

**Flygtningenævnets baggrundsmateriale**

|                                 |                                                                   |
|---------------------------------|-------------------------------------------------------------------|
| <b>Bilagsnr.:</b>               | <b>1058</b>                                                       |
| Land:                           | Somalia                                                           |
| Kilde:                          | Heritage Institute                                                |
| Titel:                          | Transitional Justice in Clan-Based Societies. Case study: Somalia |
| Udgivet:                        | 18. januar 2024                                                   |
| Optaget på baggrundsmaterialet: | 22. marts 2024                                                    |

# TRANSITIONAL JUSTICE IN CLAN-BASED SOCIETIES

## CASE STUDY: SOMALIA

January 2024



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# 1. Introduction

## 1.1. Background

After decades of civil war, Somalia stands on the precipice of recovery. Signs of improvement can be seen across all aspects of life, from the return of peace to large swaths of the country to the slow reconstruction of state institutions and the groundswell of communities coming together to rebuild their cities and infrastructure.

Yet, despite these promising developments, Somalia's path to recovery remains precariously balanced. Tribal violence and extremist ideologies continue to ripple through the country, and political factions, intractably entangled in ceaseless power struggles, threaten the fragile momentum. This volatile landscape often sees the country vacillating between progress and regression and is a direct consequence of a foundational flaw in the political settlement of the country which overemphasized power sharing at the expense of comprehensive social reconciliation.

A fundamental shift in approach is needed to solidify Somalia's path towards recovery and stability. The country must transcend its limited focus on power sharing, instead prioritizing the indispensable process of a genuine social conciliation. As such, a context-appropriate transitional justice process that allows Somali society to come to terms with the violence and transgressions that took place in the country over many decades will certainly be one of the key pillars for a comprehensive social conciliation.

Transitional justice promotes a culture of accountability, mends ruptured trust between communities, and fosters a shared national identity. Confronting the past directly, Somalia can construct a future anchored in justice, equality, and social cohesion. This effort represents a collective societal determination to confront the enduring legacies of violence, laying the cornerstone for a more peaceful and stable future.

This report seeks to explore the implementation of transitional justice in Somalia. It will examine the history and development of the concept, drawing on the experiences of transitional justice in various African contexts. By analyzing the practice of transitional justice in similar settings, the aim is to craft a tailored approach that suits Somalia's unique social, historical, and political structure.

## 1.2. Research Objectives and Questions

The paper analyses the prospects of transitional justice in Somalia to achieve the following:

- i. Contribute to the broader debate on the role of transitional justice in post-conflict societies, using Somalia's experience and lessons learned from countries facing similar experiences;

- ii. Promote an understanding of the various dynamics contributing to the country's conflict and human rights violations, essential for the design of context-specific transitional justice mechanisms;
- iii. Assess the strengths and weaknesses of past and current initiatives and inform the design of strategies that can better address past abuses while promoting sustainable peace; and
- iv. Sensitize stakeholders and the international community on addressing abuses, generating political will, mobilizing resources, and promoting accountability for transitional justice efforts.

The report seeks to answer the central question: how can Somalis deal with the past crimes and abuses? It will be discussed within four sub-questions:

- i. How have clan-based societies in Africa achieved transitional justice and what lessons can be learned from their experiences?
- ii. What are the main characteristics of Somalia's clan system and how did it affect its civil war and conflict?
- iii. What are the challenges and opportunities of implementing transitional justice mechanisms in the Somali context?
- iv. What are the recommendations for transitional justice policy and practice in Somalia?

### **1.3. Research Methodology**

This report reviews key literature on transitional justice in Somalia, utilizing a multidisciplinary approach, borrowing concepts and principles from other disciplines such as history, anthropology, and narratology to further enrich its arguments. The findings from the desk review were shared with a group of experts in a validation workshops and the data collected was incorporated into the study.

### **1.4. Structure of the Report**

The report is divided into five main sections:

- i. The first section is a general introduction, outlining the background of the state of justice in Somalia, the report's objectives, and its research methodology.
- ii. The second section conceptualizes the origins, characteristics, and key issues in transitional justice as explained by various scholars and stakeholders.

