit developing countries, much less an emerging country like Somaliland. The purpose of the patent system was to encourage the transfer of technology but even for this purpose, it ‘usually benefits the North at the expense of the South’¹²³. This is because producers in the North benefit from ‘higher profits, while consumer prices remain largely unchanged’¹²⁴. Whereas, in the South ‘consumer prices rise, resulting in net negative welfare effects’¹²⁵. I submit the most appropriate interim solution is to not adopt the patent system and to enable the transfer of technology through imitation. Only when Somaliland has sufficient economic development and gains international recognition, can they accede to ARIPO and ratify the Harare Protocol 1982.

5.1. History of Patent Law in Somaliland

During the British protectorate era, Somaliland was subject to the Patent Act 1924. Following reunification, the SDR acceded to the Lusaka Agreement 1976 established by ARIPO. This enabled the SDR to pool resources with other union members to grant patents. The aim of this agreement was to ‘avoid duplication of financial and human resources’¹²⁶. However, the SDR did not ratify the Harare Protocol 1982, which would have enabled ARIPO to receive and process patent applications on their behalf. Further, it would have enabled the SDR to align with the Patent Cooperation Treaty following their link in 1994. Registrations of patents during the SDR period were made by application to various ministries¹²⁷. There are no records of any registrations made since 1989¹²⁸. If a system of registration is rebooted in South Somalia it will have no legal bearing in Somaliland.

¹²³ A Maxwell and D Rikker, ‘*The Economic Implications of Strengthening Intellectual Property Rights in Developing Countries*’ (2014) JICE 2-8.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Paul Kuruk, ‘*Traditional Knowledge, Genetic Resources, Customary Law and Intellectual Property*’ (Edgar Elgar Publishing 2020) Ch 8.

¹²⁷ See appendix for example.

¹²⁸ Ibid (n 95).

5.2 Is the Patent System Fit for Purpose for Developing Countries?

First, we must examine whether the patent system is fit for purpose in developing countries. In doing so, the justifications provided for the patent system will be examined. For a developed country, the concern is no longer whether we need a patent system. Rather, it is determining the scope of rights and whether the traditional justifications can account for certain patent features¹²⁹. For a developing country like Somaliland, I submit the justifications fall short of providing a satisfactory basis for adopting a patent system, as they are not applicable to developing countries¹³⁰.

5.2.1 Traditional Justifications of the Patent System

Natural Rights

As previously discussed, this theory refers to one's natural right to enjoy the fruit of their labour¹³¹. With regards to patents, it provides a mechanism of protection for one to enjoy what they have created. However, this theory does not account for the process in which ideas are disseminated. Chevalier asserted 'an idea can belong to an unlimited number of persons'¹³² which is a salient criticism when looking at the protection of traditional knowledge. As, traditional knowledge is not associated with a single author but rather a result of community creation over time. Subsequently, it is difficult to discern different contributions to traditional knowledge. Thus, we cannot determine who has invested labour and therefore reap the reward.

The shortfall of this theory is demonstrated through the contentious issuing of a patent for the use of powdered turmeric for wound healing in the US. Turmeric has long been used in India and other developing countries for centuries including Somaliland. One may argue that the

¹²⁹ Ibid (n 91) Ch 11.

¹³⁰ Report of the Commission on Intellectual Property Rights, Integrating Intellectual Property Rights and Developmental Policy (London, Sept.2002) 14-15.

¹³¹ Ibid (n 111).

¹³² F Machlup and E Penrose, 'The Patent Controversy in the Nineteenth Century' (1950) 10 JEH 9-26.

lack of a patent system has enabled others to monopolise traditional knowledge. I submit that the appropriate solution is not to adopt a patent system to protect traditional knowledge. This is because it is difficult to fulfil patent requirements such as novelty. Instead, a method of documenting traditional knowledge to provide a database of prior art should be adopted. This prevents individuals from benefiting from something that they have not created. In other words, one cannot benefit from the labour invested by others.

Just Reward for the Inventor

This theory advocates for the moral right to receive a reward for inventing, in the form of monopoly control that grants exclusive rights¹³³. This is a seemingly attractive justification as it appeals to one's logic to reward those that have contributed to society. However, I question why a suitable reward must take the form of an extensive patent system. Many alternatives have been put forward such as bonuses granted to the inventor by governments or associations¹³⁴. Nonetheless, this suggestion did not gain much traction. Whilst this theory does provide the most workable justification, this opinion is not convinced that it justifies the patent system; only justifies giving a reward. For Somaliland, it is advisable to devise an alternative reward. One that balances the investment of the innovator and public interest in accessing the invention. The use of the patent system has resulted in the developing world's limited access to drugs. Even though there is a successful generics market in pharmaceuticals, this is not readily available to developing countries. Especially, emerging countries like Somaliland, where the private health sector dominates and is largely unregulated¹³⁵. The most advantageous solution is to delay the adoption of a patent system until Somaliland has developed enough economically to afford granting these rights.

Best Incentive to Invent

This theory contends patents are catalysts for inventions by incentivising security of investment for innovators. Yet, a 'positive connection between patenting and innovation'¹³⁶ is

¹³³ Ibid.

¹³⁴ Ibid (n 132).

¹³⁵ Joanna Buckley, Liz O'Neill and Ahmed Mohamed Aden, 'Assessment of the Private Health Sector in Somaliland, Puntland and South Central' HEART (March 2015).

¹³⁶ E. Auriol, S Biancini and Paillacar R, 'Intellectual Property Rights Protection in Developing Countries' (2012) Centre for Economic Policy Research 1.

to be established. Instead, the patent system is merely a process serving equitable economic return, as opposed to industrial development. Moreover, R&D are diverted from socially productive activity, such as biomedical research, to areas where monopolies are obtainable¹³⁷. Turner correctly questions whether ‘a patent system produces a net benefit for society’¹³⁸ especially for those that cannot afford it. This refers to the transaction cost of adopting a patent system. With scarce financial resources, an underdeveloped legal system, and a general lack of expertise in IP, the cost of adopting such a system is extremely high for Somaliland. In addition, associated costs such as the ‘acquisition and maintenance of rights’ is unattainable¹³⁹. Moreover, further concern is raised as foreign firms can ‘import monopolies granted by patents’ into developing countries¹⁴⁰. Subsequently, this creates a cycle of ‘technological dependence on industrialised countries’¹⁴¹ which discourages domestic innovation. I submit this theory fails to provide sufficient justification especially for an emerging country.

