**Somalia’s *Xeer* Model—Reintegration Applications for Boko Haram**

***Abstract:***

The resilient chaos in Somalia provides a rich subject for analysis, particularly with regards to the reintegration of a violent insurgency. Al-Shabaab’s movement and the Somali government response shares many common themes with those of Boko Haram and the Nigerian government. Of note, both are brutally violent insurgencies that are located in profoundly underdeveloped regions, seeking to leverage their brands of extremist Islam as a source of stability in the face of ineffectual government institutions. However, while the conflict in Nigeria has its roots in religious divisions, disenfranchisement, and heavy-handed government backlash, Somalia is an entirely Muslim nation that is fractured along clan lines. Somalia has been successful in reinvigorating and galvanizing some traditional, pre-Al-Shabaab mechanisms, specifically the *xeer* justice framework, that may be a useful model for incorporation into a solution for Boko Haram reintegration and transitional justice. While an incomplete solution for reintegration of Boko Haram, the authors of this paper strongly recommend the empowerment of a *Xeer*-like traditional justice system made of community leaders in northern Nigeria to address the unique needs of a population who have felt under-served by the Abuja government and abused by the Nigerian military. *Xeer* has been far from a panacea in Somalia; as insurgent violence continues, metrics that specify the degree of its success are nearly impossible to ascertain. The incorporation of a *Xeer*-like system, while perhaps a critical component of any strategy, must be implemented in concert with a Nigerian whole-of-government approach to addressing both the consequences of Boko Haram as well as the conditions that precipitated the violence and empowered the terrorist insurgency.

***Time Period***

The United Nations has called the current situation in Somalia the “world’s worst humanitarian disaster.”[1] Since 1991, clan warfare has plagued the country, and with the emergence of al-Shabaab, stability peace and prosperity remain distant prospectshas not returned. At the end of January 2009, Sheikh Sharif Ahmed was elected President of Somalia with the hope that his administration will bring steadiness a degree of stability to Somalia, but thus far, violence has continued unabated. At the end of 2009, nearly 700,000 Somalis were under the responsibility of the United Nations High Commission for Refugees, constituting the third largest refugee group in the world after war-afflicted Iraq and Afghanistan, respectively.[2]

***Insurgency Description***

Since the ouster of President Mohamed Siad Barre in 1991, approximately 300,000 Somalis have died due to violence, famine and disease.[3] The formerly allied rebel groups, which banded together to destroy Barre’s administration, split off and declared a civil war.[4] This resulted in a humanitarian catastrophe, with hundreds of thousands of deaths and iInternally dDisplaced pPeoples (IDPs). Inter-clan and intra-clan fighting and looting hasd decimated the Somali landscape: the entire economic infrastructure has been destroyed and political institutions no longer exist.

To this day, violence remains ongoing, due to the 2006 ascension of the notoriously violent Al-Qaida-affiliate al-Shabaab to the forefront of the battered Somali landscape. Al-Shabaab is an offshoot of the Islamic Courts Union (ICU), which splintered into several smaller factions after the ICU was defeated by Somalia's Transitional Federal Government (TFG) and the TFG's Ethiopian military allies.[5] Al-Shabaab describes itself as waging jihad against the broadly defined “enemies of Islam.” As a result, Al-Shabaab is currently engaged in combat against multiple parties on multiple fronts. Specifically, Al-Shabaab continues a battle with the Federal Government of Somalia and the African Union Mission to Somalia (AMISOM).[6] Due to their penchant for piracy and attacks upon civilians, Al-Shabaab has been designated as a terrorist organization by Australia, Canada, the United Arab Emirates, the United Kingdom and the United States.

***Causal Elements***

The insurgency has roots in Somalia’s clan-based society, the ousting of Said Barre in 1991, and the ramifications of subsequent political decisions. The Unites Somali Congress (USC) announced Ali Mahdi as the interim president after the toppling of Barre in 1991, which had many unexpected results.[7] Immediately, given ideological differences, the USC split along sub-clan lines. The Habar Gedir-based faction, led by General Mohammed Farah Aideed and the Abgal-based group led by Ali Mahdi thus began a brutal intra-clan struggle for power.[8] While Aideed and Mahdi, the major forces in the capital Mogadishu, were undoubtedly the two most powerful players, thirteen other clans and sub-clans are also engaged in the struggle.