- iii. A contextual report on transitional justice in Somalia follows, focusing on the country's socio-cultural and political landscape, the existing clan-based reconciliation practices, and the success stories from previous efforts to engage local communities and leadership in justice efforts. This section will also highlight the challenges affecting Somalia's transitional justice efforts.
- iv. The final section will discuss the findings and provide recommendations for future transitional justice engagements in Somalia and other clan-based societies.

## 2. Literature on Origins and Characteristics of Transitional Justice in Clan-Based Societies

### 2.1. Definitions of Transitional Justice

Transitional justice is a component of the processes implemented to settle conflicts in societies dealing with armed conflict and authoritarian regimes. It is a key aspect of emerging from or moving beyond conflict. In the United Nations Secretary-General 2004 report, traditional justice was defined as processes and mechanisms that reflect society's attempt to reconcile with past abuses for accountability, justice, and reconciliation. Under such a definition, transitional justice may involve both judicial and non-judicial mechanisms that may or may not engage the international community. There may be individual prosecutions, reparations for the damage caused, finding and unveiling the truth, institutional reforms, and a combination of other factors (Secretary-General, 2004).

Caroli (2022) broadly conceptualizes transitional justice as settling accounts with the past. Although the word transitional suggests regime change specifically, transitional justice is a broader notion associated with periods of political change "characterized by legal responses to confront the wrongdoings of repressive predecessors' regime[s]" (Teitel, 2015). Dersso (2017) writes that transitional justice is a deployed vehicle for moving conflicting societies to peace or authoritarian regimes to democracy and forms a template for post-conflict or authoritarian reforms and peace processes.

Matandela (2020) argues that transitional justice is a significant element of promoting human rights, justice, peace, good governance, and development in Africa. African transitional justice processes have a noteworthy history, despite no direct reference to the dominant legal and liberal democratic norms. Such processes have intervened to ensure that there is no reoccurrence of violence and have also assisted in dealing with the traumas of slavery, colonialism, apartheid, systemic repression, and civil wars using an indigenized language of human rights and community-based accountability mechanisms.

## 2.2. Origin and Characteristics of Transitional Justice

Teitel (2005) identifies three phases of transitional justice. The first was during the Nuremberg trials and the international laws applicable to Nazi Germany and its officials post-World War Two. The Nuremberg trials were anchored on two main ideas: that the perpetrators of criminal activities had to pay for the destruction caused if society was to move from illiberal regimes; and that the international community frowned upon such atrocities (Somali Stability Fund, 2021). This conception of transitional justice also marked the beginning of the current human rights paradigm.

The second phase involved the change in geopolitics following the Cold War. There was a wave of democracy in Latin America and Africa, while Eastern Europe and Central Asia witnessed the Soviet Union's disintegration. These changes were followed by renewed calls to redress past injustices. Unlike the Nuremberg-trial period, transitional justice's focus at this time shifted from retributive justice to restorative justice, incorporating amnesty and truth-telling in addition to punishment. In addition, transitional justice in this period was characterized by processes that recognized victims and their needs, such as the Truth and Reconciliation Commission in South Africa which ran between 1995 and 1998.

The final phase of transitional justice is what Teitel called the "steady-state". Steady State phase is the current phase of transitional justice, which reflects the globalization of human rights norms and institutions, as well as the emergence of new conflicts and crises. This phase involves the interaction of multiple actors and levels of governance, such as international courts, regional organizations, civil society groups and local communities. The challenges of this phase include balancing justice and peace, addressing structural violence and inequality, and fostering social transformation.

These phases reveal some of the characteristics of transitional justice. One such characteristic is the legal measures involved in the process, ranging from adopting new legislation to creating new legal bodies such as the ICC.

Another characteristic of transitional justice is that it is transformative: engagement in transitional justice, whether through reparation, punishment, or redistributive justice, will involve ultimately "changing the motivations, goals, beliefs, attitudes, and emotions of the great majority of society members regarding the conflict, the nature of the relationship between the parties, and the parties themselves (Bar-Tal and Bennick, 2004, p. 12).

A third characteristic is the distinction between retributive and restorative justice. The Nuremberg trials were particularly focused on the retributive, apportioning blame to individuals and unilaterally imposing punishment. Restorative justice (featured in the second and third phases) includes reaffirming a shared value of consensus in a bilateral process. Although the second phase favored restorative justice, elements of retribution persisted, as was seen with the tribunals in Rwanda and the former Yugoslavia. Both retributive and restorative justice are essential in a clan-based context.

