



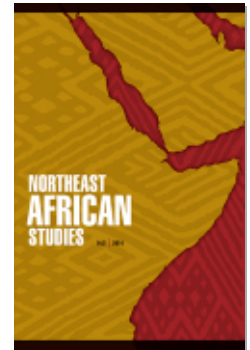
PROJECT MUSE®

Introduction: Transitional Justice Mechanisms for Somalia

Fowsia Abdulkadir, Rahma Abdulkadir

Northeast African Studies, Volume 14, Number 2, 2014, pp. 1-6 (Article)

Published by Michigan State University Press



➔ For additional information about this article

<https://muse.jhu.edu/article/557343>

Transitional Justice Mechanisms for Somalia

FOWSIA ABDULKADIR, *Carleton University, Ottawa, Canada*

RAHMA ABDULKADIR, *New York University, Abu Dhabi*

Transitional justice (TJ) can be conceptualized as a set of eclectic approaches that are used to tackle systematic or widespread violations of human rights that typically occur during authoritarian rule and/or in times of war. While there is now a substantial literature on the approaches to TJ utilized by various countries to address massive rights abuses in their recent histories (Rwanda, South Africa, Yugoslavia, Chile, etc.), almost nothing has been written about the possibilities of applying similar models to Somalia. The Somali case is unusual because, unlike other cases where a robust state has assumed responsibility for overseeing the processes of TJ, Somalia suffered a complete state collapse followed by a protracted civil war that continues in various forms to the present day. At the same time, the need to rebuild the country's institutions from the ground up offers unique opportunities for scholars and advocates of TJ: to gather empirical data on past human rights abuses; to survey Somali opinion on the most practical and acceptable modes of addressing those abuses; and to help guide planners and policy makers in assessing the potential costs and

benefits of prosecuting such violations in the context of efforts at national reconciliation.

Among the questions this special issue seeks to address are: (1) How can transitional justice be achieved in Somalia as it is today (i.e., in the absence of a functioning government in Somalia for twenty years)? (2) Who/what outside of the state (central or local authorities) has the legitimacy to engage in processes of conflict resolution in general and in addressing crimes against humanity in particular? How would such agent(s) of change operate? What will be the benefits of and challenges to enlisting such actors? (3) What would be the role(s) of Shari'a law, Somali customary law (*xeer*), and international human rights law in adjudicating past crimes against humanity in Somalia? (4) Different case studies (e.g., Rwanda and former Yugoslavia) have shown that international war crimes tribunals can make significant positive contributions towards reconciliation and peace building, even though such tribunals have had their critics. Is there a need for an international war crimes tribunal for Somalia, and if so, how would it be constituted? Finally, (5) given the Somali population's experiences with foreign interventions over the past two decades, what do Somalis think about the risks and advantages of international involvement in the process of reconciliation and TJ? The present Forum makes an initial attempt to address these and other challenging questions about the prospects for TJ in war-torn Somalia.

The first article, by Abdurahman M. Abdullahi (Baadiyow), begins with a chronological survey of the history of mass violence in Somalia following the collapse of the state in 1991 and summarizes the tortuous efforts to restore a functioning central government. It then reviews the various concepts of retributive and restorative justice familiar to Somalis, from *xeer* to Islamic Shari'a and Western jurisprudence, and proposes an innovative Somali-language terminology for the notion of "transitional justice." The heart of the paper presents and analyzes the results of a 2012 field survey conducted in Mogadishu among residents from many parts of South Central Somalia who directly experienced or witnessed gross human rights violations after 1990. Their personal testimonies painfully and poignantly reveal the human dimension of the horrors that any process of TJ must come to terms with. The research team solicited public opinion on the preferred mechanisms for addressing past crimes, and the findings suggest that most Somalis desire some type of compensation or reparation for

previously unaddressed human rights violations. Dr. Abdullahi concludes that it is critical for government authorities and international supporters to reverse the public culture of impunity and to restore individual responsibility for the crimes committed. While the author believes that Islamic Shari'a can provide both retributive and restorative mechanisms applicable in the Somali context and acceptable to the overwhelming majority of the population, he acknowledges that current popular conceptions of Shari'a are often legalistic and focused on punishments rather than on holistic Islamic approaches to justice and reconciliation.

Abou Jeng's article argues that an effective and durable transitional justice framework must be sufficiently inclusionary to allow scope for transformation. Equally crucial is that such a framework ought to command a sense of ownership capable of shielding against the imposition of an external mind set incongruous with local needs and expediencies. Dr. Jeng suggests that "in the African Union's evolving transitional justice framework, there emerges an integrated non-hierarchical model with the potential to provide a tabula rasa for a transformational transitional justice template for Somalia," one that reflects and encourages the incorporation of traditional mechanisms of adjudication. The author contends that local lineage-oriented social governance through the *xeer* system—with its long history and local legitimacy—appears more suited for Somalia than the blanket imposition of international norms and procedures. Somali lineage governance accommodates strong peace building capabilities that can contribute to a transformational TJ model for Somalia. Of course, like many traditional systems, the *xeer* suffers from some internal disjunctures that may reinforce patriarchy and other forms of disempowerment. But the African Union's evolving framework on TJ provides some pointers that could help address the limitations of lineage social governance: its Constitutive Act mandates that any TJ mechanisms must promote peace, security, *and* justice, including gender justice. One must be cautious not to totalize the capacity of *xeer* and the promises of the African Union framework. As the author warns, quoting Lydia Bosire, TJ approaches "in Africa continue to be laden with high expectations, notwithstanding the mitigating realities of institutional deficiencies, poor leadership, poverty, and the chasm between the government and the people." Thus for the African Union evolving framework to gain any purchase, it must be proposed by the African Union Panel of the Wise and must "respond judiciously and expeditiously to the

difficult dilemma of balancing the immediate need to secure peace with the longer term importance of establishing the rule of law and preventing future conflicts.”