Best Incentive to Disclose

This concept draws on the notion of a social contract wherein the inventor discloses their secrets and society vows to protect the invention from unauthorised third-party exploitation¹⁴². This theory presents concerns such as the length that any invention can truly remain a secret due to competition. Further, if an inventor believes they can keep their invention a secret they will do so and not obtain a patent. Thus, patents do not cause disclosure but rather the patent specification requires disclosure¹⁴³. This theory fails to acknowledge progress does not depend on disclosure in the specification.

¹³⁷ M Heller and R. Eisenburg, ‘Can Patents Deter Innovation? The Anticommons in Biomedical Research’ (1998) 280 (5364) SCIENCE.

¹³⁸ S Oddie, ‘The International Patent System and Third World Development: Reality or Myth?’ (1987) Duke Law Journal 831.

¹³⁹ Ibid (n 133).

¹⁴⁰ Ibid (n 132).

¹⁴¹ N Seeratan, ‘The Negative Impact of Intellectual Property Patent Rights on Developing Countries: An Examination of the Indian Pharmaceutical Industry’ (2002) St Mary’s University of Law 339,385 <<https://core.ac.uk/download/pdf/47209922.pdf>> accessed 23rd September 2021.

¹⁴² Ibid (n 91) Ch 11.

¹⁴³ M Boldrin. And D Levine, ‘The Case Against Patents’ (2013) 27 (1) Journal of Economic Perspectives 9.

5.2.2 Economic Justifications

Technology Transfer, R&D and Economic Development

The original justification of the patent system was encouraging the transfer of technology¹⁴⁴. Today, the same argument is put forth towards developing countries. This is supported by global econometric tests. These found a positive connection between the strength of IPRs and ‘capital goods imports, inwards FDI and licensing payments’¹⁴⁵. A weak patent system does not provide an incentive to create, which hinders domestic innovation¹⁴⁶. As entrepreneurs or researchers are unwilling to invest without assurance of protection. Further, it is said that innovators from developed countries have less incentive to invest in developing countries that offer weak IPRs¹⁴⁷. This is because innovators from developed countries have the technological capacity to create and see no benefit from investing resources in a country that offers no security. Additionally, foreign investment is likely only to be made to countries that have a patent system that is advanced enough to grant adequate protection. This is because the investment can offer extensive benefits such as economic growth and technology transfer.

5.2.3 Limitations of Patent System in Developing Countries

This study is not convinced of the proposed connection between having an extensive patent system and vast economic development. This is because patent applications in developing countries are overwhelmingly made by innovators from technologically advanced and economically developed countries¹⁴⁸. Thus, adopting a patent system will only enable a transfer of wealth from the developing to the developed. Over a period of 25 years Europe has accounted for 40% of all patent filings in South Africa and the US accounted for 30%¹⁴⁹. This greatly differs from domestic applications, which only account for 17%. Moreover, there

¹⁴⁴ This was the championing argument used to advocate for the TRIPs agreement under the WTO, See Gregory Graff and Philip Pardey, ‘*Inventions and patenting in Africa: Empirical trends from 1970 to 2010*’ (2019) JWIP 23(1-2) 40-64.

¹⁴⁵ Sanjaya Lall, ‘*Indicators of the Relative Importance of IPRs in Developing Countries*’ (2003) ICTSD 3.

¹⁴⁶ Yongmin Chen and Thitima Puttitanun, ‘*Intellectual Property Rights and Innovation in Developing Countries*’ (2005) JDE 78 474 – 493.

¹⁴⁷ I Diwan and D Rodrik, ‘*Patents, appropriate technology, and North-South Trade*’ (1991) JIE 30(1-2) 27-47.

¹⁴⁸ Ibid (n 146).

¹⁴⁹ See appendix for graph.

is no incentive for companies that import patented products to establish ‘domestic manufacture, or set up local R&D, or transfer technology to local production’¹⁵⁰. Thus, the patent system is counterintuitive as it only serves the interests of those with wealth.

This creates a difficult environment for the domestic industry to compete against the developed world. There is concern over the patent system and depleting indigenous communities’ resources. This is because the patent system enables the ‘unauthorised appropriation and commercial exploitation of traditional knowledge’¹⁵¹, known as ‘bio-piracy’¹⁵². For example, rosy periwinkle is a plant originating from Madagascar. The plant's anti-cancer properties have enabled Eli Lilly to benefit from huge profits in the last 40 years since coming to market¹⁵³. Whilst supply for the plant stemmed from Madagascar, the plant is now sourced from plantations in the US¹⁵⁴. This is clear evidence of indigenous creativity being usurped by western pharmaceutical giants. Thus, undermining contributions of indigenous communities and accumulating large benefits.

A significant criticism of adopting a patent system are the humanitarian considerations. The patent system greatly hinders access of developing countries to basic human needs, such as food and medicine¹⁵⁵. Developing countries that have advanced patent systems have a tendency to increase the cost of food and medicine¹⁵⁶. This impacts the poorest individuals who already cannot afford necessities. This is a trend evident across sub-Saharan Africa where the economy depends on agriculture. This is particularly difficult for Somaliland as poverty, famine and infectious diseases have contributed to vast health and economic concerns. A recent example is the COVID-19 pandemic and access to the vaccine. In Somalia, only 0.76% of the population have received a vaccine as opposed to 66.6% in the UK¹⁵⁷. Despite donations from developed countries, stark divide remains. I submit the best solution to enable greater access to medicine, such as the COVID vaccine, is allowing developing countries to make their own. This is because whilst “charity is good, we can’t rely

¹⁵⁰ V.Shiva, ‘*Protect or Plunder?: Understanding Intellectual Property Rights*’ (ZedBooks 2001) 21-26.

¹⁵¹ Ibid (n 144).

¹⁵² Ibid.

¹⁵³ G Dutfield, ‘*Intellectual Property, Biogenetic Resources and Traditional Knowledge*’ (Earthscan 2004) 47.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid (n 147).

¹⁵⁶ Ibid (n 146).

¹⁵⁷ Google News (21st September 2021) < <https://news.google.com/covid19/map?hl=en-GB&state=7&mid=%2Fm%2F07ssc&gl=GB&ceid=GB%3Aen>> accessed 21st September 2021.

on charity alone”¹⁵⁸. This would involve pharmaceutical companies sharing their patented technology and knowledge to be reproduced by the global south. However, this study is sceptical as to whether this will be achieved as action on the IP waiver issued by the US is yet to materialise.

5.5 Recommendations

A weaker patent system enables ‘copy culture’ to thrive, much like the earlier discussion concerning copyright. Thus, enabling developing countries to reproduce technology. I submit that creators in Somaliland should be free to imitate existing technology in order to advance. This is because the technology will be replicated at a lower cost allowing for accessibility. This provides an alternative to paying patent licensing fees that Somaliland innovators or research firms previously would not have access to. Further, only when Somaliland has managed to progress their domestic industry should a patent system be adopted. This mirrors the approach taken by the world’s most technologically developed countries that currently have extensive IPR systems.