### 2.3. Transitional Justice in Clan-Based Societies

Clan-based societies are not a homogeneous category, but rather a diverse and complex phenomenon that varies across time and space. However, some common features include: a strong sense of collective identity and solidarity among clan members; a hierarchical and decentralized structure of authority and decision-making; a reliance on customary laws and norms to regulate social relations; a high degree of autonomy and resistance to external interference; and a tendency to mobilize along clan lines in times of conflict or crisis (Boege et al., 2008). Clan-based societies are found around the world including in Africa, Asia, the Middle East and Oceania, and have often coexisted with other forms of political organization, such as states, empires or federations. However, clan-based societies have also faced various challenges and transformations in the modern era, due to colonialism, nationalism, globalization, state-building, democratization and development.

One of the main questions that arises when studying clan-based societies and transitional justice is how clans contribute to or mitigate violence during conflict. Clans can be sources of insecurity and instability, as they may engage in violent competition for resources, power or revenge against other clans or external actors. Clans may also use violence as a means of enforcing their authority or protecting their interests within their own group or against outsiders. Moreover, clans may be manipulated or co-opted by political elites or armed groups who seek to exploit their loyalty or grievances for their own agendas. On the other hand, clans can also be sources of security and stability, as they may provide protection, support or mediation for their members or other groups in times of crisis. Clans may also use their influence or networks to prevent or resolve conflicts through dialogue or negotiation. Moreover, clans may resist or challenge the violence or oppression perpetrated by external actors or internal factions who threaten their autonomy or dignity (Boege et al., 2008).

The literature on clan-based societies and transitional justice offers examples of both the positive and negative roles of clans in violence. In Somalia, clans have been involved in both inter-clan and intra-clan conflicts since the collapse of the central state in 1991, resulting in widespread human rights violations and humanitarian crises. However, clans have also played a key role in facilitating local peace agreements and reconciliation processes, such as the Arta, Eldoret and Mbagathi conferences from 1999-2004, which led to the establishment of the Transitional Federal Government and Parliament. Similarly, in Afghanistan, clans have been implicated in both the perpetration and prevention of violence during the successive wars and regimes since the 1970s. However, clans have also been instrumental in promoting local justice and reconciliation initiatives, such as the traditional jirgas and shuras, which have addressed issues such as land disputes, war crimes and prisoner exchanges.

## 2.4. Key Issues

Transitional justice is a term that refers to the processes and mechanisms that aim to address the legacies of human rights violations and mass atrocities committed during periods of conflict or authoritarian rule. It seeks to address and redress past wrongs, promote healing and reconciliation, ensure accountability for perpetrators, and prevent the recurrence of such issues in the future. It embodies a commitment to rebuilding shattered lives and communities within a framework of justice, democracy, and human rights. Despite these objectives, its implementation, particularly in diverse contexts like Africa and clan-based societies, encounters various challenges. Below are some of the key issues scholars cite regarding the implementation of Transitional Justice in clan-based societies.

### 2.4.1. *Retributive versus Restorative Justice*

Retributive justice and restorative justice are two different approaches to dealing with rule-breaking and injustice. Retributive justice focuses on punishing the perpetrators and upholding the rule of law, while restorative justice focuses on repairing the harm done to the victims and restoring social harmony. Depending on the context, some actors may prefer one approach over the other, or a combination of both. For example, South Africa's Truth and Reconciliation Commission (TRC) adopted a restorative approach that granted amnesty to perpetrators who confessed crimes, but also faced criticism for not delivering adequate justice to the victims. In contrast, in Rwanda, the International Criminal Tribunal for Rwanda (ICTR) pursued a retributive approach that prosecuted the leaders of the genocide, but also faced criticism for being distant from the local realities and needs. Finding a balance between these approaches is a complex and context specific task that requires careful consideration of the political, legal, social and cultural factors involved. On the other hand, the Rwandan government implemented a restorative approach that involved traditional community-based courts called gacaca, which aimed to foster dialogue and healing among the survivors and the perpetrators. Finding a balance between these approaches is a complex and context-specific task that requires careful consideration of the political, legal, social and cultural factors involved.

