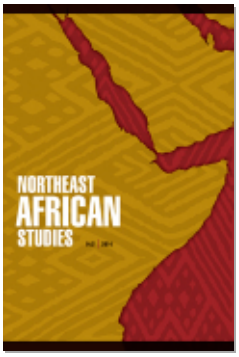
PROJECT MUSE®

Conceptions of Transitional Justice in Somalia: Findings of Field Research in Mogadishu

Abdurahman M. Abdullahi (Baadiyow)



Northeast African Studies, Volume 14, Number 2, 2014, pp. 7-43 (Article)

Published by Michigan State University Press

For additional information about this article
https://muse.jhu.edu/article/557344

Access provided by Yale University Library (3 Oct 2016 20:00 GMT)

Conceptions of Transitional Justice in Somalia: Findings of Field Research in Mogadishu

Abdurahman M. Abdullahi (Baadiyow), *Mogadishu University, Somalia*

ABSTRACT

This article is part of a larger research project on popular conceptions of transitional justice in Somalia and is based on a 2012 survey of 30 individuals currently living in Mogadishu who directly experienced or witnessed gross human rights violations after 1991. Their testimonies indicate that targeted and random murders, gang violence against civilians, and rape were the most commonly experienced violations. The article then presents a summary and analysis of opinions on the most "acceptable" mechanisms for redressing past injustices. While the Somali clan culture of collective responsibility for crimes remains in existence, the research found that more than half of the respondents believe in individual responsibility for the crimes that have been committed. In terms of addressing past violations, our interviewees gave precedence to the role of traditional authorities over modern ones (national and international actors), and to some form of Shari'a legal redress over exclusive reliance on customary law (xeer) or international law. However, the most common popular conception of Shari'a is legalistic and focused on hudud punishments rather than on holistic Islamic approaches to justice. Our survey showed that modern understandings of transitional justice are limited among the general population and mostly confined to a small number of members of the educated elite in Somalia.

Northeast African Studies, Vol. 14, No. 2, 2014, pp. 7–44. ISSN 0740-9133.
© 2014 Michigan State University. All rights reserved.

Introduction

Before the emergence of the independent Somali state in 1960, violence within and between Somali clans was typically resolved by traditional authorities using conflict resolution mechanisms based in customary law (*xeer*) combined with Islamic Shari'a. These mechanisms were administered without reference to the modern concepts of transitional justice and human rights found in secular and international law. However, in the process of state building, low-intensity violations of human rights perpetrated by the state security apparatus occurred with impunity. The intensity of violations increased in the early 1980s, with the rise of armed confrontation between opposition movements and the Somali state.[1] In these new circumstances, the nature of human rights violations and the accountability of their perpetrators extended beyond the prerogatives of the traditional authorities. All sides in the conflict were guilty of human rights violations, including the targeting of civilian populations because of their clan affiliation. Following the collapse of the state in 1991, the motives and nature of these violations and the actors involved in them changed significantly. Clan-based armed militias fought each other from corner to corner of the country, causing havoc and committing gross violations of human rights against civilian populations. These violations were not limited to the actions of Somali non-state actors—that is, warlords, Al-Itihad, the Union of Islamic Courts (UIC), and Al-Shabaab—but also implicated external actors: the United Nation Operations in Somalia (UNOSOM, 1992–95), the Ethiopian military, the African Union Mission in Somalia (AMISOM), and others.[2]

Strangely enough, despite the many violations of human rights taking place in Somalia, "transitional justice" was not incorporated as part of the international plan for assisting the Somali peacebuilding process.[3] Many victims of the civil war felt bitterness over what they perceived as the indifference of the international community to the gross violations of human rights committed by known individuals. Moreover, it seemed to many Somalis that the culture of impunity was encouraged by the international community, which privileged perpetrators of violence for high political positions in various transitional governments while ignoring their human rights records.[4] Such defective approaches and ubiquitous lack of interest were very much evident in the policies of UN agencies and

even in the paucity of academic literature on the subject of transitional justice for Somalia.

This article, which is part of a larger research project on the conception of transitional justice in Somalia and Ethiopia's Somali Region, aims to begin to fill this gap in the literature.[5] The rationale behind this research emanates from a deep conviction that understanding the views of the local population on the acceptable modalities of transitional justice for resolving their grievances is a necessary precondition for restoring faith in the system and averting inappropriate top-down or externally driven transitional justice mechanisms in the future. The findings are based on field research undertaken in the period from June 2012 to October 2012 in Mogadishu. The focus of this inquiry was to discover prevailing public opinion on transitional justice through sample interviews; it sought to identify the most "acceptable" mechanisms from the menu of available transitional justice approaches, ranging from local customary law and Shari'a to national and international law. In addition, this article offers a brief summary of human rights violations in South Central Somalia since 1991 and provides accounts of the personal traumas experienced and coping mechanisms used by Somalis during the civil war. Finally, it analyzes the responses of the interviewees in order to discover Somalis' main conceptions of transitional justice mechanisms and the implications of these for moving forward.

History of Mass Violence in South Central Somalia

This brief account of the historical background to the mass violence in Somalia confines its scope to the period after 1991 and the roles of Somali non-state actors, the national state, and external actors. However, it is important to recognize that substantial violations of human rights began under the military regime that took power in Somalia in 1969. The state violations including torture, extrajudicial detentions, collective punishments, clan cleansing, mass executions, and internal displacements that occurred in the 1970s and 1980s have not yet been fully documented or addressed in the literature.[6] Nonetheless, the real agony of Somalia began with the total collapse of the state. On 26 January 1991, President Mohamed Siyaad Barre fled the "Villa Somalia" presidential palace and retreated with

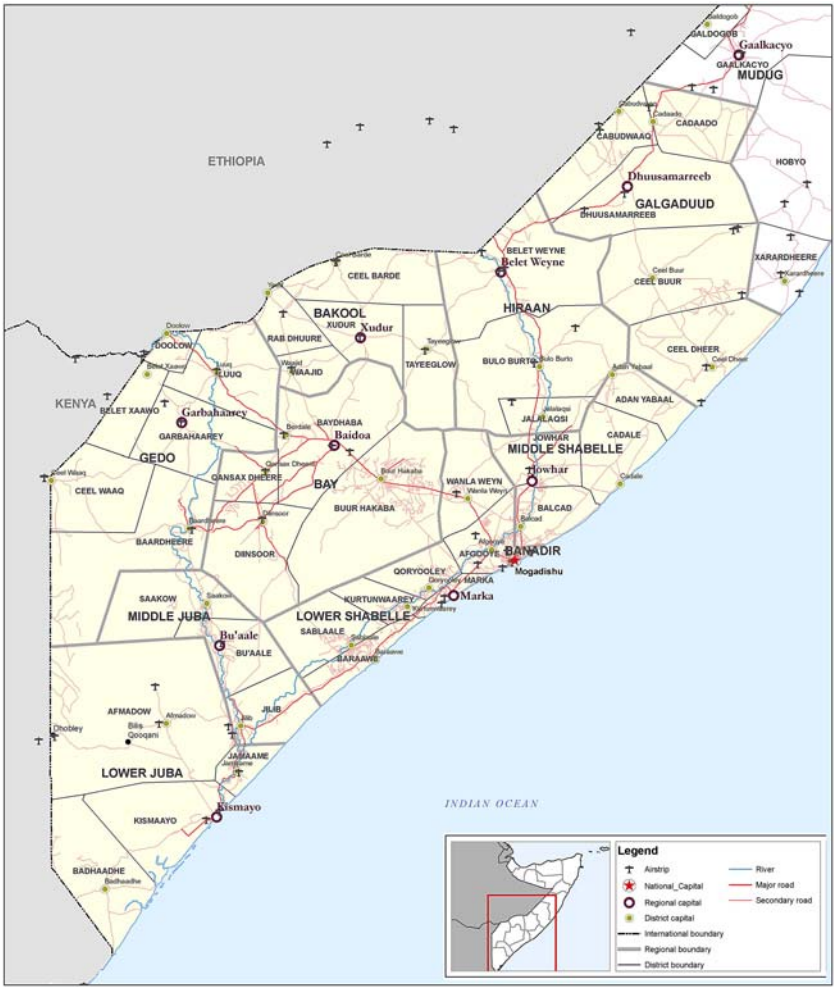


Figure 1. South Central Administrative Map, Somalia. Based on UN map.

his supporters into the southern Somali regions. The conflict between the regime and the armed opposition factions was rapidly transformed into warfare between two clan families, Darood and Hawiye.[7] At the same time, the capital city was engulfed in utter mayhem as unbridled militias engaged in plundering, looting, and the killing of civilian residents. The political and military leadership of the United Somali Congress (USC)—part of the coalition that overthrew the Barre government—lost control of its militia as it vied for control of strategic locations, including the seaport, airport,

and "Villa Somalia," against other armed factions. In this anarchy, all state property (such as factories, historical monuments, national archives, and administrative offices) and social service sites (including schools, universities, and hospitals) were ransacked and gradually destroyed. Moreover, private houses, businesses, land, farms, and livestock were also captured and plundered. Nothing was spared from destruction. Comparable pillaging and preying on the peaceful civilian population was witnessed on the part of the militias of the Somali Salvation Democratic Movement (SSDF), the Somali Patriotic Movement (SPM), and the Somali National Front (SNF) in their push and pull fighting with USC forces. Hassan Cali Mire, a veteran Somali scholar, describes these occurrences succinctly: it was as though "all the pent-up frustrations of three decades of postcolonial independence exploded into the ugly rise of fratricide, which has made the barbaric killing of innocent members of other kin communities a worthy goal."[8]