Padraig McAuliffe's contribution engages with that body of transitional justice literature which widely assumes that TJ mechanisms have the potential to facilitate socio-economic justice in post-conflict societies. Dr. McAuliffe critically assesses this assumption in the context of Somalia's transition. He questions the supposition that transition to democracy automatically leads to substantive corrections of exploitative socio-economic structures and a more distributive conception of justice, even if TJ mechanisms are designed holistically to achieve these ends. As McAuliffe explains, potential spoilers abound in post-conflict transition states, spoilers with both the motivation and means to disrupt any fundamental structural transformation so they can hold on to their conflict gains. In addition, the author points out that there are always those who resist the construction of a strong state that could possibly put into place strong institutional foundations to make distributive justice a reality. McAuliffe provides examples of barriers to distributive justice in the Somali context by highlighting the deleterious legacy of Somalia's two decades of conflict and state failure: a political culture of impunity for those suspected of gross human rights violations, tens of thousands of traumatized victims, the ubiquity of weaponry, property disputes, deep inter-clan resentments, and poverty. McAuliffe points to some of the traditional retributive and restorative approaches that have already been recommended, as well to the proposal for a commission of inquiry as a prelude to eventual prosecutions. However, he notes that the use of an ad hoc national tribunal has limited support among Somalis, while the use of the Somali *xeer*, which continues to function as a dispute resolution system in some districts, has limited potential when it comes to higher levels of governance. Some TJ advocates have also proposed the revival of a dormant Reconciliation Commission launched by former President Yusuf in 2005. None of these propositions for TJ have gained traction in Somalia because of the barrier factors mentioned above. McAuliffe applies a political economy lens in examining other cases of transitions to democracy and concludes that optimistic accounts of TJ's distributive potential exaggerate the ability of TJ mechanisms to “set the tone” for transformational governance agendas, precisely because the processes for political transition are dynamic and

negotiated among multiple powerful stakeholders who will be inevitable losers in any fundamentally redistributive process and thus will tend to resist it every step of the way. Somalia's precarious return to statehood involves similar conflicting group interests that operate to preclude national consensus on addressing structural socio-economic justice; there exists a strong opposition to the construction of any state strong enough to co-ordinate equitable development and redistribution. While some may argue that the Somali context is so unique that it is impossible to draw any wider conclusions, McAuliffe appears convinced that the modernist faith in democratic transition, in the mechanisms applied therein, and in the state-building process reflected in the language of equality, redistribution, and indivisibility of rights must give way to the very imperfect conditions of transition. For him, the evidence consistently and commendably urges TJ advocates to embrace a deeper appreciation of the sources of conflict.

Rahma Abdulkadir and Caroline Ackley's article explores the role of Shari'a based restorative justice in the transition from armed conflict to peace building. It presents findings from a qualitative research survey conducted on public opinion among Somalis regarding transitional conflict resolution approaches, focusing particularly on the Islamic notion of *qisas* ("equal retaliation" or "settlement of accounts") as a form of restorative justice. The findings of this survey suggest that there is significant popular support for a model of transitional justice based on Islamic jurisprudence for Somalia. While there is considerable agreement that the restorative justice aspects of *qisas* can be important tools for addressing instances of mass violence in the recent past, many participants in their study expressed concerns about some of the distortions in the interpretation and application of Shari'a by extremists such as Al Shabaab.

The Forum concludes with an interview/dialogue with Professor Lidwien Kapteijns, author of the recent and much-discussed book *Clan Cleansing in Somalia: The Ruinous Legacy of 1991* (Philadelphia: University of Pennsylvania Press, 2013).¹ Kapteijns responds to questions about the transitional justice process in Somalia, including the need to confront "dangerous narratives" about the past, the tendency to attribute war crimes in Somalia to clans rather than individuals, and the relevance for Somalia of other models of TJ, such as South Africa's Truth and Reconciliation Commission. Kapteijns urges us to be cautious in jumping on the "transitional justice bandwagon" and points to the challenges of documenting human

rights abuses in Somalia's recent turbulent history. Any TJ process in Somalia must take into account the scale and complexity of the violence perpetrated by and on Somalis; the temporal scope of such a process's mandate; and most importantly, the fact that Somalia is not yet a post-conflict society. The interview concludes with Kapteijns' reflections on the broader implications of speaking truth to history, as Somalis seek to bring social and moral repair to their country.

There is still much groundwork to be done in thinking through the principles and mechanisms that might constitute a transitional justice process for Somalia. The dialogue stimulated by this forum has generated some spin-offs that will appear in future issues of *NEAS*: an article by the forum editors, who are completing a survey of popular attitudes toward the application of *xeer* as a conflict resolution mechanism for post-conflict Somalia, and an article on the potential role of local and international NGOs in promoting programs for peace, reconciliation, and justice. We hope readers will join the discussion and share their thoughts with letters to the general editors of the journal.

NOTE

1. Reviewed in *Northeast African Studies* 14, no. 1 (2014): 157–62.