### 2.4.2. *Traditional and Customary Mechanisms*

In many African contexts and clan-based societies, traditional and customary mechanisms may include elders' councils, chiefs, courts, religious leaders, ceremonies and practices that are rooted in the local culture and values. However, these mechanisms may also have limitations and drawbacks, such as lack of legitimacy, accountability, transparency, gender-sensitivity and human rights standards.

Therefore, scholars have debated whether and how these mechanisms can be integrated with formal transitional justice processes. For example, in Sierra Leone, Truth and Reconciliation Commission and the Special Court for Sierra Leone, aimed at addressing human rights abuses, promoting reconciliation and healing, ensuring accountability for war crimes, and facilitating the rebuilding of the nation's legal and justice systems collaborated with local chiefs and civil society groups to conduct hearings and outreach activities at the community level. In Uganda, the government proposed to use traditional justice mechanisms such as *mato oput*, a ritual of reconciliation to address the atrocities committed by groups such as the Lord's Resistance Army (LRA), involving a combination of formal legal processes, traditional reconciliation mechanisms like *mato oput*, and initiatives aimed at reparations, peacebuilding, and reconciliation among communities affected by conflict but faced opposition from some victims' groups and activists who demanded formal justice.

### **2.4.3. Gender Dimension of Transitional Justice**

Gender is a crucial factor that shapes the experiences and needs of victims and perpetrators of human rights violations. Women and girls are often disproportionately affected by conflict related violence, such as sexual violence, displacement, abduction and forced marriage. However, they are also often marginalized or excluded from transitional justice processes. Therefore, scholars have advocated for a gender-sensitive approach to transitional justice that recognizes and addresses the specific harms suffered by women and girls as well as their agency and contributions to peacebuilding. For example, in Liberia, the TRC included a gender committee that ensured women's representation and participation in all aspects of its work. In Kenya, the TJRC issued a separate report on women's experiences of human rights violations during various periods of political violence.

## **3. Contextualizing Transitional Justice in Somalia**

### **3.1. History of Violence in Somalia**

Conflict, violence, and human rights violations have persistently marred Somali life over decades, primarily as a result of competition over scarce resources in a mainly arid land. The Somalia Stability Fund (2021) identified four major periods of instability:

1. Violence from 1969 to 1991 under President Siyad Barre's rule;
2. The period of the warlords that followed the collapse of the central government in 1991;

3.     Burgeoning Islamist influence in 2005; and
4.     The era of external influences from 2007, with UNITAF intervention (1992-1995), Ethiopian troops (2006-2008), and the ongoing African Union Mission in Somalia (AMISOM).

Each of these periods has been characterized by violence and rampant human rights abuses, although the perpetrators and victims varied across the different epochs. Recently, Human Rights Watch (2021) reported systemic violations of international humanitarian law in the region, with certain actions reaching the threshold of war crimes. For example, the Islamist armed group al-Shabaab has been implicated in both indiscriminate and targeted attacks of civilians, and is suspected of recruiting children. Inter-clan conflicts and violence within security forces, along with intermittent military operations against al-Shabaab by the Somali government, AMISOM, and other foreign forces have resulted in civilian casualties and displacement. These foreign forces include US and UN troops, which have occasionally aligned themselves with local warlords.

The ongoing conflict has resulted in widespread death, displacement, and property damage. Compounding these issues, the emerging threats of climate change and its economic consequences necessitate that Somalia's transitional justice processes prioritize both the people and the environment. Detailed accounts of these violations and criminal activities can be found in various sources (Muhammed, 2018; Pentikäinen & Hill, 2021; Somalia Stability Fund, 2021).

### **3.2. Somali Traditional Conflict Resolution**

Somali society has used both customary and Islamic conflict resolution methods. These methods are based on the principles of dialogue, reconciliation, and justice, and they have been effective in resolving disputes and maintaining social harmony.. Somali society has used both customary and Islamic conflict resolution methods. Abdile (2012) explains how clan elders use these mechanisms to mediate disputes and enforce agreements, based on shared values and norms derived from culture and religion. The authority and legitimacy of the clan elders depend on their ability to persuade the conflicting parties to accept the outcomes of Xeer and Culumo, which are seen as fair and just.

Two notable methods of traditional conflict resolution are Xeer and Culumo. Xeer is a customary law that is based on clan lineage, culture, traditional values and Islamic Sharia. It guides the conduct of individuals in the community and provides a mechanism for resolving disputes through elders who act as mediators or arbitrators .