Within two days of the old regime's collapse, on 28 January 1991, a provisional government was announced, and Ali Mahdi Mohamed was designated as the interim president. This precipitate decision by the civilian wing of the USC in Mogadishu (the so-called "Manifesto Group") preempted the Mustahil accord, which had been agreed to by the SNM (Somali National Movement), SPM, and USC–General Aidid factions.[9] The Mustahil stakeholders were swift to rebuff the new government. General Aidid considered the formation of the interim government to be a betrayal of USC goals and a return of the former regime through the back door, while the civilian USC charged the Aidid faction with seeking a return to military rule. As a result, the previously divided USC became further polarized into two antagonistic armed camps, which mobilized along clan lines: the Ali Mahdi camp and the General Aidid camp.[10] At the same time, the SPM and SSDF formed a new coalition of Darood clan members and allied with Mohamed Siyaad Barre's supporters in Gedo and Kismaayo. The alliance mobilized its combined military forces against the fractured USC and assaulted Mogadishu on 9 April 1991.[11] The country was being carved up by competing armed factions that were almost exclusively clan based.

Meanwhile, in northern Somalia, opponents of the old regime, predominantly though not exclusively Isaaq, were threatening a separation of the North from the South. Separatist sentiments in the North were already strong, but the public in the North was newly enraged by the USC's unilateral decision to form a government in Mogadishu. As a result, under

public pressure, the SNM unilaterally revoked the Act of Union of 1960 and declared the independent state of Somaliland on May 17, 1991.[12]

Back in Mogadishu, the appointment of the interim government triggered a bitter feud between rival Hawiye clan factions and power contenders. Consequently, in September 1991, when all efforts to reach a peaceful political agreement had been exhausted, severe fighting broke out between the two USC factions in Mogadishu.[13] The fighting continued for about 100 days, destroying much of the city and causing an estimated 20,000–30,000 deaths through military casualties and civilian starvation.[14] The humanitarian relief supplies could not reach starving people, as the supplies were hijacked by the warlords and their militias, who exchanged most of the relief for weapons. By the end of 1991, the fighting had divided Mogadishu, with a green line between the two USC factions. The United Nations mediated a cease-fire agreement in March 1992 and to some extent reduced the magnitude of the conflict.

The war for control of the southern coast and hinterland between the Somali National Front (SNF) and the USC faction of General Mohamed Farah Aidid brought devastation to the grain-producing region between the Shabelle and Jubba rivers, spreading famine throughout southern Somalia. All attempts to distribute relief food were undermined by the systematic looting by the militias. The epicenter of famine, the town of Baidoa, which had changed hands many times among various militias, became the theater for the conflict, and a massive number of deaths occurred in the Bay and Bakool regions. It has been estimated that more than 300,000 died and more than a million people suffered severely in 1991 and 1992.[15]

In January 1992, as international concern over the Somali debacle was growing, the UN supported the U.S. decision to send a peacekeeping force to Somalia. U.S. forces landed in Mogadishu in December 1992, leading a coalition of willing nations in accordance with UN Resolution 794, adopted on 3 December 1992. The aim of the intervention was to help create a secure environment for humanitarian efforts in Somalia. "Operation Restore Hope" consisted of a multinational force of more than 37,000 troops from 22 nations (24,000 troops from the United States and 13,000 from other countries).[16] However, the mission went awry on 3–4 October 1993, when a fight erupted between peacekeepers and General Aidid's militia, which resulted in the death of 24 Pakistanis, 19 U.S. soldiers, and 500–1,000 Somalis.[17] For that reason, the UN withdrew from Somalia on 3 March 1995,

leaving the country "in a state of violence and anarchy."[18] Notwithstanding widespread criticism of UN operations at the time, the ramifications of the UN presence for Somalia were on the whole positive. The UN mission relieved famine, weakened the warlords, promoted civil society organizations, and encouraged business ventures in the private sector.[19] The culmination of these developments was a change in national reconciliation strategy that recognized a greater role for civilian leadership. One outcome was the National Reconciliation Conference, held in Arta, Djibouti, in 2000, which incorporated a wide spectrum of civil society actors after ten years of failed warlord-driven conferences.[20] Arta produced the Transitional National Government (TNG), which gave some promise of restoring civilian governance in Somalia and reconciling its competing factions.

Unfortunately, in the aftermath of 9/11 and the Bush administration's proclamation of the "Global War on Terrorism" (GWT), Somalia was listed among the states that were potential havens for terrorism.[21] The first victim of the GWT was the Transitional National Government (TNG), which erstwhile international supporters suspected of having too many Islamists in its ranks.[22] Moreover, the TNG proved dysfunctional due to its low leadership capacity, and opposition from warlords who had been marginalized by the TNG found support from Ethiopia and Western intelligence agencies concerned about the Islamist leanings of the TNG. International efforts to establish another government led to a new round of peace talks in Kenya, known as the Eldoret/Mbagathi conference. The conference was sponsored by IGAD (the Intergovernmental Authority for Development) but was dominated once again by warlords and their allies. With the strong backing of Ethiopia, the conference concluded by endorsing another government, the Transitional Federal Government (TFG), in 2004. The TFG unsurprisingly failed to secure popular support in Somalia, especially in the South: personal squabbles among assembly members and government ministers, a lack of governance capacity, and rampant corruption paralyzed the TFG and thwarted efforts to restore state institutions. The TFG had to govern from the inland town of Baidoa because of its unpopularity in the capital, Mogadishu, where local warlords vied with a growing Islamic courts movement for the support of the populace.

U.S. counterterrorism operations offered covert financial and political support to the warlords, who established the "Alliance for the Restoration of Peace and Counter-Terrorism"[23] with the aim of uprooting Mogadishu-based

1991–92: The collapse of the state and outbreak of the civil war and famine causing 20,000–30,000 deaths in Mogadishu, and 300,000 deaths in the Bay and Bakool famine.
1992–95: Intervention forces combine Unified Task Force (UNITAF) and UNOSOM. This operation caused the death of 24 Pakistanis, 19 U.S. soldiers, and 500–1,000 Somalis.
1995–2001: Interclan conflict and marauding warlord militia violence.
2001–6: The beginning of the GWT, and the emergence of the UIC and its conflict with Mogadishu warlords.
2007–8: Ethiopian military intervention, UIC resistance, and AMISOM/U.S. counterterrorism operations and war with Al-Shabaab.
January 2009 onward: Continuation of conflict between AMISOM and the Somali military and Al-Shabaab.

Figure 2. Chronology of major episodes of violence and human rights violations.

Islamists. However, the undertaking provoked an unprecedented upsurge of Islamic rage in Mogadishu under UIC leadership, and the U.S.-backed warlord program was aborted and dissolved. The political environment of Somalia changed dramatically with the outright victory of the UIC over the warlords; in June 2006, the UIC assumed uncontested control over Mogadishu and many of the surrounding regions.

But once again, popular hopes for peace and stability under a UIC administration were dashed with the impasse in the way of peaceful dialogue in Sudan and the renewed escalation of civil war in which the Ethiopian military participated with tacit U.S. support. The UIC was defeated on Christmas Eve 2006, and a new round of resistance against Ethiopia began, with various forces pursuing their own political agendas.

After the defeat of the UIC, various forces opposed to the Ethiopian occupation and/or the TFG regime gathered in Asmara, the capital city of Eritrea, and the Alliance for the Re-liberation of Somalia (ARS) was formed in September 2007. International and regional diplomats encouraged reconciliation between the TFG and ARS, and a 2009 meeting in Djibouti ultimately produced a new transitional government that combined former TFG and ARS supporters. However, the precipitate reconciliation process sponsored by the UN proved ineffective, and the new government

depended heavily on protection from AMISOM. At the same time, Al-Shabaab, an extremist group ideologically affiliated with Al-Qaida, used popular discontent with the central government to seize control of large portions of southern Somalia. It even extended its terrorist attacks to Uganda, threatening other African countries that were contributing troops to the security mission in Somalia.

In the course of these changing political alliances and international interventions, all parties perpetrated many war crimes and human rights violations. Figure 2 summarizes the various phases of the conflict following the collapse of the state in 1991. Each produced human rights violations against the people in South Central Somalia.