Al-Shabaab capitalized on this clan system to rise to power, and their intentions remain to rule Somalia under Sharia Law. Al-Shabaab's predecessor was al-Ittihad al-Islami (AIAI), which worked to create an Islamist emirate in Somalia and was partially funded by former al-Qaeda leader Osama bin Laden.[9] Gaining power after the Ethiopian forces invaded Somalia, both groups leveraged the various levels of religiosity, and the faithfulness of different clan groups to build a coalition of followers. They still ascribe to this—their new leader, Ahmad Umar, is understood to represent al-Shabaab’s more nationalist branch, which aims only to rule Somalia.[10] Its appetite for global attacks is limited.

***Civilian Agency Involvement***

Largely as a result of the destruction of Somalia’s existing infrastructure, the collective efforts of federal, state, and local agencies have failed to slow the spread of al-Shabaab’s influence. No individual group has had success in quelling violence, so the military has been the primary instrument of Somali national power. Unfortunately, the Somali military has yet to demonstrate neither the capability nor the willingness to address the grievances social, economic, and cultural factors that led to Al-Shabaab’s rise.

***Military Involvement***

In 2007, the Ethiopians were joined by AMISOM, a U.N.-backed African Union mission that was tasked initially with little more than protecting Somalia’s fledgling transitional government. But the early deployment of 1,500 Ugandan troops quickly grew into the African Union’s largest-ever peace-support mission, encompassing contingents from Burundi, Sierra Leone, Djibouti, Kenya, and Ethiopia, among others, and embracing an aggressive peace-enforcement mandate centered on taking the fight directly to al-Shabaab.[11]

The most recent insurgency began in early February 2009, with the conflict between the forces of the Federal Government of Somalia assisted by African Union peacekeeping troops and various militant Islamist groups and factions.[12] The violence has displaced thousands of people in the southern part of the country. The conflict has also seen sectarian violence between various types of Islamic groups, including al-Shabaab versus more moderate Sufi coalitions.

Within the last year, Al-Shabaab in January, “killed more than 100 Kenyan troops [from the African Union] and drove off with their trucks and weapons,”[13] according to the New York Times. After high-profile piracy operations and the 2013 Westgate Mall hostage crisis in Nairobi, Al-Shabaab has maintained international relevance. The US appears to have escalated President Obama’s standard ‘light-footprint’ warfare, characterized by surgical strikes against Al-Shabaab leadership and US special operations training of Somali troops. For the past several months, as Al-Shabaab has continued terrorist attacks in Somalia and neighboring Kenya, the more globally-oriented Islamic State (IS) has created an “insurgency within an insurgency” and battled with Al-Shabaab to establish the IS brand of Sharia Law.[14]

**International Agency/Expert Involvement?**

International agencies have been largely involved in the humanitarian crisis created by the insurgency—but have been hugely impacted, both in terms of casualties and development stalls. In the nineties, feeling public pressure, U.S. President George H.W. Bush ordered emergency airlifts of food and supplies to Somalia.[15] The UN Security Council similarly approved a military mission, “Operation Restore Hope,” led by the United States to try to help the starving country by protecting food shipments from the warlords.[16] Not long after though, the United Nations declared that it would be pulling its international staff and aid workers from Somalia because of the dangerous fighting conditions and attempts at kidnapping. Then, in 2005, food shipments began being hijacked off the coast of Somalia by rebel forces. Food aid programs, including the UN’s World Food Program (WFP), were suspended.[17]

Following these efforts, the violence only continued. In 2008, the UN Security Council approved the sending of other countries' warships to Somalia’s territorial waters in order to combat the threat of Somali pirates, who had begun hijacking ships regularly. That same year, the head of the UN Development Program in Somalia was killed by gunmen in Mogadishu. In response, American military began flying drone aircraft from a base in Ethiopia. Most recently, in July of this year, the Council adopted resolution 2297, which extended the African Union Mission to Somalia’s (AMISOM) authorization until May 2017 with no major changes. Ongoing efforts continue, but as insurgency prevails, economic development and social reconciliation continue to struggle.

