CIVILIAN HARM IN SOMALIA:

Creating an Appropriate Response

Copyright © 2011
Campaign for Innocent Victims in Conflict (CIVIC)
All rights reserved

Written by Nikolaus Grubeck with the help of Tillie Peacock and Wayne Fulton
Cover and Report Design by Marla B. Keenan
Cover photo by Kate Holt

Cover Caption
Women with their children in Mogadishu, Somalia on July 25, 2011

Campaign for Innocent Victims in Conflict (CIVIC)
1210 18th Street NW
4th Floor
Washington, DC 20036 USA
Tel: +1 202 558 6958
Fax: +1 623 321 7076
Email: info@civicworldwide.org

Website address: www.civicworldwide.org

Copies of this report are available for download at: www.civicworldwide.org/somalia_report_2011

This report was written by Nikolaus Grubeck from Mogadishu, Somalia, Dadaab Camps, Kenya and London, United Kingdom (June 2011 to October 2011) and was funded and supported by the United Nations High Commissioner for Refugees (UNHCR).

Disclaimer

The information and opinions expressed in this report do not necessarily reflect the views and policies of UNHCR.

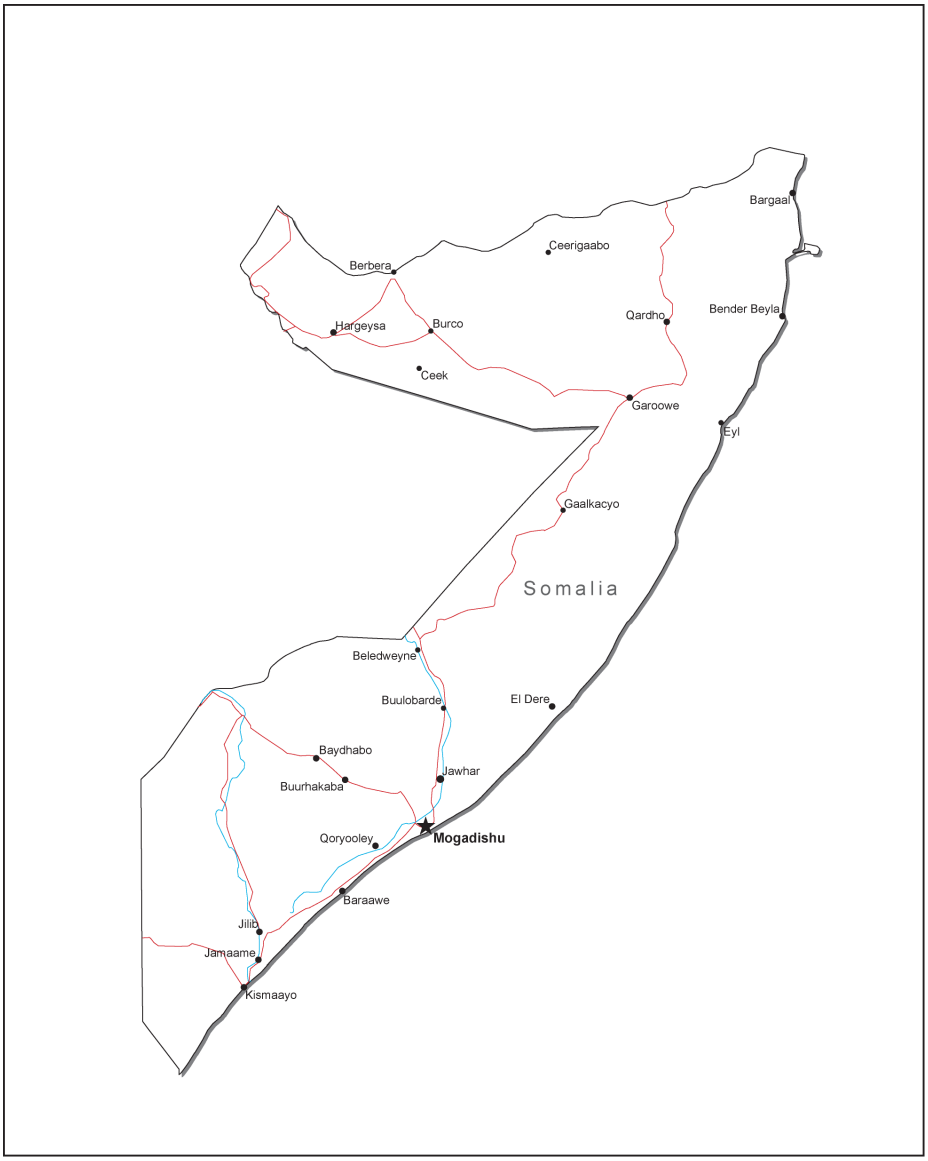
United Nations High Commissioner for Refugees (UNHCR)
Case Postale 2500
CH-1211 Genève 2 Dépôt, Suisse
Tel: +41 22 73981111