Conceptualization of Transitional Justice

Transitional justice has been defined in many ways by scholars from various academic disciplines, and conceptual approaches have evolved over time. Early scholars defined transitional justice narrowly in the process of laying the foundations of international human rights law. These early attempts were exemplified in the legal developments associated with the Nuremberg and Tokyo trials after World War II. The second generation of scholars mostly focused on the development of restorative mechanisms as well as innovative tribunals.[24] During these two periods, transitional justice was approached from a Western legal perspective, and alternative approaches from the southern hemisphere were not considered relevant. Recent scholarship, however, has moved toward a more comprehensive perspective that seeks to account for cultural variations in the understanding and application of judicial principles. Naomi Roht-Arriaza, for example, writes that "the universe of transitional justice can be broadly or narrowly defined. At its broadest, it involves anything that a society devises to deal with a legacy of conflict and/or widespread human rights violations, from changes in the criminal code . . . to tackling the distributional inequities that underlie conflict."[25]

It is worth comparing Roht-Arriaza's definition with those developed by international organizations such as the UN. The UN defines transitional justice as "the full set of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuse,

in order to secure accountability, serve justice and achieve reconciliation."[26] Another definition, adopted by the International Center for Transitional Justice, reads that "transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal trials, truth commissions, reparations programs and various kinds of institutional reforms."[27] All these definitions emphasize the fact that transitional justice implies a particular set of approaches dealing with the legacy of gross human rights violations and concur that alleged perpetrators of mass atrocities, war crimes, and crimes against humanity should not be given impunity.

However, the argument here is that the forms of transitional justice that should be applied in a country like Somalia must take into account the local context, which includes consideration of what factors put a community at peace with itself and prevent the recurrence of violence. Most communities utilize some type of customary law that is accepted and respected by the individual members of the community. In Muslim countries like Somalia, Islamic jurisprudence has also influenced notions of peacemaking and restorative justice. Thus, multiple legal systems, consisting of customary law (*xeer*), Shari'a law, national laws, and international law, are available in Somalia.

Conceptions of Transitional Justice in the Traditional Xeer

The traditional legal system as it has evolved in Somalia is a combination of Shari'a and *xeer*. In most traditional settings, clan elders oversee the implementation of the local *xeer*, while Islamic scholars are responsible for and called upon to render religious judgments related to criminal acts and civil disputes. At the community level, then, *xeer* and Shari'a constitute parallel and interlocking systems of legislation. Shari'a law is familiar to most Somalis, though its application in combination with *xeer* varies from community to community. Most Somalis are Sunni Muslims who adhere to traditional Islam, which consists of the Ash'ariyah school of theology, Shafiyah jurisprudence, and Sufism.[28] This gives them a widely shared set of Islamic practices and concepts that serve to unify a culture that is otherwise prone to fragmentation along clan lines. During the colonial era, European laws were introduced, pushing aside many aspects of the indigenous laws at the state level, even though European law failed to

penetrate deeply into the societal space. Therefore, three crosscutting sources of laws compete with each other in Somalia: *xeer*, Islamic Shari'a, and secular European-derived laws.[29]

Somali customary law provided/s both restorative and retributive justice mechanisms. Communal (inter- and intraclan) violence was not resolved through formal courts but was settled by what we would call today an alternative dispute resolution (ADR) body made up of traditional elders. The role of the elders was and is to seek ways of repairing damage caused by clan violence, including bodily harm and material damage. Through the application of traditional *xeer* and often tedious deliberations between traditional elders from both sides of the conflict, decisions are made on how to redress injustices through compensation and other restorative mechanisms. In the Somali clan system, the individual is not separated from his/her clan in the consideration of violence and crimes. Thus, the basic concept of resolving conflicts emanates from the collective responsibilities of the clan members, which attribute only limited culpability to the individual perpetrator. This notion, of course, diminishes individual responsibility for a crime and may encourage impunity within society. Restorative justice practices that derive from custom in Somalia include forgiveness, payment of blood money (*diya*), and other penalties for injuries.

Conceptions of Transitional Justice in Modern Somalia

Justice is a concept of moral rightness, and its understanding differs to some extent from society to society depending on cultural values. This does not mean, however, that there are no universally accepted justice principles that are shared across cultures. Exploration of conceptions of traditional justice within the Somali population revealed that there is no agreed upon terminology for transitional justice in the Somali language. Only three entries for transitional justice in the Somali language were found in the Google search engine,[30] suggesting that the notion is not a familiar one in Somali popular discourse. This observation indicates that the modern concept of transitional justice is not well articulated in the Somali mass media, or even in Somalist academic circles.

To further explore this notion, I posted a question on my Facebook page requesting readers to come up with Somali terms for transitional justice.[31] More than 50 individuals participated in the discussion and

proposed 13 different terms.[32] By analyzing and shortlisting these terms, I discovered that *cadaalad* (justice), borrowed from the Arabic "al-'Adalah," is commonly accepted and fairly widely used. The Somali term *garsoorka,* a compound word coined from *gar*, which means "something right," and *soor,* meaning "to provide," was also proposed by several respondents. The term *garsoor* literally signifies "providing rights to someone" and is often applied to magistrates and judges; in fact, *garsoore* is the term coined by Somalis to refer to "judge" and "jurist." However, in Somali discourse, the words *cadaalad* and *garsoor* are often used interchangeably by the public and in the mass media, which also employ the English words "justice," "law," and "judge."[33]

If we accept the generic term *cadaalad* as the most appropriate translation of "justice," it is more difficult to find a Somali equivalent for "transitional." In the Somali language, *kalaguurka* ("transition or change") and *kumeelgaarka* ("interim, provisional, temporary, and transitory") are possible candidates.[34] The term *kumeelgaarka* is probably less suitable here since it connotes a notion of "interim" or "provisional" justice, while *kalaguurka* appears closer to the concept of "transitional."[35] However, to clarify the meaning of the latter in Somali, it is necessary to add *xilliga*, which means "the time of." Therefore, the phrase *xilliga kalaguurka* ("the time of transition") provides a more nuanced meaning. Putting these concepts together, we devised a Somali term for "transitional justice"—*cadaaladda xilliga kalaguurka*—which was used in the Somali interviews for this research. Somalis are already familiar with the well-articulated form of resolving conflicts known as reconciliation (*dib-u-heshiisiin*), which is one of the important components of any transitional justice process.

In the current Somali context, there is no clear national policy for pursuing transitional justice, and there are no specific institutions established for that purpose. The Provisional Federal Constitution (PFC) stipulates support for human rights and for a human rights commission. Article 4 of the PFC affirms the state's commitment to the promotion of human rights and the rule of law, while Article 39 outlines procedures to redress violations of human rights. Article 41 mandates the establishment of an independent human rights commission.[36] Thus there is growing awareness in Somali legal and political discourse of the importance of transitional justice, even if there are not as yet any mechanisms in place for its achievement at the national level.

Conceptions of Shari'a among Somalis

Islamic Shari'a has a long history in Somalia, and while its implementation has been partial and uneven throughout the country, most Somalis have a familiarity with its general precepts. Recent calls by various Islamic movements for a more extensive application of Shari'a appear to be a reaction to the secular tendency of the modern Somali state and its perceived failures. This trend is manifest in the constitutions of Somaliland and Puntland, as well as in the Provisional Federal National Constitution. It is worth noting that Somalia has produced three national constitutions (1960, 1979, and 1989), two charters (2000 and 2004), and one provisional constitution (2012), and all of but one of them explicitly acknowledge Islamic principles as the ultimate foundation for the laws of the land. (The only exception was the constitution that the military regime enacted in 1979.)[37] While it is important to keep in mind the historical importance of Shari'a in the doctrinal and constitutional discourses of Somali religious and legal elites, our attention here is focused on conceptions of Shari 'a among nonexperts in Islam as reflected in our sample of interviews.

Somali cosmology has been influenced historically by Islamic Shari'a, including its concepts of justice. These concepts are addressed in the basic sources of Islam: the Qur'an and *hadith*, and the science of jurisprudence (*fiqh*). For instance, the following well-known verse from the Qur'an offers an Islamic conception of justice: "The recompense for an injury is an injury equal thereto (in degree): but if a person forgives and makes reconciliation, his reward is due from Allah. . . . But indeed if any show patience and forgive, that would truly be an exercise of courageous will and resolution in the conduct of affairs" (Qur'an 42:40–43). This verse is one of many in the Qur'an that can be considered as laying a foundation for the concept of transitional justice. The Islamic vocabulary of "rewarding evil by evil," "forgiveness," "reconciliation," and "patience" represent concepts that also stand at the core of contemporary transitional justice mechanisms. For Muslims, these notions are rooted in the divinely revealed laws, termed Shari'a, that are obligatory and binding upon all believers.[38] One model of the application of transitional justice in Islam can be inferred from the events following the Prophet Muhammad's conquest of Mecca, the holy city in Saudi Arabia. In dealing with his defeated enemies, the Prophet deployed four mechanisms: general amnesty, criminal prosecution, individual forgiveness, and institutional reforms.[39]

How does the contemporary Somali public conceptualize Shari'a? Most of our interviewees had a rather simplistic understanding of Shari'a, taking a legalistic perspective that confined it to *hudud* punishments. *Hudud* is the part of Islamic law ordained by Allah that prescribes proper behavior and invokes punishments for serious crimes as a means of deterrence. Interviewee #27, for example, states: "To apply Shari'a, women should wear *hijab* (Islamic code of women's dress); alcoholic beverages and gambling should be prohibited; women should stay at home and care for the children; women should not sit in the parliament." While Muslim scholars from various legal schools have provided various interpretations of the classical Islamic texts using distinct legal methodologies, the mechanism of *ijtihad* (diligent independent reasoning) still remains intact as a means to review and adopt new laws. The issue of women's political roles, for example, is considered one of the controversial issues in Islam, and in Somalia, the debate has been influenced by the patriarchic culture typical of many pastoral societies.