If Somaliland wants to adopt a patent system, this will involve establishing an IPO. It would be more beneficial to seek assistance from regional bodies, such as ARIPO, to aid this process. However, I affirm the finding of the World Bank in that ‘interests in encouraging low-cost imitation dominate policy until countries move into a middle-income range with domestic innovative and absorptive capabilities’¹⁵⁹. Thus, adopting a patent system is not preferable until Somaliland has reached this middle-income range. Upon doing so, can the Harare Protocol be ratified. Further, a more appropriate solution is to draw influence from Somaliland’s indigenous community, where there are ‘complex custom-based intellectual property systems’¹⁶⁰. This would enable greater social benefits of investment rather than investment in profitable sectors.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid (n 147).

¹⁶⁰ G Dutfield, ‘*Indigenous People, Bioprospecting and TRIPs Agreement: Threats and Opportunity*’ <https://www.iapt.org/sites/default/files/Indigenous_Peoples_Bioprospecting_and_the_TRIP.htm> accessed 24th September 2021.

If Somaliland decides to become TRIPs compliant, I advise doing so in a way that follows the approach adopted by South Africa in the 90's. By enacting the Medicines and Related Substances Control Amendment 1997, President Mandela permitted the use of compulsory licensing of generic medicine. In addition, purchasing affordable medicine via parallel imports. In light of the AIDS epidemic, this allowed for greater accessibility to medicine for the average South African citizen who would not be able to afford it otherwise. Somaliland must mirror this approach to address public health concerns that arise by adopting the patent system.

Conclusion and Next Steps

‘All the more reason, I would argue, for governments implementing TRIPS to think imaginatively rather than just to think they must imitate other countries’ flawed intellectual property systems’ - G Dutfield¹⁶¹

No single person nor state could argue that the perfect intellectual property system exists. Instead, there is a battle to find the one mechanism that is essentially the lesser evil. That is, to formulate a system that finds an appropriate balance between granting strong intellectual property rights protection, public interest and economic growth. What is more often than not left out of the conversation, is how the global south factors into this discussion. Even more so neglected, is how emerging countries fit into the equation.

In an increasingly globalised society, the importance of intellectual property is undeniable. For an emerging country, like Somaliland, the question is not as simple as whether to adopt an intellectual property system or not. Instead, the conversation is underpinned by a yearning of Somaliland citizens and the diaspora to gain recognition. To reduce this long felt want for recognition to the simple solution of rejoining South Somalia is unreasonable and reductive. Instead, this legal opinion has provided a way to align the development of Somaliland’s intellectual property system and the bid for recognition. Namely, by employing pre-existing constitutional provisions, drawing influence from international structures, and incorporating customary law.

The different solutions postulated in this legal opinion are all subject to a caveat. That is, until Somaliland has actualised high rates of economic growth, any mechanism of protecting intellectual property cannot be adopted. Up until that moment, this opinion advocates for Somaliland to adopt a copy culture mantra. This means to copy until they can compete. This opinion acknowledges that this approach may be met with hostility by the international community. However, this serves as a reminder that ‘many developing countries agreed to TRIPs in order to gain concessions from rich ones in other spheres of economic activity or

¹⁶¹ Ibid.

aid'¹⁶². Thus, whilst one may criticise an emerging countries' decision to appropriate others' technology, the alternative of ratifying an agreement that does not suit their current economic needs is untenable.

Once Somaliland has reached an appropriate level of economic growth, only then can certain aspects of the UK approach to protecting and enforcing intellectual property rights be adopted. As demonstrated, some elements of the UK system are more fitting for specific intellectual property rights than others. For those that are not compatible, this legal opinion has offered a myriad of alternative solutions.

The next steps for Somaliland are divided based on the specific intellectual property right:

- *Trademarks*: Somaliland should only adopt the specific tropes of the UK approach outlined, such as a registration system. The continued application of constitutional provisions is the baseline. To develop trademark protection, Somaliland needs to formulate an effective mechanism of enforcement that is authoritative. This will be aided by adopting the provided interim measures. The long-term aim is to ratify the Banjul Protocol to gain assistance from ARIPO and pool resources.
- *Copyright*: Somaliland should not adopt the UK approach to protecting and enforcing copyright. Instead, Somaliland should build on the already evident author's rights tradition. In doing so, there are reformations that should be made on the pre-existing law. The foremost amendment is the removal of the compulsory registration system to acquire copyright protection.
- *Patents*: Somaliland should not adopt the patent system at all, regardless of origin. The patent system does not favour developing countries and much less, emerging countries. In lieu of this, Somaliland should enable the transfer of technology through

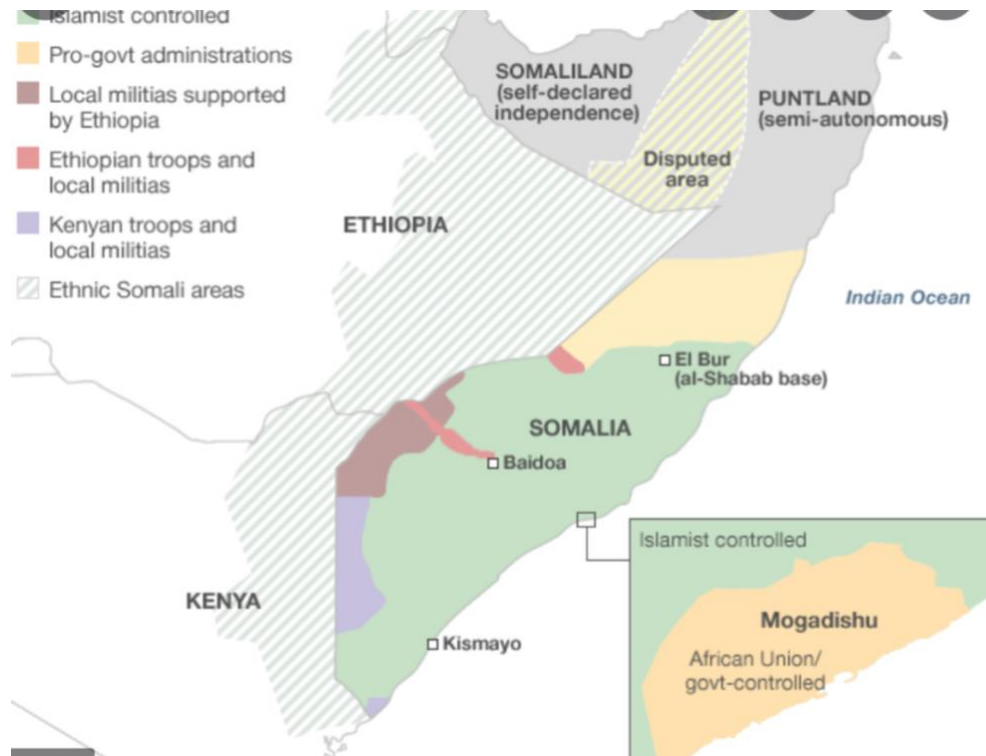
¹⁶² Ibid (n 145).

adopting copy culture. The next stage would be ratifying the Harare Protocol upon gaining recognition and sufficient economic development. The future patent system should be moulded in line with South Africa's approach as opposed to the UK.