***NGO Involvement***

In the wake of disintegration of the Somalian state in 1992, numerous NGOs were formed. Research has shown that NGOs experience a number of common problems and dilemmas, including internal decision-making processes, recruitment, retention of staff, layoffs, and accountability, evaluation, structural growth, and fund raising activities. Thus far, none have been able to make progress in transitional justice.

***Impetus for Reintegration***

While there is ongoing hostility and active al-Shabaab groups remain in power, sociologists have recognized an increasing number of children and young adults laying down their arms. As within similar terrorist groups, the members cycle out as new recruits become available. Consequently, many have worked to identify best practices for reincorporating these men and women back into society.

The most commonly discussed model is the *Xeer* system. Despite the lack of a functioning government, local structures within Somali society have served to maintain a minimum level of stability, rule of law, and justice. Mostly unique up to this point to Somali culture, the *xeer* serves as a dispute settlement mechanism based on clan/family customary law and elements of Sharia law, the body of law derived from the Koran and from the teaching and examples of the Prophet Mohammed. Given that the al-Shabaab insurgency forced local leaders out of their traditionally powerful roles, *xeer* seeks to empower those leaders again. Tribal leaders can thus unify their community, and solidify the relationships between citizens and ex-combatants.

***Prosecution/Punitive Component***

While reintegration is a critical component of post-Somalian insurgency, the African Union emphasizes the importance of a balance between disarmament and prosecution. In order to make any model relevant, the best practices for AU integration emphasizes “the need for complementarity between the international tribunals, hybrid courts and domestic legal systems with regards to prosecutions and investigations.”[18] Like in Rwanda, there are too many defendants to try fairly and appropriately— domestic courts simply lack the necessary financial and human resources to try all cases. Because of the ongoing insurgency as well, many judges and educated people have fled the region, continuing the cycle of unprosecuted cases. Moreover, “many legal codes were literally burnt by the Islamic Courts—as a result, there is a general lack of trust in the ability of the national courts to assure a fair and transparent trial.”[19]

The *Xeer* system is still the most commonly used and reinforced justice mechanism—so punishment is an incorporated component of *xeer*. Somalis use *Xeer* to solve approximately 80-90% of all the controversies involving crimes, especially in rural areas where lack of transportation and tradition prevent people from using other justice mechanisms.[20] This ensures that all citizens have access to the justice system, and that ex-combatants are able to make amends in the eyes of all those in their returned home.

***Community Engagement***

One of the most important aspects of the *Xeer* system is the involvement of local community members. The clan elders, acting as judges, lead *Xeer* processes. There is also an effort to incorporate differing tribes in some cases, so that a lack of bias is ensured—in those instances, “the *Xeer* is an unwritten agreement created bilaterally between two clans.”[21] Clan members transmit these agreements from generation to generation—this type of tradition sets precedent, thus forms part of customary law.[22] As a result, community members know that they have and will be heard in existing law. Additionally, *Xeer* hearings are held in public, usually under a tree within the village or in rural areas.[23] This type of inclusion facilitates group participation, and allows those who are prosecuted be publicly punished, then publicly forgiven.

One of the more problematic aspects of *Xeer*, though, is that it marginalizes and excludes other members of the community. Some of these exclusions involve efforts to maintain objectivity—much like in Western systems, persons with close family relationships with those involved in the controversy, individuals who have a personal grievance against one of the parties, and persons who have already sat in judgment of the same case are not allowed to attend *Xeer* hearings or processes.[24] But given the religious roots of the system, women are also not permitted to participate in the discussion and judgment.[25] This merits further discussions in applicability beyond Somalia, but regardless, it is an ingrained portion of the existing structure of Xeer.