Website address: www.unhcr.org

UNHCR
The UN
Refugee Agency

CIVIC

Map of Somalia



Glossary of Acronyms

AMISOM	African Union Mission in Somalia
ARPCT	Alliance for the Restoration of Peace and Counter-Terrrism
ARS	Alliance for the Re-Liberation of Somalia
AU	African Union
BBC	British Broadcasting Corporation
CCTARC	Civilian Casualty Tracking, Analysis and Response Cell
CIA	Central Intelligence Agency
ENDF	Ethiopian National Defense Force (ENDF)
EU	European Union
FNL	Forces for National Liberation
GPI	Global Peace Index
IASC	Inter-Agency Standing Committee
ICU	Islamic Courts Union
IDF	Indirect Fire
IDP	Internally Displaced Person
IED	Improvised Explosive Device
IGAD	Intergovernmental Authority on Development
IHL	International Humanitarian Law
IT	Information Technology
NGO	Non-Governmental Organization
TNG	Transitional National Government
TFG	Transitional Federal Government
SRC	Supreme Revolutionary Council
UN	United Nations
UNHCR	United Nations High Commissioner on Refugees
UNITAF	United Task Force
UNOSOM	United Nations Operation in Somalia
UNOSOM II	United Nations Operation in Somalia II

Table of Contents

Executive Summary 1
- Civilian harm in southern Somalia
- Responding to civilian losses
- Traditional mechanisms of healing
- Recommendations

Introduction 7

Historical background of the conflict in Somalia 9
- The road to state failure
- International intervention
- The rise of the Islamic Courts Union
- Ethiopian intervention and Islamist insurgency
- AMISOM intervention
- The current situation

Civilian Harm in the Current Conflict 17
- A history of civilian casualties
- Civilian casualties in the current conflict
- Causes of civilian casualties
  - Indirect fire & use of human shields
  - Small arms fire
  - Direct targeting and assassinations
  - Improvised Explosive Devices (IEDs) and suicide attacks
  - Road traffic accidents and force protection incidents

Traditional Somali dispute resolution & compensation mechanisms 25
- Traditional law (Xeer)
  - Kinship and the clan structures
  - The diyya system
  - The administration of Xeer
  - Challenges
- Islamic Shari'a (Xaq)
  - Islamic courts in Somalia
  - The administration of shari'a in Somalia & its public perception
  - Wider concerns
- Secular laws

Somali expectations regarding responses to civilian harm 35
Civilian harm and casualties
Addressing civilian harm
In principle
What constitutes appropriately addressing civilian harm?
How to organize a mechanism addressing civilian harm?
What should be the role of the traditional system?

Addressing civilian harm: Rationale & practice of the conflicting parties 41
Why address civilian harm?
Moral reasons
Strategic reasons
Cultural reasons
Ugandan cultural traditions
Burundian cultural traditions
Current Practice
AMISOM
Other parties

The way forward: Effectively responding to civilian harm 49
Recommendations

Executive Summary

Civilian casualties are common in Somalia, the world's most dangerous country.[1] Ravaged by two decades of conflict, the current fighting between the Transitional Federal Government (TFG) supported by the African Union Mission in Somalia (AMISOM) and various armed groups (notably al-Shabaab) continues to take a heavy toll on the civilian population.