Ultimately, the adoption of an extensive intellectual property system is contingent on vast economic development and international recognition. Somaliland should not succumb to the pressure of the international community to blindly adopt strong intellectual property protection. Instead, this legal opinion asserts Somaliland can be a compliant international player whilst retaining core values and culture by the incorporation of indigenous and customary laws.

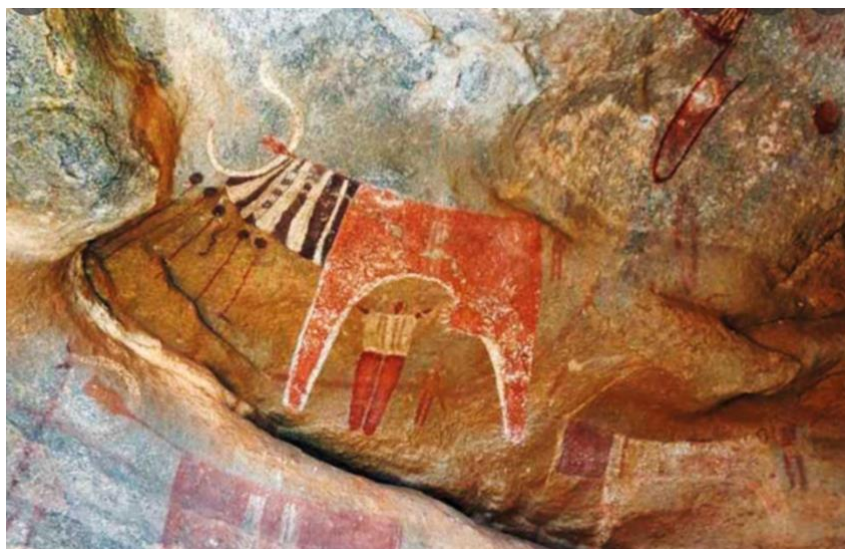
Appendices

APPENDIX A: MAP OF SOMALILAND¹⁶³



¹⁶³ 'Political map of Somalia after 22 years of Civil War' (Reddit) <
https://www.reddit.com/r/MapPorn/comments/17v79g/political_map_of_somalia_after_22_years_of_civil/>
accessed 23rd September 2021.

APPENDIX B: LAAS GEEL ART ILLUSTRATION¹⁶⁴



APPENDIX C: EXAMPLE OF PRECAUTIONARY NOTICE

CAUTIONARY NOTICE TRADE: x

somaliandsun.com/cautionary-notice-trademark-in-the-territory-of-somaliland-2/

Apps Gmail YouTube Maps News Trademark reading Somaliland: Insigh...

Reading List

HOME DONOR NEWS CONTACT SOMALILAND OP-ED GLOBAL ECONOMY REGIONAL HISTORY JOB OPPOR English

SOMALIA

TRADE-MARK-CAUTIONARY-NOTICE

NOTICE IS HEREBY GIVEN that: KT&G Corporation, a South Korean company with head office at: 71, Beotkkot-gil, Daedeok-gu, Daejeon, Republic of Korea Is the owner and Sole proprietor of the following trademark:

RAISON

The above trademark is used in the international class 34 in respect of the following products:
Class 34: Tobacco; Cigarettes; Cigars; Snuff; Cigarette papers; Tobacco pipes, not of precious metal; Cigarette filters; Cigarette cases, not of precious metal; Tobacco pouches; Cigarette lighters, not of precious metal; Matches; Tobacco pipe cleaners; Ashtrays for smokers, not of precious metal; Cigar cutters.

NOTICE IS ALSO GIVEN that legal proceedings will be instituted against any person or company that uses the same trademark or any imitation thereof, or against anyone that violates this trademark ownership rights.

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¹⁶⁴ Omar Shariff, 'Laas Geel: Heritage world's best-kept secret' (27th April 2018) *Gulf News* < <https://gulfnews.com/world/mena/laas-geel-heritage-worlds-best-kept-secret-1.2209326> accessed 23rd September 2021.