Culumo is a council of religious leaders who also intervene in conflicts and offer guidance based on Islamic principles. Both xeer and culumo are widely respected and preferred by many Somalis over the formal judicial system, which is seen as ineffective, corrupt or biased .

Xeer represents an indigenous alternative dispute resolution method employed by clan elders, encompassing principles of restorative justice. While secular in nature, it incorporates Islamic legal principles and norms. At its core, Xeer employs negotiation, mediation, and arbitration as its main conflict resolution strategies, all of which are voluntary and contingent upon clan consensus. In scenarios where the Xeer process fails, the matter is referred to the Culumo, or Islamic religious leaders, who apply Sulh, a form of conciliation in Islamic jurisprudence. Should a deadlock occur, more experienced Islamic scholars are invited to engage with the conflicting groups.

According to Özerdem et al. (2021, p. 424), “in Somalia, the general public continued to view the UN peace processes as being driven by outside interests and interference; these traditional mechanisms provided an alternative, culturally acceptable method of resolving conflicts.” This legitimacy encourages the warring parties to participate in the dispute process.

Traditional justice systems have significantly influenced the peace processes in Somalia. Pentikäinen and Hill (2021) examine the role of servant leadership in facilitating reconciliation processes in Somalia. They argue that servant leadership, which is based on the principles of humility, empathy, stewardship, and community building, is compatible with the traditional Somali values and norms of reconciliation, such as dialogue, forgiveness, restitution, and clan solidarity. They provide examples of how servant leaders have successfully mediated between conflicting parties, fostered trust and cooperation, and promoted social healing and peacebuilding in Somalia. They conclude that servant leadership is a valuable approach for addressing the complex and multifaceted challenges of reconciliation in post-conflict societies.

Pentikäinen and Hill (2021) are two scholars who wrote a chapter on servant leadership in Somalia in a book titled *Routledge Handbook of Conflict Response and Leadership in Africa*. Servant leadership is an approach to leadership development that emphasizes serving the needs and interests of others, rather than exercising power or authority over them. Pentikäinen and Hill (2021) argue that clan elders and traditional reconciliation mechanisms in Somalia exemplify servant leadership, as they seek to rebuild legitimate state structures and foster social cohesion in a context of protracted conflict and instability. They also suggest that servant leadership can offer valuable insights and lessons for other actors involved in conflict response and peacebuilding in Africa. To learn more about their arguments and evidence, you can read their chapter here: Pentikäinen, A., & Hill, O. T. (2021).

Pentikäinen and Hill (2021) discuss the concept of servant leadership in their book “*Servant Leadership: A Guide for Aspiring Leaders*”. They define servant leadership as a leadership style that focuses on serving the needs and interests of others, rather than one’s own.

They argue that servant leadership is not only ethical and effective, but also beneficial for the leader's personal growth and well-being. They provide examples of successful servant leaders from various fields and sectors, and offer practical tips and tools for developing and applying servant leadership skills.

Discussing the role of servant leadership in the context of Somali reconciliation in their chapter "Clan Elders and Traditional Reconciliation in Somalia: Exercising Servant Leadership While Rebuilding Legitimate State Structures" in the book "Routledge Handbook of Conflict Response and Leadership in Africa", they describe how clan elders, who practice a combination of customary and Islamic methods to resolve conflict, have been able to rebuild political legitimacy and state institutions in Somalia with the support of external actors. They highlight the importance of servant leadership as a way of serving the needs and interests of others, rather than one's own, and as a means of personal growth and well-being for the leaders themselves. They also suggest some lessons learned and recommendations for applying servant leadership in other conflict-affected contexts.

Pentikäinen and Hill (2021) give three reasons that traditional leadership, processes and social structures are important in the peace process of fragile states: their inherent legitimacy; the reduced likelihood of foreign and political elite interference; and their potential to dissipate violence rooted in religion and misconstrued cultural ideologies.

Similarly Özerdem et al. (2021, p. 409) emphasize that local dispute resolutions, initiated and guided by clan elders and Finn Church Aid (FCA), brought more enduring results than the UN-led top-down initiatives, which often collapsed shortly after implementation.