Between February and July 2011, CIVIC conducted over one hundred interviews with Somali civilians, humanitarian agencies, the UN and international donors and AMISOM personnel. This report also draws heavily on previous original research. The goal was to inform AMISOM's and the other warring parties' response to civilian harm.

This report details the response Somalis want to see when civilians are harmed in conflict. It sets out how traditional dispute resolution mechanisms can inform such responses and makes technical recommendations. We urge AMISOM and its partners to use these findings as a basis for a formal system to address civilian harm. If al-Shabaab does adopt a policy of civilian protection, they too should implement a formal mechanism to track, investigate and respond to civilian casualties they cause.

> A 32-year-old man in the camp said: "In Somali culture, if somebody is killed, the killer should come and talk to me, help me bury the dead and compensate me."

This report does not focus on accountability for violations of human rights and international humanitarian law. These must remain a separate priority.

No apology or amount of compensation can give back what Somali war victims and their families have lost. But our findings clearly show that an attempt to respond to their suffering in this conflict can mitigate some of the consequences and return a sense of dignity to the victims and their communities.

Civilian harm in southern Somalia

Accurate civilian casualty numbers in Somalia are hard to obtain due to insecurity and limited political will to prioritize tracking. However, on the basis of the available figures, the overall annual civilian death toll is likely to exceed that in Afghanistan.

1 Out of 153 countries surveyed by the Global Peace Index. Global Peace Index 2011, INSTITUTE FOR ECONOMICS AND PEACE. available at http://www.visionofhumanity.org/wp-content/uploads/2011/05/2011-GPI-Results-Report-Final.pdf (last visited Jul. 27, 2011).

Civilians are affected by the conflict in several ways. Al-Shabaab has been accused of using civilians as "human shields", of targeting those they suspect of links to AMISOM or the TFG, and, increasingly, of using improvised explosive devises (IEDs) and suicide bombings indiscriminately. Crossfire presents a further hazard for Somalia's civilian population. Frontlines move unpredictably and fighting between warring factions can break out without warning.

Reports suggest all sides in Somalia have violated the laws of war by conducting indiscriminate attacks, particularly through the use of indirect fire weapons. AMISOM has recently shown clear improvement in its tactics. These include limiting the collateral impact of artillery, and committing to better civilian protection awareness and policies.

Traditional mechanisms

The report outlines traditional Somali dispute resolution mechanisms and highlights the role they could play in dealing with civilian casualty incidents. Somali respondents widely favored incorporating such traditional responses to harm in any policy operated by warring parties in Somalia.

Xeer: Traditional Somali law, which operates in the context of the clan-system, is one of the defining features of Somali society. It provides for collective compensation (diyya, or blood money) and a reconciliation based structure for the resolution of disputes. This is backed by the threat of the use of direct retaliatory force by the victim's clan in the absence of a settlement. Despite its popularity among Somalis of all walks of life, Xeer, the diyya system and its administration by clan elders was developed for nomadic communities. Clan elders' traditional authority has been gradually eroded. This makes it difficult to apply to a modern urban environment and the context of intensive armed conflict. Nevertheless, given the widespread respect for Xeer, many of its principles could usefully be applied.

Shari'a: Islamic law (shari'a or Xaq in Somali) has been used widely as a means of resolving disputes in Somalia, especially in the absence of any efficient state-run legal system. While there is broad and deeply felt respect for shari'a amongst the Somali population, there are significant disagreements as to its proper interpretation and practical application. In particular, al-Shabaab's enforcement of extreme measures and punishments under the mantle of shari'a is increasingly unpopular with many Somalis. To win popular support, however, any mechanism needs to be compliant with the basic principles of shari'a.

Secular law: Besides the TFG's efforts to develop a formal legal system, other secular dispute resolution mechanisms have sprung up in several areas of Southern Somalia.

These often take the form of combined court and police hybrid institutions that apply laws imposed by a local administration—in practice often a combination of traditional law principles, shari'a, old secular laws, and possibly newly invented codes. Such systems remain disparate and have only localized impact.