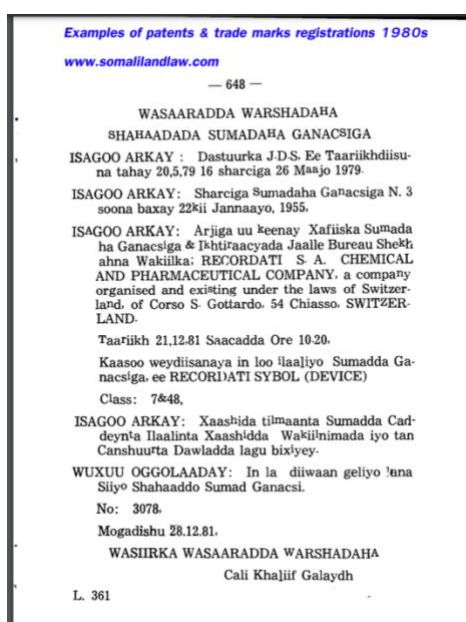
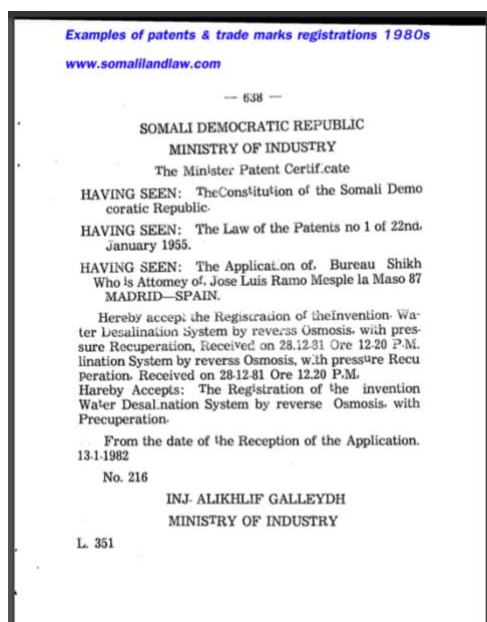
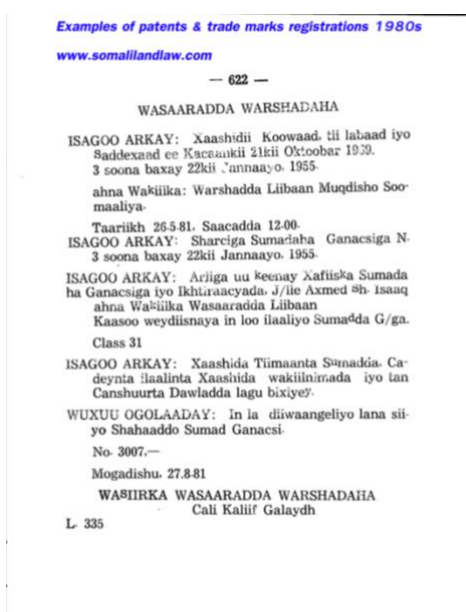
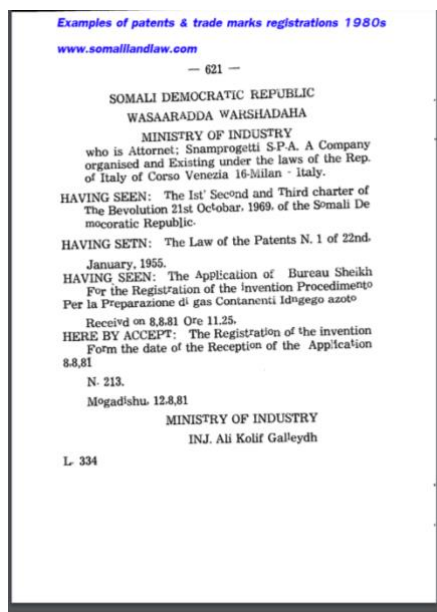
APPENDIX D: EXAMPLE OF TRADEMARK MISUSE¹⁶⁵



*This is an example of a well-known international mark being misappropriated. The traditional KFC acronym has been replaced.

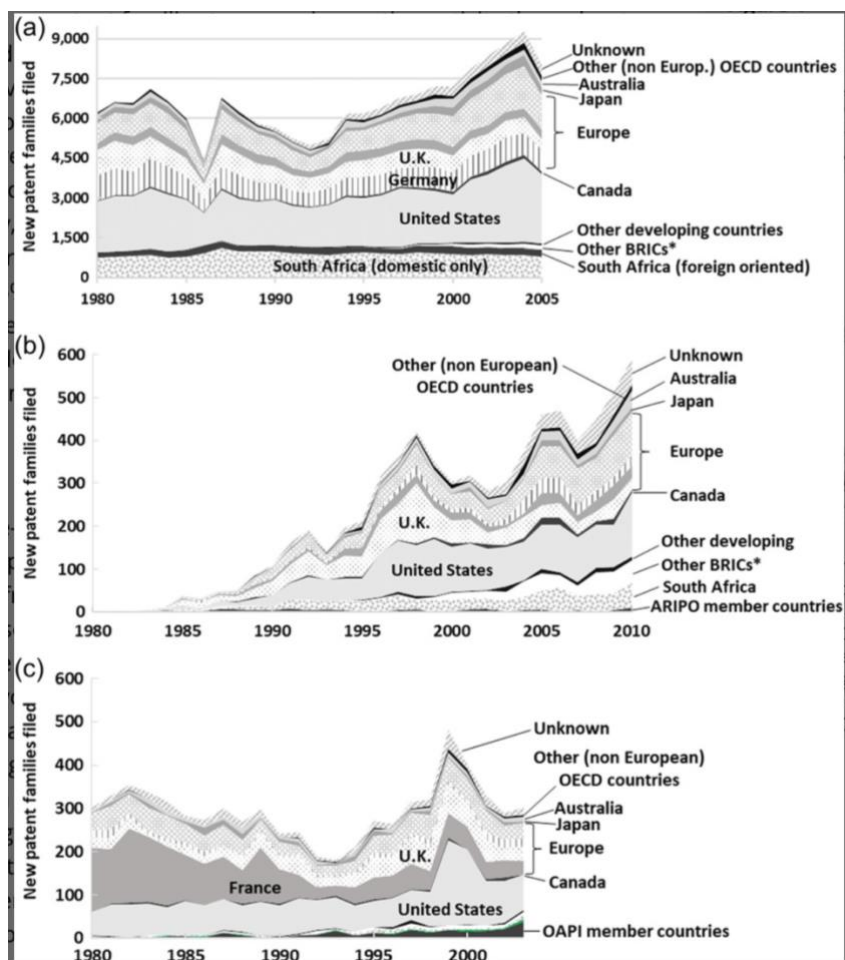
¹⁶⁵ Ibid (n 82).

APPENDIX E: EXAMPLE OF PATENT APPLICATION REGISTER¹⁶⁶



¹⁶⁶ Ibid (n 100).

APPENDIX F: % of PATENT APPLICATIONS IN AFRICA & ORIGIN¹⁶⁷



¹⁶⁷ Ibid (n 145).

Bibliography

Statutes

Banjul Protocol on Marks 1993.

Berne Convention for the Protection of Literary and Artistic Works 1886.

Copyright Act 1911.

Copyright Law – Law No. 66 of 7 September 1977 (*Sharciga Xuquuqda Qoraaga*).

Copyright, Designs and Patents Act 1988, s 1(1).

Harare Protocol 1982.

Italian Trade Mark Decree No. 929 1942.

Lusaka Agreement 1976.

Patent Act 1924.

Patent Cooperation Treaty 1970.

Somali Civil Code - Law No: 37 of 2 June 1973.

Somaliland and Somalia Act of Union 196.

Somaliland Civil Procedure Code 1973.

Somaliland Constitution 2000.

Somaliland Penal Code 1963.

Statute of Anne 1709.

The Copyright Act, 1956 (Transitional Extension) Order 1959.

The Laws of the Somaliland Protectorate, Revised Edition 1950, British and Indian Act under the Somaliland Copyright Ordinance.

Trade Marks Act 1938.

Trademarks and Patents Amendment Law 1987

Universal Copyright Convention 1952

Cases

L'Oréal v Bellure C-487/07 [2009] ECR I-5185.

Secondary Sources

Ahmed Yasmin, 'Somalia's Lost Tapes Revive Musical Memories' *BBC News* (26th August 2017) <<https://www.bbc.co.uk/news/world-africa-40966656>> accessed 21st September 2021.