One interviewee (#21) expressed the following general conception: "For me Shari'a is simply to follow the Qur'an and traditions (sayings and actions of the Prophet Mohammad)," while another (#11) stated: "Shari'a means to stone adulterers, to give alms, to pray and to fast during the month of Ramadan and make pilgrimage." This interviewee combined *hudud* punishments with performing the four essential pillars of Islam. One of our Facebook respondents explained that "Shari'a is not to begin amputating limbs of the poor, sick, hungry, and ignorant people. So, public education is a prerequisite prior to the implementing of Shari'a." Another Facebook commentator proposed that "Shari'a is not anything except to prevent aggression, to detain the aggressor, to help victims of the aggression and to do so, we must have executive power." Thus, most of the interviewees' conceptions were fixed on specific elements of Shari'a, notably those associated with *hudud* punishments in one way or another. Clearly absent from our limited sample was a comprehensive view of Shari'a as a guide for regulating all human activities in the realms of morality, values, social relations, economic activities, and politics. While Islamic law may have a crucial role to play in the establishment of transitional justice mechanisms for Somalia, it is important to recognize that the general public's understanding of Shari'a is not monolithic and is frequently limited to notions of "punishment."

Research Design and Methodology

The survey research for this study was conducted in Mogadishu, where one can find individuals from all over South Central Somalia who were victims, perpetrators, or bystanders in the massive human rights abuses since 1991. Three well-qualified research assistants were recruited, two from Mogadishu and one from Baidoa region. They were selected for their diverse clan affiliations and their familiarity with the various clans and regions in southern Somalia. I held a day-long familiarization and planning session with them on 17 March 2011.

Together we designed the survey and divided the tasks equally: each researcher was to interview ten persons representing different age groups, genders, and educational backgrounds. The team began working in April and produced the first collection of data by the end of that month. On 2 May, we met to review the preliminary findings and to begin the analysis. We discovered the need for more interviews to increase the number of women and respondents above the age of 40. To include participants who had more direct involvement in the civil war—"the big fish," as we called them—we used innovative interview methods, such as inviting them for dinner and engaging them in open and friendly discussions.

Our research objective was to document and analyze prevailing knowledge about past mass violence and gross human rights violations, and to survey ideas about dealing with that violence among Somalis in Somalia. The population of interest for the study consisted of adults who were present in South Central Somalia between 1991 and 2010. The sample was initially set at 30 individuals, designed to encompass and give due consideration to gender, age, and clan membership. The average age of the study participants was 35 years, and 60 percent had informal and 40 percent had formal education. The majority of the participants (70 percent) were male.

The individual interviews used a predesigned set of questionnaires developed and agreed upon by the participating researchers. The core questions involved personal background, experiences of injustice and/or violence that the interviewee had either been exposed to or witnessed directly, and the interviewee's understanding of the reasons for that violence and its consequences. The interviewees were also asked to comment on whether steps had been taken to deal with the violence by legal or customary proceedings, and what these entailed. Finally, each interviewee

was asked to express his/her personal opinion on how to deal with the experienced injustice and to select from a menu of four available systems of justice: Somali customary law (*xeer*), and/or Shari'a, and/or national law, and/or international law.[40] Individuals selected for interviews had to fulfill the following three conditions. First, they had to have been present at or close to one or several of the events, as victim, perpetrator, or bystander. Second, they had to be old enough to have some memory of one of the events. Finally, they needed to be aware of what had happened after the event. The interviews were conducted in the Somali language, using the personalized approach to collect confidential individual case histories.

This research methodology benefited from the "place-based approach" to transitional justice presented by Shaw and Waldorf.[41] Transitional justice practices work under assumed universal conceptions based on expectations that truth telling leads to reconciliation, prosecutions bring closure, and the rendering of justice prevents the recurrence of violence. But because of the variation in cultures and traditions, local responses to transitional justice may contest international and/or national laws and norms and offer different priorities. Thus, localizing transitional justice must entail exploring the transitional justice mechanisms preferred by the ordinary people and proposing more locally responsive approaches to social reconstruction after mass violence. In this approach, local preferences do not automatically or necessarily oppose national or international norms; multiple systems may come together in a particular locality, which can then be taken as a starting point to engage the complexities regarding transitional justice—for example, contradictions between various conceptions of justice held by the people in a given place, and also with international actors working in that place. By applying a place-based approach in Somalia, the research can also take into account local variations in *xeer* or Shari'a, thereby providing a more nuanced approach to transitional justice.

Terrible Memories of Injustice and/or Violence/Conflict

This section presents narratives of selected interviewees, translated from Somali into English, to demonstrate various human rights violations experienced and crimes committed in selected regions of Somalia. Most of these crimes involved indiscriminate murder, assassination, rape, and

revenge killing. The atrocities experienced and the memories associated with them caused wide-ranging psychological, behavioral, and medical problems in individuals, in addition to the social, economic, and political implications for the clans or communities involved. The psychological problems include posttraumatic stress disorder, depression, anxiety disorders, and psychotic conditions. Exposure to trauma can also lead to sleep disorders, sexual dysfunction, chronic irritability, physical illness, and a disruption of interpersonal relations. Although most interviewees described their experiences with some form of trauma, there were no institutions that offered therapeutic treatment, so traumas were mostly dealt with through traditional coping mechanisms.[42] Some of these traditional mechanisms derived from an Islamic cosmology based on the belief that disastrous events are the will of God. According to this view, Muslims must consequently accept whatever happens to them and seek the help of Allah through supplications, without eschewing other available medical and social assistance.[43] The concept of trauma is not well known to most Somalis, as our field research indicates and as a recent study conducted in a Somali community in the UK attests.[44]

Let us now look at a sample of the testimonies gathered from our 30 respondents.

One of the most painful narratives (that of respondent #1) was obtained from a former member of the United Somali Congress (USC) militia, who related a tale of a father inheriting a sex slave from his son. He said:

> I was one of the early members of USC militia who started guerrilla war against the Somali government. I fought from the Somali-Ethiopian border until we captured Mogadishu. During the civil war everything was destroyed and surviving militia members were desperate and unemployed. Most of the former militia members died in the war and survivors among them were scattered. In April 1994, I decided to visit the house in which I heard that one of my former colleagues lived, in the old district of Mogadishu-Hamarweyne. I was desperately in need of his financial assistance. When I knocked at the door of his residence, suddenly a chained white Banaadiri woman in her 20s opened the door.[45] Surprisingly, the lady was chained from her legs in such a way that she cannot go beyond the door, but she can move around inside the house. I asked her, "Where is my friend Ali?" She replied in a whisper:

> "He died a few months ago in the war in Bay region." Then, she began to tell her story. She said: "After the outbreak of the civil war in Mogadishu in early 1991, I was abducted by the brother of your friend who was a member of the USC marauding militia. He used me as his wife, but in reality I was his sex slave. After his death, his brother inherited me and I was his sex slave too." Suddenly, while she was talking to me, I heard a noise in the house. . . . I asked her, "Who is now with you?" She replied that she was inherited by the father of the two former "husbands," and "And he is taking care of me. . . ." I was shocked and never imagined such incidents could occur in a Muslim country like Somalia. I quickly left the house.

Indiscriminate killing and house grabbing were reported by another former USC militiaman (Interviewee #5), who was among those who entered Mogadishu and captured it from the government forces in 1991:

> One day, I met a former colleague of mine who was very active in the militia of USC in its early formation in Ethiopia. The time was 1994 when Mogadishu civil war had receded. I had not seen my friend after we entered Mogadishu in late 1990. I asked him: "My friend how have we benefited from USC struggle?" ("Maxaad ka faaidaysatay halgankii USC?") We started sharing story after story and finally he took me to a beautiful two story building and showed me around. His family and relatives were living there. It was a well-furnished house that most likely belonged to a wealthy family or high-ranking government official. He told me: "Look my friend, I have benefited from our struggle with this house. This house belongs to me forever," he said with confidence. I asked: "My friend, where is the owner of this house? They will return one day and reclaim their house." Then he grabbed my hand and took me to the corner of the garden of the house and showed me the dry bones of dead human bodies. Then he said: "These were the mother and her six children who lived in this house. Their father was killed in the early days of the civil war and when I took over the house, I killed all the family members." "My friend!" he said, "for sure nobody is alive to reclaim this house."