However, peace processes in Somalia haven't always favored traditional mechanisms. The civil war and the subsequent efforts by external actors to impose top-down peace processes often resulted in failed initiatives due to their perceived lack of legitimacy and failure to engage clans and local communities meaningfully (Njoku, 2013; Özerdem et al., 2021). The Transitional Federal Government (TFG) formed in 2004, despite support from the US, UN, and African Union, failed to suppress the power of the clans and centralize governance (Menkhaus, 2014).

Recognizing the significance of community-led reconciliation efforts, traditional leaders, youth, and women initiated consultations to mitigate conflict independently from the elites. Their successful local dispute resolutions were often cultivated following traditional Somali methods, and the conflicts resolved in this manner rarely resurfaced (Pentikäinen & Hill, 2021).

Despite these successes, traditional justice systems are not without challenges. Issues of identity and legitimacy persist, with Abdile (2012) finding only partial recognition of Somali clan leadership capable of negotiating agreements. Some traditional leaders lack legitimacy, having appointed themselves or been installed to seize control of the peace process. Additionally, scholars have criticized traditional leadership for hindering progressive procedures, pointing out the rigidity of clan-based electoral systems in adapting to changing demographics and political contexts.

Furthermore, traditional leadership often lacks global peace-building experience, which necessitates support from external stakeholders. Civil society organizations (CSOs), particularly those advocating for minority rights, often express reservations about clan elder involvement. International mediators and secular actors also struggle to engage with traditional actors due to cultural and procedural unfamiliarity. Moreover, the involvement of traditional leadership may be seen as a threat to the legitimacy of political elites, resulting in pushback (Lepisto, 2015).

Lastly, Roberts (2020) warns against the hijacking of transitional justice processes by third parties with vested interests. Citing the South African Truth and Reconciliation Commission, he claims such processes often fail to address the systemic roots of conflicts. These challenges must be confronted and resolved if transitional justice in Somalia is to yield substantial benefits.

## 4. Conclusions

Complexity theory, influential in political science and public policy, emphasizes the intricate and evolving dynamics of social systems, especially in challenging policy terrains. When analyzing traditional Somali structures, this theory suggests a shift: instead of viewing them as static entities, they should be seen within the broader context of evolving societal interactions. Such a perspective paves the way for a context-sensitive justice model.

Transitional justice demands managing stakeholders' expectations. A challenge, as highlighted by A. Dersso (2017), is the "implementation gap" often seen in transitional justice mechanisms, where one-size-fits-all approaches can falter, like the limited impact of criminal trials in Ethiopia.

### 4.1. Identifying the Need for Transitional Justice

A crucial finding from the current discourse is that any efforts towards establishing transitional justice processes must begin with the acknowledgment of the various actors that injustices have been committed and clear parameters set regarding the scope of injustices to be addressed.

In Somalia, the need for transitional justice is evident from the dissatisfaction with the existing social and political structures, including the electoral processes and representation of various groups in different economic and social systems. In addition, the cycle of insecurity resulting from unsettled conflict among various groups has resulted in grudges and insurgents from various sections of the society. Other areas of focus captured by the Somali Stability Fund (2021) report include sexual and gender-based violence and material loss resulting from the history of violence.

## 4.2. Stakeholder Involvement

Part of the efforts towards inclusive transitional justice in a clan-based system is the involvement of all relevant stakeholders. For Somalia, it is essential to identify the key stakeholders to engage in the justice system as a starting point for developing a path of engagement. As Özerdem et al. (2021, p. 414) note, “the UN should start back-channel consultations with clan leaders, listen to them, and invite them to provide a plan to end the conflict.” In the current context, the notable parties include the victims of atrocities and their families, affected communities, perpetrators and innocents used to fuel the violence, civil society organizations, and governmental and external agencies.

## 4.3. Victims

The first beneficiaries of transitional justice in any society are the victims, their families, close relations and community members. Victims of injustice constitute those directly affected by violence, including women, children, and those whose property was destroyed (McEvoy and McConnachie, 2013). That also extends to families and friends of those affected by the violence through the loss of a loved one, the long-time care for an injured relative, or the effect of the destruction of their home on their physical and psychological well-being.

The best way to engage the victims and their families is through narratives and stories of healing and forgiveness ((McEvoy and McConnachie, 2013). Most societies anchored in African and Islamic principles prefer conciliatory measures rather than retaliation, such as restoring a destroyed home or paying medical bills for a child who has had a limb amputated. These voices should be listened to as the basis of creating a tone of unity.