Somali expectations

CIVIC found that Somalis place importance on both recognition of their losses and tangible assistance. Offers of compensation are appreciated as an expression of regret and acknowledgment of the harm caused. They may also allow a family to pay for medical assistance, rebuild a damaged home, or compensate those who suffer loss of earnings due to injury.

Key findings from CIVIC's interviews with Somalis, including several directly affected by civilian casualty incidents, included:

- The vast majority would welcome a system to address harm caused by the armed conflict;
- None recalled any instance in which civilian harm had been fully addressed and most victims had no hope of ever receiving compensation for the harm that they had suffered;
- Most favored payments to the individuals or families directly affected by an incident. Some, however, thought that compensation should be awarded to communities rather than individuals, for example in the shape of a clinic or school;
- Those affected by the violence felt that even modest compensation payments accompanied by an apology would be better than nothing. However there was significant disagreement over the amounts that should be paid for various forms of harm;
- Respondents primarily focused on the responsibilities of AMISOM and the international forces rather than on the TFG or the armed groups. Likely this is due to higher expectations of the capacity and resources of foreign troops;
- Somalis generally felt that the traditional mechanisms hold important lessons for responding appropriately to civilian harm.

Responding to civilian harm

Minimizing harm to civilians must be the goal for warring parties in southern Somalia. But when harm does occur, those responsible should acknowledge and attempt to mitigate the impact.

Creating a system to address civilian harm will not be easy. Interviewees repeatedly highlighted concerns including fraudulent allegations and the difficulty of proving cases; the problem of handling a potential flood of claims; and concerns that compensation might create economic dispari-

ties between victims and the rest of the population. Nonetheless, the vast majority of interviewees agreed that these problems are not insurmountable and even imperfect solutions are preferable to not tackling them at all.

Recommendations

There are concrete, immediate measures all warring parties and civilian stakeholders in Somalia can take to lessen the impact of armed conflict on civilians. First and foremost, all parties to the conflict in Somalia must avoid causing civilian harm. When harm occurs, a system should be in place to track, investigate and properly respond to incidents.

Al-Shabaab's behavior in the conflict, including directly targeting civilians, suggests little interest in addressing the harm it has inflicted. There is now broad agreement among AMISOM and African Union leadership that the mission must aim to minimize civilian casualties and properly respond to the harm it creates. To effectively create the necessary mechanisms, however, will require support in the form of financial assistance and expert human resources. In addition to creating model mechanisms and procedures within international forces in Somalia, these must also be built up within the TFG, which will require intensive support and mentoring.

To All Warring Parties

- Immediately cease attacks targeting civilians and humanitarian agencies.
- Comply with international humanitarian law, including the principles of proportionality and distinction.
- Respond promptly to incidents and allegations of civilian harm. Investigate all relevant incidents, make findings public, and, where appropriate, both acknowledge responsibility and implement strategic and tactical changes to prevent future incidents of the same type.
- Provide assistance and compensation to civilians harmed as a result of legitimate combat actions, while acknowledging that such assistance in no way justifies or excuses attacks that target or disproportionately affect civilians.

To AMISOM

- Ensure all troops understand the strategic, moral, and legal importance of minimizing and properly addressing civilian harm, including through strong leadership from the Force Commander, contingent commanders, and African Union representatives.
- Fully implement the 2011 Indirect Fire (IDF) policy, particularly with regard to exercising extreme caution when deploying indirect fire in response to attacks.
- Develop a Civilian Casualty Tracking, Analysis and Response Cell (CCTARC) to: Investigate all incidents of civilian harm; analyze the data for trends; acknowledge responsibility for causing harm where appropriate; in cooperation with AMISOM public affairs, coordinate the public response; participate in a lessons learned feedback chain; and respond appropriately to victims.