Interviewee #4 reported on the atrocities of the insurgency of Al-Shabaab, the militant Islamist group that controls large swathes of territory in the

southern part of the country. The worst violence he experienced occurred in 2009, when an explosion rocked a truck in which he was traveling on the road between Afgoye and Merca.[46] He said:

> Nine persons were injured including myself. I was injured badly and parts of my body had been completely removed. The area of the explosion was under the control of Al-Shabaab and the most likely perpetrators were Al-Shabaab militia [members]. The injured individuals were all unarmed innocent people including three women and five men. We could not explain the true reason for committing such atrocities. The injured individuals were taken to Mogadishu Hospitals. Nothing could be done about those responsible for the violence.

Interviewee #10 recalled a revenge killing among clans, a well-known tradition in Somalia. A widow, she explained how her husband was executed:

> My husband was murdered between Garbahaarey and Buur-Dhuubo in the Gedo region in 1997.[47] Al-Itihad, an Islamist militant group, took over control of Gedo region after the collapse of the state in 1991 and established their version of Islamic-compliant administration.[48] However, they were surprisingly defeated by an alliance of clan militia and Ethiopian defense forces. Some sub-clans supported Al-Itihad and others opposed them. Thus, after their defeat, the clan militia allied with the Ethiopian forces began to target clan members who supported Al-Itihad. My husband was from a clan that supported Al-Itihad, and therefore he was targeted for revenge killing. My husband was traveling from Garbahaarey to Buur-Dhuubo, and the truck he was traveling with was stopped at a checkpoint and searched by the enemy clan militia. He was taken into custody and executed for revenge killing. The killing of my husband then instigated a fight between his clan and the clan of the militia that shot him. My husband was a well-respected and famous person and his murder was considered a great humiliation to his clan. Therefore, according to clan tradition, he should be revenged. The clan of my husband initiated a plan for his revenge and finally found two innocent individuals who belonged to the enemy clan and shot them in cold blood in the town of Buur-Dhuubo. The conflict was exacerbated and many other individuals were murdered for revenge killing. Finally,

> the conflict was controlled and the two clans resorted to solving their conflict through traditional *xeer* system.

Interviewee #13 recounted his witnessing of killing and rape. He said:

> My brother was killed and his wife was raped in front of me and my young brothers in Singale, located in Lower Juba, in 1993. Our story begins when my elder brother evacuated me, his wife, the two young brothers, and our mother from Kismaayo town because of the fear of war flaring there. The road we were traveling was muddy and it took us many days. Unfortunately, our car was broken down at Singale and our supplies of food and water finished. My elder brother tried his utmost to get supplies and sent a message to relatives in Kismaayo. The next night, while we were waiting for someone to rescue us, a car loaded with militia [members] came to us and we were very much delighted, thinking they came to save us. However, after asking us some questions they recognized what clan we belonged to and began to threaten us, pointing their guns toward us. They shouted, "Do not move" and dragged the wife of my brother away. When my brother started to resist they simply fired five bullets in his chest and raped his wife. They did not fire on us because the rest of us were children. My age was 14 years and the other brothers were younger than me. They left us, but they came back after a few hours and took the car and all our belongings. The unconscious wife of my brother was left alone in the nearby jungle; we were scared and remained there alone. In the next morning, individuals from our clan arrived and we were saved from imminent starvation. No action was taken to deal with this atrocity even though the perpetrators were identified.

Interviewee # 6 told of her husband, who was murdered while attempting to halt fighting between two of his relatives' militias. She said:

> My husband and I married in 2007 and had three children, two boys and one daughter. The daughter was born after the death of my husband and she also died after three months. My husband died while trying to mediate the fight between two close relatives' militias. He was intentionally shot by one of the militias. My husband was a driver of lorries and was well known in the central regions of Somalia. Five days before his death,

> he left us to travel as his routine work required. My last contact with him was the Tuesday morning he was murdered; I heard the news of his death in the afternoon. I was shocked and traumatized. I loved my husband so much and was not expecting to have orphans to raise alone. Anyway, it was the will of Allah and we have to accept and be patient.

Interviewee #8 spoke of his personal experience with intrigues involving his clan and others during 2004. He related that he had unintentionally killed a boy who worked for his family. He said:

> In the beginning he was injured and I took him to the hospital and he died there. It took many nights before I could sleep; I was shocked and traumatized. My clan invited the clan of the murdered boy and we could not convince them that it was an unintentional killing and therefore they have to accept blood money (*diya*). This incident occurred after the emergence of clan-based Islamic courts. Thus, after some days I was detained by one of the Islamic courts and incarcerated. This court belonged to the clan of the murdered boy. I was in the prison for six months, during which militia [members] belonging to the clan of the dead boy kept trying to take me out of the prison and kill me. Finally, the court offered a verdict that it was a case of premeditated murder and that I had to be executed. My clan considered the ruling of the court to have been motivated by clan attachment to the murdered boy. In the night before the morning of my scheduled execution, a militia belonging to the clan of my mother attacked the prison and took me out. The clan of the boy announced a war against my mother's clan. After skirmishes in which four persons were injured, the two clans agreed to imprison me again and to restart new negotiations. However, I fled to Beledweyne and I lived there for a year. I came back to Mogadishu during Court Union time in 2006 and after many assassination attempts, I decided to flee Mogadishu to the diaspora and I came back in 2012.

Interviewee #3 witnessed a road robbery and indiscriminate killings. He said:

> The road between Mogadishu and Kismaayo is a very harsh road. In 2003 I traveled this road from Mogadishu to Kismaayo. In the village called

> Haramka in the night, armed militia[men] belonging to the clan residing in this area attacked us. They rained us with indiscriminate firing for quite some time. Most of the people in the truck were either killed or injured. The militia searched each and every person and confiscated all the money, watches, mobile phones, and other materials. In addition, they dragged out two passenger girls and raped them not far from us. One of the two girls became unconscious for about a day. After they left us, we continued our journey and reached the town of Jilib, where we buried our dead and received preliminary healthcare service.

Finally, Interviewee #21 reported the murder of an international employee of one of the NGOs. He said:

> A logistic officer working for MSF (Belgium) in Mogadishu in December 2011 murdered two international staff [members] who were running the MSF program in Mogadishu. This NGO employed more than 300 persons and ran many programs such as dispensaries and hospitals. As a result, the program was completely closed and MSF was evacuated from Mogadishu. I and the murderer belong to the same sub-clan; our clan elders tried to persuade government officials not to jail the killer because he is a Muslim, and the victims were non-Muslim.[49] However, the killer was kept in custody for months and justice was not administered. The community lost its healthcare service and employees lost their jobs.

Analysis of the Research Findings

What follows is a summary of the findings from the 30 individuals' interviews. By categorizing the types of violence, we discovered that 17 of the 30 interviewees reported that they had experienced and/or witnessed murder, target killings, random killings, and/or being caught in crossfire. The second identified category of violence was rape and forced marriage, which four of the 30 respondents had witnessed.

When we explored who was directly responsible for this violence, we found that marauding clan militias were identified by 8 of the 30 interviewees. On the other hand, 7 of the 30 respondents considered the Ethiopian forces who intervened in Somalia in 2006 to be mostly

accountable for the crimes, while 11 of the 30 believed that the Al-Shabaab insurgency was primarily responsible for the violence and crimes. Government soldiers were seen as less responsible: only 4 of the 30 in our sample pointed the finger toward them. While these data suggest that Al-Shabaab were the primary cause of violence and the Ethiopian forces a close second, in reality, the findings most likely reflect the fact that the majority of our interviewees belonged to the younger generation, who primarily witnessed violence during the phases of the UIC in 2006 and the subsequent Ethiopian intervention.[50] Also, the data allow us to affirm that the gross violations in the period of 1991–2000 mostly involved clan militias belonging to various warlords. Other instances of mass violence in that decade occurred between the Al-Itihad Islamic organization and various clan militias, in addition to sporadic Ethiopian incursions in the border regions with Somalia. While the intervention of the multinational forces of UNOSOM (1992–95) also presumably caused gross violations of human rights, notably in their confrontation with General Aidid's militia in October 1993, none of our interviewees discussed that episode. Subsequent investigations revealed that the ordeal left 18 American men dead and 70 wounded, while Somalis suffered an estimated 3,000 casualties (deaths and injuries). This battle was immortalized in a famous film, *Black Hawk Down*.[51]

Responding to the question regarding the reasons behind mass violence, half of the respondents (15 out of 30) considered the civil war to be the real cause, while 9 out of 30 believed it was to be explained by lawlessness and lack of government institutions. These figures indicate that the violence is largely perceived to be motivated by contending clans and their militia groups, while substantial numbers see the conflict as the result of an absence of law enforcement institutions that might deal with public disorder and government mechanisms that might resolve conflict. Not surprisingly, 27 of the 30 respondents concurred that these acts of violence, whatever their primary causes, were not being addressed through available customary or Shari'a law, let alone by state or international laws. As a result, the conflict continues to cause enormous psychological, social, and economic hardship, with implications that remain in the memory of victims. For instance, 12 of the 30 respondents reported forcible loss of properties and claimed that there are no reliable institutions and no court system to which they might have recourse. The losses are not

confined to consumable goods but also include immovable properties such as houses, agricultural enterprises, and land with valuable natural resources. Many of these properties customarily belong to certain clans (including minority clans) but nowadays remain in the hands of powerful militias of other clans. This phenomenon is as prevalent in Mogadishu as it is in rural areas. The implication of loss of property is huge and complex. One consequence of the lack of secure property rights is that most of the families and individuals displaced from their homes in Mogadishu still fear to return to their homes, which have been occupied or confiscated by individuals belonging to other clans and communities. This situation creates mistrust among various communities and makes it harder for them to participate freely in the reconstruction of the national state.