Akopyan David, 'The Role of Somali Women in the Private Sector' *Somalia: United Nations Development Programme* (20th November 2014) <https://www.so.undp.org/content/somalia/en/home/library/womens_empowerment/publication_2211.html> accessed 22nd September 2021.

Al Jazeera English, 'Somaliland: Kill All but the Crows' <<https://www.youtube.com/watch?v=JNBTLc2wHU8&t=201s>> accessed 16th September 2021.

Alshorbagy Ahmad A, 'On the Failure of a Legal Transplant: The Case of Egyptian Takeover Law' (2013) *Indiana International & Comparative Law Review* 22(237) 237-266.

'Amazon Pays £290m in UK Tax as Sales Surge to £14bn' *BBC News* (9th September 2020) <<https://www.bbc.co.uk/news/business-54082273>> accessed 13th September 2021.

Antonov Mikhail, 'Eugen Ehrlich - State Law and Law Enforcement in Societal Systems' *National Research University Higher School of Economics* (2014).

Aplin Tanya and Davis Jennifer, 'Intellectual Property Law: Text, Cases and Materials' (3rd edn, Oxford 2017) Ch 6.

Auriol E, Biancini S and Paillacar R, 'Intellectual Property Rights Protection in Developing Countries' (2012) *Centre for Economic Policy Research* 1.

Ayieko Odindo, 'Somaliland Economic Growth on the Rise' *EABW News* (20th February 2020) <<https://www.busiweek.com/somaliland-economic-growth-on-the-rise/>> accessed 21st September 2021.

Background Briefs: Traditional Knowledge and Intellectual Property WIPO <https://www.wipo.int/pressroom/en/briefs/tk_ip.html> accessed 15th September 2021.

Black Donald, 'The Social Structure of Right and Wrong' (1993) Academic Press.

Bently L, Sherman B, Gangjee D and Johnson P, *Intellectual Property Law* (4th edition, OUP, 2004).

Boldrin M And Levine D, 'The Case Against Patents' (2013) 27 (1) *Journal of Economic Perspectives* 9.

Brown Alison, Mackie Peter and Dickenson Kate, 'The Informal Economy in Civil War: Hargeisa – Somaliland' *Cardiff University* (2017)

<https://www.cardiff.ac.uk/__data/assets/pdf_file/0007/1057732/The-informal-economy-in-civil-war-Hargeisa.pdf> accessed 17th July 2021.

Buckley Joanna, Liz O'Neill and Ahmed Mohamed Aden, '*Assessment of the Private Health Sector in Somaliland, Puntland and South Central*' HEART (March 2015).

Campbell John, '*Somaliland Peacefully Elects and Swear in Another President*' Council on Foreign Relations (9th January 2018) <<https://www.cfr.org/blog/somaliland-peacefully-elects-and-swears-another-president>> accessed 14th August 2021.

Chen Yongmin and Puttitanun Thitima, '*Intellectual Property Rights and Innovation in Developing Countries*' (2005) JDE 78 474 – 493.

Davies Margaret, '*Legal Pluralism*' (2010) The Oxford Handbook of Empirical Legal Research 816-822.

Diamond S.A, '*The Historical Development of Trademarks*' (Scribd) <<https://www.scribd.com/document/228633579/The-Historical-Development-of-Trademarks>> accessed 22nd September 2021.

Diwan I and Rodrik D, '*Patents, appropriate technology, and North-South Trade*' (1991) JIE 30(1-2) 27-47.

Dutfield G, '*Indigenous People, Bioprospecting and TRIPs Agreement: Threats and Opportunity*' <https://www.iapt.org/sites/default/files/Indigenous_Peoples_Biorespecting_and_the_TRIP.htm> accessed 24th September 2021.

Dutfield G, '*Intellectual Property, Biogenetic Resources and Traditional Knowledge*' (Earthscan 2004) 47.

Ellis Mewburn, '*Trademark: Licensing*' <<https://www.mewburn.com/law-practice-library/trade-marks-licensing>> accessed 20th September 2021.

Eubank N, '*Taxation, Political Accountability and Foreign Aid: Lessons from Somaliland*' (2010) Journal of Development Studies 48(4) 465-480.

Ewald William, '*Comparative Jurisprudence (II): The Logic of Legal Transplants*' (1995) The American Journal of Comparative Law 43(4) 489-510.

Farah H. Mohamoud, '*Research the Somaliland Legal System*' Global Lex (June 2020) <<https://www.nyulawglobal.org/globalex/Somaliland1.html#ElectionsLegalFramework>> accessed 8th September 2021.

Felter Claire, '*Somaliland: The Horn of Africa's Breakaway State*' Council on Foreign Relations (1st February 2018) <<https://www.cfr.org/backgrounder/somaliland-horn-africas-breakaway-state>> accessed 8th September 2021.

Fisher M, '*Classical economics and philosophy of the patent system*' [2005] Intellectual Property Quarterly 2005 1.

Ginsburg J, 'Moral Rights in the Common Law System' (1990) 1 Ent.L.R 121, 128-9.
Goldman Kathryn, 'Charles Dickens and the American Copyright Problem' *Creative Law Centre* <<https://creativelawcenter.com/dickens-american-copyright/>> accessed 13th September 2021.

Google News (21st September 2021) <<https://news.google.com/covid19/map?hl=en-GB&state=7&mid=%2Fm%2F07ssc&gl=GB&ceid=GB%3Aen>> accessed 21st September 2021.

Graff Gregory and Pardey Philip, 'Inventions and patenting in Africa: Empirical trends from 1970 to 2010' (2019) *JWIP* 23(1-2) 40-64.

Griffiths J, 'What is Legal Pluralism?' (1986) *Journal of Legal Pluralism* 24 1–55.
Hassan Mohammed, 'Literacy in Somalia: A Struggle to Rebuild the System Broken by War' *Development Aid* (23rd July 2020) <<https://www.developmentaid.org/#!/news-stream/post/70249/literacy-in-somalia-a-struggle-to-rebuild-the-system-broken-by-war>> accessed 16th September 2021.

Heller M and Eisenburg R, 'Can Patents Deter Innovation? The Anticommons in Biomedical Research' (1998) 280 (5364) *SCIENCE*.

Intellectual Property Office, 'Building the Evidence Base on the Performance of the UK Patent System' (The Intellectual Property Office 2017/04).

Jhazbhay I, 'Somaliland: Africa's best kept secret, a challenge to the international community?' (2003) *African Security Review* 12(4) 77-82.

Keating Joshua, 'When is a Nation Not a Nation? Somaliland's dream of Independence' *The Guardian* (20th July 2018) <<https://www.theguardian.com/news/2018/jul/20/when-is-a-nation-not-a-nation-somalilands-dream-of-independence>> accessed 5th September 2021.