- Within the CCTARC, develop a mechanism for making amends for civilian harm that references and has due regard for existing traditional Somali reconciliation and dispute resolution mechanisms.
- Ensure the CCTARC is accountable and transparent to the African Union, AMISOM leadership, donors and, most importantly, the Somali people, through robust record-keeping capabilities, clear and publicized guidelines, and official oversight.
- Equip the CCTARC with sufficient and appropriate resources to effectively carry out its mandate, including: Appropriate staff, drawn from both military and civilian personnel, to include at least one expert with a background in bringing pragmatic solutions to civilian casualty issues, a legal expert, and experts on investigation and data analysis.Ensure sufficient funding to be able to assist victims materially in applicable cases.
- Mentor the TFG on the issue of civilian protection and harm, including through the development of appropriate rules of engagement that prioritize accountability and minimizing civilian casualties.

To the African Union

- Create a funding stream to allow AMISOM to set up a fully effective CCTARC and ensure funds for making amends for harm caused to Somali civilians by AMISOM combat operations.
- Ensure all troops deployed to Somalia are appropriately trained on IHL as well as inculcated with a mindset of civilian protection, restrictive combat behavior, and appropriate response to civilian harm allegations or incidents.
- Prioritize the issues of civilian protection and properly addressing harm in interactions with the TFG, including in support of the TFG's national security strategy and development of rules of engagement.

To the UN and international donors

- Make civilian protection and mitigation of civilian harm a priority in all engagements with warring parties in Somalia.
- Encourage all warring parties to abide by international laws and, where appropriate, to provide amends to recognize and assist civilians harmed in combat operations.
- Provide material support to the African Union in supporting AMISOM to create a CCTARC as well as a harm-response fund and ensure these are effective and transparent in their operations.
- Provide material support for training both incoming and in-theater AMISOM troops as well as TFG troops on IHL, appropriate responses to civilian harm and best practices in the Somalia context.
- In all activities under the SC's renewal of AMISOM's mandate requesting UN technical and expert advice, the United Nations agencies should prioritize issues of civilian protection and addressing any civilian losses through tangible amends in their assistance to AMISOM.

Introduction

This report sets out guidance for warring parties on how to recognize and address harm suffered by civilians in the armed conflict in Somalia. It outlines the current situation of the conflict-affected population in Somalia and details the types of incidents causing civilian victims. The report then outlines traditional Somali practices and civilian expectations regarding conflict resolution and compensation, with a view towards creating a comprehensive system for warring parties to address civilian harm they cause. Finally, the report reviews the parties' current practice in this regard and makes recommendations for improvement.

Section One provides a background on Somalia's recent history and the events leading up to the present armed conflict. It details the origins and role of the various parties involved in the fighting and gives an overview of the current situation.

Section Two considers the impact of the conflict on the civilian population and analyzes which tactics have affected civilians most severely.

In Section Three, traditional local compensation and dispute resolution schemes are explored, with a view to (1) their role in shaping the expectations of the Somali civilian population and (2) their potential application in creating a culturally appropriate system of addressing civilian harm.

Section Four looks at the expectations of the Somali population, both inside Somalia and those in refugee camps and the diaspora.

The reasons for addressing civilian harm are considered in Section Five, alongside a review of the current practice of the parties involved in the conflict today.

The final section of the report makes recommendations for improving current practice.

This report is based primarily on over one hundred interviews conducted in the course of several visits to Somalia and Kenya between 2006 and 2011. It also draws substantially on the author's previous academic research on traditional dispute resolution mechanisms in Somalia. Further interviews were held with members of the Somali diaspora in the UK, the USA and the UAE. For reasons of confidentiality and security interviewees are generally not identified by name. A full record of their identities is on file with the author.

Historical background of the conflict in Somalia

Somalia has been described as "the model of a collapsed state".[1] This definition, however, applies primarily to the southern part of the country. Two areas in the north, Somaliland and Puntland, have been self-declared independent respectively autonomous states since the 1990s. Despite not being internationally recognized as such, each has an elected government and enjoys relative peace and stability (although Puntland has in recent years become known as the hub of Somali piracy).[2] By contrast, the southern part of the country has been in a state of almost continuous anarchy and armed conflict for over two decades. This report focuses on Southern Somalia, which will be referred to as "Somalia" throughout.