Apart from loss of property, 7 of the 30 interviewees reported loss of dignity as the result of rape and forced marriages. Loss of dignity can be an unbearable burden, especially for Muslim women in conservative Muslim countries. Most of the cases are not reported for fear of shame and social stigma. For example, the annual human rights violation report compiled by the Peace and Human Rights Network in Mogadishu reported only six rape cases.[52] A woman who is a victim of rape is socially stigmatized and may not be considered suitable for marriage, or she may lose her marriage because of the shame culture of traditional Muslim societies. This shame may even be transmitted to the victim's family and children, constituting a lifelong stigma for the woman and a source of ongoing hostility and never-ending revenge between the families involved.

In responding to the question of how best to deal with the violence that has been experienced in the past by Somalis, 21 of the 30 respondents answered that they are prepared to forget and forgive and to accept some form of compensation for lost relatives and lost properties. In contrast, 6 of the 30 interviewees were adamant that they choose not to forget and that they strongly believe in retribution against the perpetrators of their agony. The widespread willingness to deal with past violence with forgiveness may be related to the deep Islamic influence in the cosmology of the people, as reflected in the Qur'anic verse cited earlier in the article: "But if a person forgives and makes reconciliation, his reward is due from Allah." (Qur'an 42:40–43, emphasis added). On the other hand, revenge killing is an established element of Somalia's clan culture, based on the common responsibility of the clan for injuries caused or suffered. This culture

emanates from the common security pact among clan members, which mandates their responsibility to protect other members. Thus, clans collectively pay blood money (diya) as compensation for the damage/injuries and lives lost. Diya is part of Somali customary law and is sometimes condoned by Islamic jurists as an alternative to revenge killings or perpetual feuds. At the same time, the influence of both urban culture and modern Islamic education have begun to erode the strong pastoral "revenge culture," as is evident in the responses of our interviewees.

On the necessity of personal accountability for violence and/or injustice, half of the interviewees (15 out of 30) responded positively. This is another indication of the growing public attention to "modern justice" norms, likely resulting from exposure to Islamic jurisprudence, urban culture, and even the awareness programs of numerous civil society organizations and peace movement groups.[53] On the other hand, 6 of the 30 respondents declared that they do not believe in personal accountability and continue to favor collective responsibility of the clan members for the crimes committed. If our sample is representative, it indicates that the pastoral clan culture is weakening in the urban area of Mogadishu, even though most of its people have been displaced by the civil war.

On the question of who should be active stakeholders in the process of addressing past injustices and instances of violence, clan elders were identified by the largest number of interviewees (11 of the 30 respondents), while Islamic scholars were identified by 6 out of 30. Thus, 17 of the 30 respondents saw local stakeholders as the most likely agents for promoting transitional justice. On the other hand, 9 out of the 30 assigned a primary role to the national government, and only 4 saw the international community as a viable stakeholder. When asked which relevant legal norms come to mind when thinking about the issue of transitional justice, Shari'a was mentioned by 15 of the 30 respondents, and customary law by only 3. While we might conclude from the data that a total of 18 of the 30 interviewees prefer local solutions, it seems that the narrowing role of customary law and the widening preference for Islamic Shari'a reflect the impact of modern Islamic movements in Somalia, which have been actively advocating for Shari'a and have grown in prominence since the collapse of the state in 1991.[54]

Turning to our original question about Somalis' familiarity with the concept of transitional justice, our survey indicates that 21 of the 30

respondents were not familiar with the term, and only 6 out of 30 claimed to have heard about it. These figures certainly do not mean that Somalis are unfamiliar with the core ideas of retributive and compensatory justice, or that they are uninformed about some of the mechanisms that various countries have set in place to deal with human rights violations in their recent past. As we have seen, elements of retributive and restorative justice are well articulated in Shari'a law and entrenched in Somali customary law. And most Somali respondents were found to be familiar with the International Criminal Court for Rwanda in Arusha, Tanzania, and with the South African Truth and Reconciliation Commission, both of which have been widely covered in the mass media. In a question about tailoring known transitional justice mechanisms from Rwanda and South Africa to the Somali context, 10 of the 30 respondents preferred the Rwanda option, while 6 regarded the South African TRC as more relevant to Somalia. (Even though these responses seem to be at variance at with our data showing that 18 of the 30 interviewees preferred traditional options over imported ones, it is worth noting that both the Rwandan and the South African transitional justice mechanisms incorporate elements of traditional justice alongside modern international and national laws.)

One way to interpret the data, then, is to conclude that while ordinary Somalis may not be aware of transitional justice as a holistic approach or familiar with the terminology of contemporary international law, they are quite conversant with the logic(s) behind the various options that transitional justice theory and practice offer. Our survey also reveals that there are different understandings of the causes of past violence depending on the gender and generation of the interviewees. Fifteen of the 30 respondents felt there were significant differences in how men and women and old and young viewed past violence, while only nine believed that were no substantive differences.

We suspect that different understandings between genders may be related to the relative level of education, which is generally much lower for women than for men.[55] On the other hand, different understandings between generations may be correlated with the higher levels of education in the new generation and with their growing interest in and connections with modern social media.[56] The implications of these differences in perception will need to be taken into account by those seeking consensus on how best to implement a transitional justice approach in Somalia.

Conclusion

This field research was conducted in Mogadishu in 2012, with 30 individuals who were selected to discover variations in the ways of understanding the human rights violations that occurred in South Central Somalia after the collapse of the state in 1991 and in the preferred ways of addressing them. The violations intensified in six periods. The first (1991–92) followed the collapse of the state and the outbreak of the civil war, and resulted in more than 300,000 deaths, hundreds of thousands of injuries, and loss of countless properties. The second period (1992–95) witnessed the international intervention of UNOSOM, and was followed by a third period (1995–2001) characterized by low-intensity conflicts among various warlords. The fourth period (2001–6) saw the launch of the Global War on Terrorism and the emergence of the UIC in Somalia. Fear of Islamist radicalism prompted the Ethiopian military intervention (2006–8) and the subsequent rise of local resistance movements, including the appearance of Al-Shabaab. Finally, the sixth period (2009–the present) has seen the continuation and occasional intensification of the conflict between AMISOM and Somali forces, on one side, and Al-Shabaab insurgents, on the other.

The findings of the research demonstrate that the overwhelming majority of the gross human rights violations that occurred in South Central Somalia involved murder (including targeted killings as well as random killings by armed militias), violence against civilians by armed gangs, and rape. Twenty-seven of the 30 interviewees agreed that these incidents of violence have not been addressed, and that the forcible loss of properties remains unresolved. However, the majority of Somalis are ready for peace and reconciliation and are prepared to forget and forgive and to accept some compensation for the loss of lives and properties. Furthermore, even though the Somali clan culture of collective responsibility for crimes remains in existence, this research indicates that more than half of the respondents believe in individual responsibility for the crimes that have been committed. In terms of addressing past injustices, our interviewees gave precedence to traditional stakeholders over modern ones (national and international actors), and to some form of Shari'a legal redress over exclusive reliance on customary law (*xeer*) or international law. However, the most common popular conception of Shari'a is legalistic and focused on *hudud* punishments. Our survey showed that modern understandings

of transitional justice are limited among the general population and mostly confined to a small number of members of the educated elite in Somalia. The lack of Somali terms for transitional justice testifies to the paucity of public debate on the issue. Finally, most elements of modern transitional justice approaches can be found in internally accepted norms of Somali customary law and Islamic Shari'a, and a place-based approach has the potential to reconcile multiple forms of law as they deal with issues of transitional justice.

APPENDIX

Questionnaires: Conceptions of Transitional Justice in Somalia

Personal Background

1. Name
2. Age
3. Sex: Male or Female
4. Current address/city
5. Educational background (Islamic, formal, informal education)
6. Place of birth
7. Where did you grow up?
8. From which clan and sub-clan are you?

Part 1: Experiences of Injustice and/or Violence/Conflict

1.1. What type of violence and/or conflict did you or your family experience while living in Somalia?

1.2. What type of violence and/or conflict did you witness (without being directly involved) during your life in Somalia?

1.3. Who else was involved in these events? Who were those who acted out the violence or drove the conflict in the first place? Who suffered most from it?

1.4. What were the reasons for these acts of violence? What triggered this kind of conflict?

1.5. What is the relevance of these events for you personally today?

Part 2: Aftermath and follow-up of violence and/or conflict

2.1. How did you and/or your family deal with these experiences?

2.2. How were these events/instances of violence/conflict and/or injustices addressed? Who addressed or attempted to address them?
2.3. What were the social, economic, and/or political implications/results of these events in the long run, in your view?
2.4. How far are the events you just outlined related to ongoing violence and/or conflict in Somalia now?