### 4.3.1. Perpetrators of Injustice

Previous approaches to transitional justice have primarily focused on punishing perpetrators and requiring them to pay reparations. While governments and international communities may wish to intervene harshly against the most grotesque violence against innocent civilians, such an approach may worsen conflict rather than provide peace.

Many perpetrators, such as those engaged in terrorism, are usually innocents indoctrinated into a system of hate and violence. As A Dersso (2017) writes, “transitional justice should rather be designed and implemented in a way that transforms victims and perpetrators into citizens.” Such prospects require embedding transitional justice into the political, socioeconomic, and institutional measures addressing the causes of conflict.

### **4.3.2. Civil Society Organizations**

Civil society organizations (CSOs) remain essential in national transitional justice policy debates. CSOs played a large role in designing the South African Truth and Reconciliation Commission through policy discussions and conferences behind the scenes.

In most cases, truth commissions and other measures have relied on civil society's ability to access victims and marginalized communities (Brancovic and Merwe [eds], 2018). The central role of civil society, coupled with limited government capacity in states like Somalia, can help shape an approach that incorporates the traditional justice systems while embracing modern developments, including gender and minority representation.

### **4.3.3. State Agencies and External Stakeholders**

State agencies, political elites, and international actors such as the UN and the African Union are critical in the transition process. The failure of previous top-down transition models should be a lesson to the international community. The role of the international community should be limited to providing financial and technical support and ensuring that agreements are implemented.

According to the Somali Stability Fund (2021), where there is ongoing crisis and states remain weak and in constant competition with non-state entities, state structures alone cannot achieve the objectives of transitional justice. Hybrid political arrangements are more appropriate with a central forum where both internal and external experts, traditional (Xeer) and religious (Culumo) authorities, local and transnational academia, and representation of minorities, women, and other marginalized groups.

## **4.4. Challenges and Potential**

### **4.4.1. Beware the colonial influence on transitional justice**

One of the challenges for transitional justice in Africa is the mainstream transitional justice framework failing to consider the “backdrop of a long history of colonial and postcolonial repression, political instability and economic pauperization of the continent”. Understanding the colonial background is critical due to the structural legacies that have remained in post-colonial societies. The colonial state has to be interrogated in the context of extractive economic systems, failed checks and balances, and the inequality of power relations (Dersso, 2017). Somalia should therefore seek to correct the structural illegitimacy that characterizes it as a modern state. This will depend on political inclusion and equitable distribution of resources within society.

#### ***4.4.2. The power of narratives***

Cultural models play a pivotal role in comprehending the collective experiences of distinct societies (Kane, 2000, p. 312). Nevertheless, Somalia's history of colonialism and civil war have contributed to the erosion of cultural beliefs and practices. This phenomenon has led to the unfortunate loss of valuable aspects of Somali heritage. In this context, the identification of genuine community elders has been a vexing challenge, as acknowledged by previous scholars.

In light of these circumstances, it is imperative to accord paramount importance to the influence of cultural evolution within the realm of transitional justice processes. The dispensation of justice has to resonate with local communities to ensure its effectiveness. An example of this approach is the initiatives undertaken by Finn Church Aid, which undertook a proactive approach, empowering Somalis, including the diaspora, to take charge of designing programs tailored to their unique context. Furthermore, it facilitated research endeavors spearheaded by these community members, as explained by Lepisto (2013). This approach not only underscores the importance of indigenous perspectives but also recognizes the value of involving the affected community in shaping their own restorative processes.

#### ***4.4.3. Identifying traditional principles of reconciliation***

The concept of transitional justice in clan-based societies should extend beyond the confines of formal legal mechanisms. As emphasized earlier, stakeholder engagement in the transitional justice process should prioritize the needs and experiences of victims while being grounded in the principles of reconciliation. The shift away from an exclusive focus on punitive measures towards understanding and addressing the root causes of conflict is essential for building lasting peace.

In this context, the practice of Xalay Dhaly offers valuable insights. The central tenets of Xalay Dhaly – open dialogue, community involvement, and negotiated resolutions – can guide the development of transitional justice approaches that resonate with the cultural and social fabric of clan-based societies. By observing how elders come together to address grievances and collaboratively shape agreements, transitional justice initiatives can draw inspiration from this process.