***Reconciliation***

The *Xeer* system is associated with the idea of restorative justice. One of its main goals is to reestablish the social order—therefore, any punishment or penance is designed with reintegration in mind. The ultimate end goal, for both ex-combatants and beyond, is for the community to be satisfied with justice and to seek to move forward after the proceedings. Often, victims are compensated through a Diya (blood compensation), which consists of either money or livestock—any kind of payment from them, or from their families.[26] Those who are involved in the practice speak highly of the way in which *Xeer* promotes reconciliation. According to one ex-combatant, “in the clan justice, the decision is made to stop the violence: the aim is to make peace and set up an agreement.”[27] Considering the importance, acceptance and legitimacy that the clan system and customary practices have had throughout Somali history, the traditional *Xeer* system ought to be considered a primary means to bring accountability to the people, all while facilitating forgiveness and acceptance of those accused.

**Cost Estimate and Financing**

One of the best features of *Xeer* are its cost-effectiveness and ease of start-up. Beginning any new program, especially one being funded by international NGOs, or through supranational organizations, can be complicated financially and logistically. But Somalia, a country of tradition, can simply continue and revive the existing cultural norms as soldiers lay down their arms. The system is already in place, so no major new structures are needed, such as the construction of courts and the election of judges. No incentives are needed to ensure that local leaders and tribal elders exercise this process—it is one of the few that gives them the opportunity to reclaim their local status, which al-Shabaab has worked to dismantle. Additionally, an unintended consequence of the application of *Xeer* to ex-combatants is the possibility of banding different tribal groups together. By creating further commonalities and cooperation among groups, the number of recruits for al-Shabaab may decrease, given the lack of clan fighting and proximity to returned soldiers. Combined with the lack of financial cost, *Xeer’s* integration into the social fabric of Somalia makes the use of such a system ideal.

***Lessons Learned/Applicability to Boko Haram***

Somalia’s model holds tremendous potential for Nigeria, should a system like *Xeer* be implemented or introduced. While Islam is not nearly as prevalent in Nigeria, and the Islamic system of law is not a part of the federal, or even local system, procedures like *Xeer* are a crucial component of small villages, and the politics therein.[28] Nigerian traditional rulers often derive their titles from the rulers of independent states or communities that existed before the formation of modern Nigeria. Although they do not have formal political power, in many cases they continue to command respect from their people and have considerable influence.[29] Given the influence of these rulers, there is tremendous potential in empowering them to act as adjudicators in reintegration. Additionally, provided that the *Xeer* system has no root in religion in Nigeria, a *Xeer*-like model would circumvent some of the problematic aspects of *Xeer*—most importantly, the lack of women’s participation. Including the entire community in such a proceeding will further allow reintegration by all—mothers, sisters, wives, and beyond for those who are seeking reconciliation.

While there is a punitive aspect to *Xeer*, its most important aspect is one of forgiveness. This could be especially beneficial in reintegration non-traditional ex-combatants—specifically women who have been kidnapped by Boko Haram, and child soldiers. With many Chibok girls returning to their villages, and others choosing to stay with their husbands, both would benefit from a transitional justice system that inherently reaffirms the culture of their villages, and does not punish them for being kidnapped. The same principle applies to child soldiers—as of 2016, the United Nations verified the recruitment and use of 278 children (143 boys and 135 girls) by Boko Haram (225) and the Civilian Joint Task Force (53).[30] The same report cites that “twenty-one girls were used in suicide attacks claimed by Boko Haram, 11 of which were documented in the fourth quarter.”[31] Additionally, “of the 1,010 children (422 boys and 588 girls) encountered or rescued during the course of military operations in north-east Nigeria, 204 (117 girls and 87 boys) had been recruited and used by Boko Haram.”[32] All of these children would benefit from the *Xeer* process—some are still children, and returning to their families will be a struggle. But with the community’s forgiveness and support, reintegration is possible. The best way to do so, as opposed to simply mandating their return, is to involve those who are receiving them—their families, and their communities.

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