Part 3: Options/Chances for the Future

3.1. In your opinion, how are these instances of violence and/or conflict you experienced/witnessed/suffered from in the past important or relevant to your life and other Somalis today?
3.2. What in your opinion needs to be done to address these past events and suffering now or in the near future? What can be done to "heal the wounds"?
3.3. In your opinion, should perpetrators of violence and/or injustices be held accountable for their actions? If yes, how and through what kind of legal, social, or political process?
3.4. Who should be an active stakeholder in the process of addressing past injustices and instances of violence?

If respondents have already answered questions 3.2 and 3.3 comprehensively, questions 3.5–3.7 will not have to be asked.

3.5. What role, if any, can *xeer* play in this regard?
3.6. What role, if any, can Shari'a play in this regard?
3.7. What role, if any, can national authorities or the international community play in this regard?
3.8. Related to that, are there relevant legal norms at the national or internal level that come to your mind when thinking about the issues? If yes, which ones?
3.9. Are there, in your view, significant differences in the way Somalis see the problem about past violence and/or conflict between those belonging to different sexes or different generations?
3.10. Do, in your opinion, people in the diaspora reflect on these issues differently than those who are inside Somalia/the Somali Region?
3.11. What are your hopes and worries regarding dealing with past violence and/or conflict?

If respondents have already mentioned transitional justice in their answer to question 3.2, question 3.12 will not have to be asked.

3.12. Have you ever heard about the concept "transitional justice"? If yes, what do you understand by that?

3.13. Do you think that transitional justice mechanisms such as implemented in South Africa and Rwanda before should also be implemented in Somalia?

Thanks for your response.

NOTES

1. Early armed factions were the Somali Salvation Democratic Front (SAD), the Somali National Movement (SNM), the United Somali Congress (USC), and the Somali Patriotic Movement (SPM).
2. UNOSOM was led by the United States and was accepted by the UN and made possible through United Nations Security Council Resolution 794. On the evening of 4 December 1992, U.S. forces landed in Mogadishu. AMISOM is the regional peacekeeping mission in Somalia launched in 2007 by the African Union with the approval of the UN. Other external actors include Eritrea and some European fishing companies, as well as those international companies that dumped nuclear waste within Somalia's marine territorial waters.
3. For instance, the mandate of the African Union Mission in Somalia does not include a transitional justice component. See Margherita Zuin, "A Model for Transitional Justice for Somalia," *PRAXIS, The Fletcher Journal of Human Security* 23 (2008): 89–108.
4. Somali warlords participated in all of the political reconciliation conferences. While alleged human rights violations were examined as one of the criteria regarding participation, many of these warlords still remain members of the Somali parliament.
5. "Transitional Justice in Protracted Conflict: Local and Diaspora Conceptions of Retributive and Restorative Justice between *Shari'a*, Customary and Human Rights Law in Somalia and Ethiopia's Somali Region," project proposal submitted to the Deutsche Stiftung Friedensforschung, Max Planck Institute for Social Anthropology, Halle/Saale, Germany, 2010, 6.

6. The terminology of clan cleansing has been applied most recently in Kapteijn's study of the mass killings in 1991–2. However, even before the collapse of the regime, government forces targeted specific clans for collective punishment. See Lidwien Kapteijns, *Clan Cleansing in Somalia* (Philadelphia: University of Pennsylvania Press, 2013).
7. Although both the Barre government and the opposition United Somali Congress (USC) played on clan loyalties before 1991, the transformation of the conflict into an all-out Hawiye vs. Darood war appears to date to April 1991, when allied forces comprising all the Darood clans attempted to recapture Mogadishu. These forces advanced to the outskirts of Mogadishu. The USC was caught in panic and mayhem, and launched a counteroffensive to throw them out at all costs. See Terrence Lyons and Ahmed I. Samatar, *Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction* (Washington, DC: Brookings Occasional Papers, 1995), 22.
8. Hassan Ali Mire, "On Providing for the Future," in *The Somali Challenge: From Catastrophe to Renewal?* ed. Ahmed Samatar (London: Lynne Rienner, 1994), 22.
9. The three armed factions, the SNM, the SPM, and the USC–General Aidid wing, were bound by the Mustahil agreement in June 1990 to form an alliance. Moreover, this agreement was consolidated in October 1990 and rejected any negotiated settlement with the regime. However, the civilian USC in Mogadishu was furious with General Aidid and at the possible return of military rule in Somalia. It seems that this disagreement precipitated the hasty formation of the interim government.
10. The two contesting leaders, Ali Mahdi and Aidid, belonged to two Hawiye sub-clans, Mudulood and Madar-kicis, respectively, and clan mobilization was used for the power struggle.
11. See Lyons and Samatar, *Somalia: State Collapse,* 22.
12. In the Grand Conference of Northern Peoples "Shirweynaha Beelaha Waqooyiga," held in Burco in May 1991, the secession of Somaliland was not originally on the table. The SNM leadership was negotiating for a new model of governance with the USC–General Aidid faction in Mogadishu. See Mark Bradbury, *Becoming Somaliland* (London: Progresso, 2008), 80; and also John Drysdale, *Whatever Happened to Somalia*? (London: HAAN Publishing, 1994), 25.
13. General Aidid declared a military coup and the toppling of the Ali Mahdi

government. See Hussein Abdi Osman, "Malaf al-Sarā' beyna 'Ali Mahdi wa 'Aidīd," unpublished paper submitted to the Horn of Africa Center for Studies, Mogadishu, 1993.

14. See Mohamed Sahnoun, "Somalia: the Missed Opportunities," paper delivered to the United States Institute of Peace, Washington, D.C., 1994, 11.
15. The total loss of lives was never fully tallied. Lewis provides a figure of 300,000: See I. M. Lewis, *A Modern History of the Somali: Nation and State in the Horn of Africa*, rev./4th ed. (Columbus: Ohio University Press, 2003), 265. See also Kenneth Rutherford, *Humanitarianism under Fire: The US Intervention in Somalia* (Sterling, Virginia: Kumerian Press, 2008), 38; and Samatar, ed., *The Somali Challenge*, 3.
16. Samatar, ed., *The Somali Challenge.*
17. The number of Somali deaths was a highly controversial issue. For instance, Rutherford reported 500 deaths and 700 wounded. See Rutherford, *Humanitarianism*, 160. Other sources provide a figure of 500–1,000. See Luke Glanville, "Somalia Reconsidered: An Examination of the Norm of Humanitarian Intervention," *Journal of Humanitarian Assistance*, 11, *http://www.jha.ac/articles/a178.pdf* (accessed 19 June 2010).
18. World Bank, "Conflict in Somalia, Drivers and Dynamics, 2005," *http://siteresources.worldbank.org/INTSOMALIA/Resources/conflictinsomalia.pdf* (accessed 31 June 2010).
19. This author was a Somali living in the diaspora who went back to Somalia during the UNOSOM period to work in the humanitarian field.
20. Abdurahman Abdullahi, "Penetrating Cultural Frontiers in Somalia: History of Women's Political Participation during Four Decades (1959–2000),"*African Renaissance* 4, no. 1 (2007): 34–54.
21. "On 23 September 2001, less than two weeks after the 9/11 terrorist attacks in the United States, President George W. Bush signed Executive Order 13224, which blocked the assets of 27 organisations and individuals linked to terrorism. Tenth on the list was a little-known Somali organisation, al-Itihaad al-Islaami (AIAI)." See International Crisis Group, *Somalia's Islamists*, Africa Report No. 100 (2 December 2005), *http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/somalia/Somalias%20Islamists.ashx* (accessed 25 August 2010). See also Abdurahman Abdullahi, "Recovering the Somali State: The Islamic Factor," in *Somalia: Diaspora and State Reconstitution in the Horn of Africa,* ed. A. Osman Farah, Mammo Mushie, and Joakim Gundel (London: Adonis and Abby Publishers, 2007),

196. However, on 27 August 2002, the United States removed al-Barakaat from its designated terrorist list. See Terrorist Financing Staff Monograph, *Al-Barakaat Case Study: The Somali Community and al-Barakaat,* 85, *http://www.9-11commission.gov/staff_statements/911_TerrFin_Ch5.pdf* (accessed 25 August 2010).