Traditional leadership must be engaged in defining the legitimacy framework for the transition process. In the words of Özerdem et al. (2021, p. 419), “engaging in local peace-building and involving the traditional actors in the national peace process can take away a terrorist organization's strongest weapon – the perception that a state structure is a threat to a group's autonomy, identity or dignity.”

#### ***4.4.4. Bridging traditions and the role of emerging technologies***

Traditional leaders, including elders and women, are bastions of traditional knowledge. Mboya (1970) refers to this approach as embracing nationalism (the uniqueness of the Somali identity). Scholars should define a regeneration framework that centers on such identities.

Beyond traditional structures, emerging technologies are crucial in shaping the new narrative. With the emergence of social media, peace caravans can utilize such social platforms to preach the message of forgiveness and reconciliation. Civil society organizations have access to technologies to reach youth and young people and platform discussions on what it means to be a Somali.

## **5. Recommendations**

The scars of Somalia's tumultuous history, characterized by prolonged conflict and state disintegration, demand a strategic framework for transitional justice, reconciliation, and state reconstruction. Tailoring a plan specifically to address Somalia's distinct challenges, this approach seeks inspiration from effective strategies employed in similar tribal conflict contexts.

This report argues that by meticulously following this targeted roadmap, Somalia can embark on a comprehensive journey toward sustainable peace, unity, and justice. The customized approach, informed by effective African transitional justice strategies, has the potential to guide the nation toward a more cohesive and prosperous future.

To ensure a stable, peaceful, and prosperous future for Somalia, it is imperative that the dark chapters of its past are addressed comprehensively and empathetically. By adopting a multifaceted transitional justice approach that prioritizes both retribution and reconciliation, Somalia can move beyond the traumatic past that is hampering its state rebuilding towards a more promising future.

**1. Understanding Complex Grievances:** Recognizing the intricate web of grievances within Somali communities is paramount. Tailoring justice mechanisms to distinct segments of the population is essential. This acknowledges the multifaceted nature of grievances and ensures that each segment's unique needs are addressed.

**2. Inclusivity and Representation:** Draw lessons from strategies to include marginalized groups in reconciliation processes. Engage historically excluded factions—women, youth, minorities, displaced persons, refugees, and the diaspora. Utilize public consultations, civil society engagement, media outreach, and educational initiatives to foster unity and trust.

**7. External Factors:** Understand the impact of external factors on internal conflicts. Address regional geopolitics and international interventions that exacerbate Somalia's challenges. This awareness is crucial for devising effective strategies that mitigate external influences.

**9. Overcoming Divisive Systems:** Replace divisive systems that perpetuate clan divisions and hinder genuine reconciliation efforts. Eliminating the 4.5 power-sharing formula is pivotal for promoting inclusivity, equality, and stability.

**8. Strengthening the Judiciary:** Enhance the capacity, credibility, and accessibility of the Somali judiciary. Invest in training, infrastructure, and legal education to empower the formal justice system. This step ensures that justice is administered fairly and efficiently.

**4. Harmonizing Legal Norms:** Integrate traditional justice mechanisms with formal legal systems. Recognize the coexistence of Shari'a law, customary law (Xeer), and international human rights law. Synthesize these sources, respecting cultural diversity while upholding the universal principles of human dignity and equality.

**5. Ensuring Accountability:** Establish mechanisms to hold perpetrators of human rights violations accountable. Prevent individuals responsible for grave abuses from holding public office. This reinforces accountability, deters future violations, and symbolizes a commitment to justice.

**3. Comprehensive Transitional Justice:** Adopt a comprehensive strategy that incorporates various transitional justice mechanisms. This strategy includes truth-seeking initiatives, prosecutions, reparations, institutional reforms, and reconciliation efforts. Acknowledge the inadequacy of a one-size-fits-all approach, as Somalia's history is layered with complexities that demand a multifaceted response.

**6. Grassroots Reconciliation:** Prioritize reconciliation efforts at local levels, acknowledging that Somali conflicts have seeped into the smallest societal units. Address grievances not only between clans and factions but also within them. A genuine reconciliation process necessitates resolution at the most localized levels.

**10. Integrating Peacebuilding and Statebuilding:** Integrate transitional justice with concurrent peacebuilding and statebuilding processes. Transform the security sector, conduct constitutional reviews, and manage electoral arrangements in parallel for holistic progress.

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