Knox Rawle, 'Parties Talk of Coming Struggle with Ethiopia' (1959) 2(25) *Periodicals: South African Political Organisations* 8.

Kuruk Paul, 'Traditional Knowledge, Genetic Resources, Customary Law and Intellectual Property' (Edgar Elgar Publishing 2020) Ch 8.

Lall Sanjaya, 'Indicators of the Relative Importance of IPRs in Developing Countries' (2003) *ICTSD* 3.

Landes W. and Posner R., 'Trademark Law: An Economic perspective' (1987) 30 *Journal of Law and Economics* 268-70.

Lewis M. I, 'Modern Political Movements in Somaliland, I.' (1958) 28(3) *Africa: Journal of International African Institute* 244-261.

Lewis Toby, 'Somali' (*EthnoMed*, March 2009) <<https://ethnomed.org/culture/somali/>> accessed 17th September 2021.

Machlup F and Penrose E, '*The Patent Controversy in the Nineteenth Century*' (1950) 10 JEH 9-26.

Makeen Makeen, '*The Evolution and Scope of the Public Performance Right of Musical Works under International, US and Egyptian Copyright Laws*' (2018) Journal. Of the Copyright Society of the USA 65(2) 169-202.

Manson Katrina, '*Coca-Cola Boosts Somaliland Economy*' *Financial Times* (17th May 2011) <<https://www.ft.com/content/35ab85bc-80ca-11e0-8351-00144feabdc0>> accessed 14th September 2021.

Mariano Khadar, '*The Somaliland Dream: Dialogue Between Generations*' *Horn Diplomat* (16th May 2018) <<https://www.horndiplomat.com/2018/05/16/the-somaliland-dream-dialogue-between-generations/>> accessed 4th September 2021.

Martin Bernd and Wetzler Peter, '*The German Role in the Modernisation of Japan – The Pitfall of Blind Acculturation*' (1990) 33(1) 77-88.

Maxwell A and Rikker D, '*The Economic Implications of Strengthening Intellectual Property Rights in Developing Countries*' (2014) JICE 2-8.

McGregor Sarah, '*World Bank Gets First Measure of 'Unequal' Somaliland Economy*' *Bloomberg* (29th January 2014) <<https://www.bloomberg.com/news/articles/2014-01-29/world-bank-gets-first-measure-of-unequal-somaliland-economy>> accessed 22nd September 2021.

Memorandum From the Director of the Office of Northern African Affairs (Newsom) to the Assistant Secretary of State for African Affairs, *Foreign Relations of the United States* (26th August 1963) <<https://history.state.gov/historicaldocuments/frus1961-63v21/d298>> accessed 22nd September 2021.

Miller Johnathan, '*A Typology of Legal Transplants*' (2003) *The American Journal of Comparative Law* 51(4) 839-886.

Mills Greg, Githongo John, Steenhuisen John, Haji Abbasali, Mwanawasa Chipokota and Biti Tendai, '*Somaliland: The Power of Democracy*' *Rusi* (4th June 2021) <<https://rusi.org/explore-our-research/publications/commentary/somaliland-power-democracy>> accessed 5th September 2021.

Montell Amanda, '*This Somali Spice Might Be the Secret to Looking 25 Forever*' (*Byrdie*, 2nd April 2020) <<https://www.byrdie.com/somali-women-skin-tips>> accessed 11th September 2021.

Morin Jean-Frederic and Gold Edward, '*An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries*' (2014) *International Studies Quarterly* 58(4) 781-792.

Nolan James, *Legal Accents, Legal Borrowing: The International Problem-Solving Court Movement* (Princeton University Press 2009) Ch 2.

Ocko Jonathan, 'Copying, Culture and Control: Chinese Intellectual Property Law in Historical Context' (1996) Yale Journal of Law & the Humanities 8(2) 559-578.
Oddie S, 'The International Patent System and Third World Development: Reality or Myth?' (1987) Duke Law Journal 831.

Olivecrona Karl, 'Locke's Theory of Appropriation' (1974) The Philosophical Quarterly 24(96) 220-234.

Orwin Martin, 'Introduction to Somali Poetry' (2001) Poetry Magazines
<<http://poetrymagazines.org.uk/magazine/recorded69-2.html?id=12334>> accessed 11th September.

Osman Abdurahman 'Shuke', 'Order Out of Chaos: Somali Customary Law in Puntland and Somaliland' (2010) 21 Accord < <https://www.c-r.org/accord/somalia/order-out-chaos-somali-customary-law-puntland-and-somaliland>> accessed 19th September 2021.

Paster Benjamin, 'Trademarks – Their Early History' Compiler Press (1969) < <http://www.compilerpress.ca/Library/Paster%20Trademarks%20Early%20History%20TMR%201969.htm>> accessed 18th September 2021.

Patinkin Jason, 'Meat for Mecca: Somaliland Exports Livestock for the Hajj' VOA (1st September 2016) <<https://www.voanews.com/a/meat-for-mecca-somaliland-exports-livestock-for-the-hajj/3489292.html>> accessed 15th September 2021.

Perry Mark and Margoni Thomas, 'From Music Tracks to Google Maps: Who Owns Computer-generated Works?' (2010) Law and Publications 27.

Pettinger Tejvan, 'Free Rider Problem' Economics Help (22nd May 2019) < <https://www.economicshelp.org/blog/1626/economics/free-rider-problem/>> accessed 7th September 2021.

'Political map of Somalia after 22 years of Civil War' (Reddit) < https://www.reddit.com/r/MapPorn/comments/17v79g/political_map_of_somalia_after_22_years_of_civil/> accessed 23rd September 2021.

Radcliffe-Brown A.R, 'On the Concept of Function in Social Science' (1935) American Anthropologist 37(3) 394-402.

Raven F, 'Copyright and Public Goods: An Argument for Thin Copyright Protection' (2005) MC Journal 8(3).

Report of the Commission on Intellectual Property Rights, Integrating Intellectual Property Rights and Developmental Policy (London, Sept.2002) 14-15.

Reiss S, 'Commentary on the Paris Convention for the Protection of Industrial Property' <<http://www.lex-ip.com/Paris.pdf>> accessed 23rd September 2021.

Richards Donald, 'The Ideology of Intellectual Property Rights in the International Economy' (2002) *Review of Social Economy* 60(4) 521-541.

Rowland Hazel, *Somali Music And Poetry: A Threatened Tradition* (The Culture Trip) <<https://theculturetrip.com/africa/somalia/articles/somali-music-and-poetry-a-threatened-tradition/>> accessed 22nd September 2021.