22. "Somali Reconciliation" in Djibouti, 2000, was a civil-society-driven process, and ideological and clan differences were acknowledged in the inclusive approach. As a result, many Islamists became members of the parliament and Islam was accepted as the ultimate reference for the laws of the land.
23. The alliance consisted of eight Mogadishu-based warlords. See "Somali Warlords Hold 'Secret Anti-Terrorism' Talks with US Agents: Witnesses," Agence France Presse, 28 February 2006.
24. These restorative mechanisms included truth commissions, official apologies, reparations, innovative tribunals, including the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and hybrid courts like the Special Court for Sierra Leone.
25. Naomi Roht-Arriaza, "The New Landscape of Transitional Justice," in *Transitional Justice in the Twenty-First Century*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 2.
26. Kofi Annan, UN Secretary-General, *The Rule of Law in Conflict and Post-Conflict Societies* (New York: United Nations, 2004), 4.
27. See the definition at *http://ictj.org/about/transitional-justice* (accessed 11 June 2013).
28. The Ash'ariyah school of theology was founded by Abu al-Hassan Al-Ashari (873–935 CE) in reaction to the extreme rationalism espoused by the school of Mutazilah, one of the early theological schools in Islamic theology. The Shafiyah school of jurisprudence is one of the four major Sunni schools of jurisprudence, and it is rooted in the methodology and teachings of Abū-Abdallāh al-Shāfiī (767–820 CE). Sufism appeared as a reaction against the luxurious lifestyle that grew prevalent in the Islamic urban centers when Muslims became powerful and wealthy and came under the influence of other cultures.
29. These laws are not mutually exclusive. For instance, many elements of *xeer* are compliant with Islamic Shari'a, while many modern European laws introduced in Somalia have taken account of the Islamic faith of the Somali people.

30. Moxamed Cali Xarakow, "Cadaaladda Xilliga kala-Guurka," *http://www.hiiraan.com/op4/2012/july/25249/cadaaladda_xilliga_kala_guurka.aspx* (accessed 6 August 2013). See also Abdi Gadiid, "Yaan laga Tegin Cadaaladda Danbiilayaasha ma yaro," *http://www.qubanaha.com/2012/08/16/yaan-laga-tagin-cadaaladda-dambiilayaasha-ma-yaro-faalo-xiiso/* (accessed 6 August 2013).
31. See responses of the participants, available at *https://www.facebook.com/abdurahman.baadiyow* (accessed 4 September 2013). The question was posed as follows: "A form of justice called in English language 'Transitional Justice' and in Arabic 'al-Cadaala al-intiqaaliyah' is dispensed in the countries where civil wars and gross violation of human rights occur. There is no definitively agreed terminology for Somali language. Can you propose a Somali terminology for transitional justice? Can you find such terminology from Somali poetry?"
32. These are *garbax iyo xaalmarin, waddadii caddaalada, garsoorka marxaladda kalaguurka, wadadii cadaalad raadinta, caddaaladda kalaguurka, caddaalad ku meelgaar ah, xaq- xeerin, xeerka kala guurka, garsooridda kumeel gaarka, ka-gudbidda gaboodfalka, xaq uraadin xasuuq dhacay, garsoor kumeel gaar ah,* and *is-xaqsiin*.
33. See *http://www.thefreedictionary.com/justice* (accessed 24 July 2014).
34. See *http://www.yourdictionary.com/temporally* (*accessed* 24 July 2014).
35. The meaning of "transition" according to *http://www.merriam-webster.com/dictionary/transition*, is "passage from one state, stage, subject, or place to another." In similar fashion, the Somali term *kalaguurka* indicates passage from one situation to another.36. Somali Provisional Constitution, *http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=* (accessed 12 September 2013).
37. In the Constitution of 1960, see Articles 1:3, 50, 94, and 29. The National Charter of 2000 included two important additional provisions in Articles 2 and 4, which prohibit the adoption of any law contradicting Islam or propagating other religions in Somalia. See also Article 2 of the provisional Federal Constitution of the Somali Republic.
38. The Qur'anic verse "But no, by your Lord, they shall have no faith until they make you (O Muhammad) judge in all their disputes and find in themselves no resistance against your decisions and accept them with full submission." Qur'an 4:65.
39. Abdurahman Abdullahi (Baadiyow), "Islam and Transitional Justice:

Principles, Mechanisms and Historic Role in Somalia," paper produced as part of a research project on Transitional Justice in Somalia commissioned by the Max Planck Institute for Social Anthropology, Halle/Saale, Germany, 2013, 19–20, available at *http://www.scribd.com/doc/132832431/Islam-and-Transitional-Justice-Edited1-Doc* (accessed 14 June 2013).

40. See the research questions in the Appendix.
41. Rosalind Shaw and Lars Waldorf, eds., *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Redwood City, CA: Stanford University Press, 2010).
42. There are numerous traditional coping mechanisms employed in Somalia. Among the most important is the reciting of Qur'anic verses by traditional Islamic scholars, verses that offer solace to the victims and their kin. In addition, various forms of supplication by relatives and friends typically constitute a part of these traditional means of coping.
43. See the Qur'anic verse that says: "No calamity befalls on the earth or in yourselves but is inscribed in the Book of Decrees, before We bring it into existence. Verily, that is easy for Allâh. In order that you may not grieve at the things that you fail to get, nor rejoice over that which has been given to you. And Allâh likes not prideful boasters." Qur'an 57:22–23.
44. According to the recent study conducted in the UK, "Out of 92 people interviewed 52.1% did not know the understanding of Post-traumatic Stress Syndrome although many were sufferers. It was also apparent that people suffering from mental health were not being supported and in fact were being stigmatized in the community resulting in many sufferers hiding their problems. 50% of sufferers did not receive any treatment." See Northamptonshire Somali Community Association, Dhaawac ama Waxyeelo Maskaxeed, "A Report on Post-Traumatic Stress in the Somali Community in Northampton and Their Experiences of Health Service" (2008), 47, *http://www.nmhdu.org.uk/silo/files/post-traumatic-stress-disorder-in-the-somali-community-northampton.pdf* (accessed 5 August 2013).
45. The Banaadiri (Benadiri, Benaadir) people traditionally lived in the Mogadishu districts of Shangani and Hamarweyne, in Merca, and in Barawa. They are reputed to be the early founders of Mogadishu and trace their mixed origins to Arab, Persian, and Cushitic people. They can often be identified by their lighter skin, in comparison with the majority of other Somalis. See Lee Cassanelli, "The Benaadir Past: Essays in Southern

Somali History" (PhD diss., University of Wisconsin, 1973).

46. Merca is a historic coastal town and the regional capital of Lower Shabelle, located about 110 kilometers southwest of Mogadishu. Afgoye is a town and district of the Lower Shabelle region, located 30 kilometers west/southwest of Mogadishu.
47. Garbahaarey is the capital town of Gedo region in Somalia, and Buur-Dhuubo is one of its districts.
48. See Duale Sii'arag, "The Birth and Rise of Al-Ittihad Al-Islami in the Somali Inhabited Regions in the Horn of Africa" (2005), *http://wardheernews.com/articles/November/13__Alittihad_Sii'arag.html* (accessed 5 August 2013)
49. There is disagreement among Muslim jurists on what to do when a Muslim kills a non-Muslim. According to Abu Hanifa, if a Muslim deliberately kills a non-Muslim, the Muslim killer is killed. The following verse of the Qur'an demonstrates this equality of humanity: "if anyone slew a person—unless it be for murder or for spreading mischief in the land—it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people." Qur'an 5:32. But there are other scholars, like Imam Shafi'i, Imam Malik, and Imam Ahmad, who hold that a Muslim who kills a non-Muslim should not be killed. The latter conception is more prevalent in Somalia.
50. The Union of Islamic Courts (UIC) was the association of clan-based Islamic courts in Mogadishu that reacted militarily against the alliance of the warlords in 2006, defeating them. The union comprised divergent ideological forces and later broke up into various groups. One of their components is Al-Shabaab, which is currently affiliated with al-Qaida in Somalia.
51. *Black Hawk Down* is a 2001 American war drama directed by Ridley Scott. It is an adaptation of the 1999 book of the same name by Mark Bowden, who chronicles the events of the Battle of Mogadishu, a raid integral to the United States's effort to capture General Mohamed Farah Aidid.
52. See *Peace and Human Right Rights Network* (*PHRN*) *Annual Report from July 2010–June 2011*, submitted in September 2011.
53. Since 1992, various human rights organizations and many civil society organizations have been exploring options for transitional justice in Somalia. The best known in Mogadishu are Ismail Jumale Human Rights and Elman Human Rights.
54. Modern Islamic movements in Somalia have been active since the

1960s and are affiliated mostly with the Egyptian Muslim Brotherhood and the Salafia of Saudi Arabia. The two most prominent organizations within these movements are Islah and Al-Itihad (Itisam). For more information, see Abdurahman Abdullahi, "The Islamic Movement in Somalia: A Historical Evolution with a Case Study of the Islah Movement (1950–2000)" (PhD diss., McGill University, Montreal, 2011).

55. According to the 2006 *Somalia Multiple Indicator Cluster Survey*, the adult literacy rate for women is estimated to be 26 percent (compared to 36 percent for men, and 31 percent overall). Available at *http://www.so.undp.org/docs/Gender_in_Somalia.pdf* (accessed 6 August 2013).
56. As of 2012, Somalia had around 186 internet hosts. There were about 106,000 online users in the country in 2009: see *https://www.cia.gov/library/publications/the-world-factbook/geos/so.html* (accessed 6 August 2013). Moreover, more than a million Somalis, most of them part of the younger generation, live in the diaspora and use social media extensively.