Sarrute Raymond, 'Current Theory on the Moral Right of Authors and Artists under French Law' (1968) 16(4) 465-486.

'SBI Sets Pace for Industrialisation in Unrecognised Somaliland' *EABW News* (27th May 2019) <<https://www.busiweek.com/sbi-sets-pace-for-industrialization-in-unrecognized-somaliland/>> accessed 12th September 2021.

Scheuhter F.I, 'The Rationale Basis for Trademark Protection' (1926) 40 *Harvard Law Review* 818-19.

Seeratan N, 'The Negative Impact of Intellectual Property Patent Rights on Developing Countries: An Examination of the Indian Pharmaceutical Industry' (2002) *St Mary's University of Law* 339,385 <<https://core.ac.uk/download/pdf/47209922.pdf>> accessed 23rd September 2021.

Sequeira Ines, 'Somalia: Trademark Registration in Somalia and Somaliland – What You Need to Know' *Mondaq* (31st December 2020) <<https://www.mondaq.com/trademark/1021152/trademark-registration-in-somalia-and-somaliland-what-you-need-to-know>> accessed 14th September 2021.

Shariff Omar, 'Laas Geel: Heritage world's best-kept secret' (27th April 2018) *Gulf News* <<https://gulfnews.com/world/mena/laas-geel-heritage-worlds-best-kept-secret-1.2209326>> accessed 23rd September 2021.

Shinn H. David, 'Somaliland: The Little Country that Could' *Africa Notes* (November 2002) <https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/media/csis/pubs/anotes_0211.pdf> accessed 22nd September 2021.
Shiva V, 'Protect or Plunder?: Understanding Intellectual Property Rights' (ZedBooks 2001) 21-26.

Smith Sara, 'Somaliwood: Columbus has Become a Haven for Somali Filmmaking' *Hiraan Online* (19th April 2007) <https://www.hiiraan.com/news2/2007/may/somaliwood_columbus_has_become_a_haven_for_somali_filmaking.aspx> accessed on 29th August 2021.

Sohonie Vik, 'Uncovering Somalia's Forgotten Music of the 1970s' *Al Jazeera* (18th August 2017) <<https://www.aljazeera.com/features/2017/8/18/uncovering-somalias-forgotten-music-of-the-1970s>> accessed 11th September 2021.

'Somaliland Copyright Law'
<http://www.somalilandlaw.com/somaliland_copyright_law.html#Title> accessed 1st September 2021.

Somaliland Elections: Opposition Parties Win Majority of Seats 'Al Jazeera News' <<https://www.aljazeera.com/news/2021/6/6/somaliland-opposition-wins-first-parliamentary-polls-since>> accessed 6th September 2021.

'*Somaliland Profile*' BBC News (17th August 2017) <<https://www.bbc.co.uk/news/world-africa-14115069>> accessed 3rd September 2021.

South Sudan – Reservation of Trademarks 'LYSAGHT' (13th June 2017) <<http://www.lysaght.co.uk/news/ip-developments/south-sudan-%E2%80%93-reservation-trade-marks>> accessed 23rd September 2021.

Spence M., '*Justifying Copyright*' in D. McClean and K. Schubert, *Dear Images Art, Copyright and Culture* (Ridinghouse 2002) 389-403.

'*Sudan*' Country Index <https://www.country-index.com/country_surveys.aspx?ID=65> accessed 10th September 2021.

Tamanaha B.Z., '*Understanding Legal Pluralism: Past to Present, Local to Global*' (2008) *Sydney Law Review* 30 375–411.

TEDx Talks, *How Intellectual Property Powers Economic Growth* <<https://www.youtube.com/watch?v=1e5HKDJnkw8>> accessed 27th August 2021.

The Role of Remittance in the Economic Development of Somaliland' *UN-OHRLLS* <<http://unohrlls.org/news/the-role-of-remittance-in-the-economic-development-of-somaliland/>> accessed 22nd September 2021.

TME, '*The Essential Functions of a Trademark*' *AI Law* (28th November 2020) <<https://ai-law.co.uk/the-essential-functions-of-a-trademark/>> accessed 22nd September 2021.

Twin Cities Public Television, '*Somalia: A Nation of Poets*' <<https://www.tpt.org/somalia-a-nation-of-poets/>> accessed 22nd September 2021.

Vago Steven, Nelson. Adie, Nelson Veronica, Barkan Steven, *Law and Society* (5th edn, Routledge 2017).

Vincent Andrew, '*Marx and Law*' (1993) *Journal of Law and Society* 20(4) 371-397.

Waterfield Gordon, '*Trouble in the Horn of Africa? The British Somali Case*' [1956] 32(1) *International Affairs* (Royal Institute of International Affairs 1944-) 52-60.

Watson Alan, '*Comparative Law and Legal Change*' (1978) *The Cambridge Law Journal* 37(2) 313-336.

Watson Alan, '*From Legal Transplants to Legal Formats*' (1995) *The American Journal of Comparative Law* 43(3) 469-476.

Watson Alan, *Legal Transplants: An Approach to Comparative Literature* (2nd edn, University of Georgia Press 1993).

'When Charles Dickens Fell Out with America' BBC News (14th February 2012)
<<https://www.bbc.co.uk/news/magazine-17017791>> accessed 14th September 2021.

William Alford, *'To Steal a Book is an Elegant Offense: Intellectual Property Law in Chinese Civilisation'* (Stanford University Press 1995).

Williams Austin, *'The Origins of China's Copyright Culture'* Global <<https://www.global-briefing.org/2014/01/the-origins-of-chinas-copycat-culture/>> accessed 15th September 2021.
WIPO <https://www.wipo.int/directory/en/details.jsp?country_code=SO> accessed 24th September 2021.

WIPO, *International Patent Classification System*
<<https://www.wipo.int/classifications/ipc/ipcpub/?notion=scheme&version=20210101&symbol=none&menulang=en&lang=en&viewmode=f&fipcp=no&showdeleted=yes&indexes=no&headings=yes¬es=yes&direction=o2n&initial=A&cwid=none&tree=no&searchmode=s mart>> accessed 2nd September 2021.

WIPO, the *Patent Cooperation Treaty Minimum Documentation* <<https://www.wipo.int/export/sites/www/standards/en/pdf/04-01-01.pdf>> accessed 2nd September 2021.

World Bank, *'Doing Business in Hargeisa'* Washington: World Bank Publications (2012)
<<https://openknowledge.worldbank.org/bitstream/handle/10986/13418/74663.pdf?sequence=1&isAllowed=y>> accessed 22nd September 2021.

Yoo Christopher S., *'Rethinking Copyright and Personhood'* (2019) Faculty Scholarship at Penn Law 423.