Somalia's complete inability to maintain even a minimal central administration since the fall of military dictator Siad Barre's government in 1991 marks the country as "a failure among failed states."[3] But state failure is not a sudden event. Rather, it is a "cumulative, incremental process,"[4] the roots of which can be found in the country and region's history.

The road to state failure

Somalia does not have a long history of centralized authority. Ioan Lewis observes: "The Somali have no indigenous centralized government. And this lack of formal government and of instituted authority is strongly reflected in their extreme independence and individualism."[5] The Somali intellectual Ahmed Mohamed Sulayman also argues that "psychologically Somalis hate central power" and will unite to prevent one from arising.[6] Before colonialism created a state to "hover above it,"Somali society was highly decentralized. Mostly nomadic pastoralists, Somalis were interlinked by language, an extensive kinship and clan system and by common cultural values and traditions.

When the state of Somalia emerged at the end of colonialism, the lack of any Western political tradition soon turned the new state-construct into nothing more than a convenient way for individuals to amass spoils, rather than a structure "responsive and responsible to the challenges facing the Somali society."[7] Less than ten years after independence the political system was riddled with corruption and clanism, in which politicians relied on the votes of their specific sub-clan so as to get in on the bonanza. Parliament was reduced to what Lewis terms "a sordid marketplace"[8] with barely any relevance to the daily lives of the population.

Accordingly, when the president was assassinated in 1969 and six days later the military (under the leadership of General Siad Barre) staged a bloodless coup, its "temporary" assumption of power was mostly welcomed. It soon became clear that Barre and his Supreme Revolutionary Council (SRC) had no intention of relinquishing power again and his regime began to indulge in corruption and

personality cult, while harshly cracking down on any real or perceived dissenters. The SRC's lack of focus on the country's struggling economy as well as a defeat in a Somali-initiated border-war with Ethiopia (funded and equipped by the cold-war powers) significantly increased internal tensions.

Barre, who officially campaigned against "tribalism", became increasingly reliant on the support of his own Darood clan, while other clans started banding into armed opposition groups. The SRC was unsparing in striking back against such resistance movements. Numerous massacres of civilian members of "hostile" clans occurred throughout the 1980s,[9] each one further polarizing clan-entities[10] and straining whichever state structures could still be said to exist.

In 1990 *The Washington Post* wrote: "The 20-year rule of Somali leader Mohamed Siad Barre appears to be crumbling … The octogenarian ruler is unable to control the nation's armed forces, which are accused of committing recent mass murder of civilians in Central Somalia and numerous acts of banditry, looting and harassment."[11] Only a few months later *The Economist* already referred to the General as the "mayor of Mogadishu,"[12] and in January 1991 Siad Barre was finally overthrown and forced to flee the capital.

The old regime's demise exacerbated the already prevailing anarchy, as numerous armed factions started jostling for power. In some parts of Somalia, such as in the formerly British area in the north (now Somaliland), one faction managed to take control and stabilize the region. Southern Somalia, however, was soon completely engulfed by looting and general lawlessness. In a vacuum of legitimate institutions, armed gangs became the sole wielders of authority.

Besides suffering the frequent abuses committed by warlords and their militias, the situation of the civilian population was further aggravated by a disastrous famine that had been triggered by the collapse of the state. Television channels around the world broadcast images of starving Somali children and of militia soldiers in machine gun-mounted pick-up trucks (known as "technicals") looting the limited international relief that made it to the country. Quickly, international pressure to do something about Somalia's situation mounted.

International intervention

Though there was some recognition of the wider consequences of state-breakdown,[13] the international intervention in Somalia was triggered primarily by humanitarian concerns. After the end of the Cold War there was much talk of a new world order, the limits of sovereignty and justified humanitarian intervention.[14] Encouraged by the effective international defense of Kuwait in the 1991 Gulf War, the tragic televised images of the humanitarian catastrophe in Somalia seemed to make it the perfect test case at the dawn of a new era. It presented an experiment for a new form of multilateral peace operation—a post-cold war, common international response to the suffering, threats, and challenges resulting from state collapse.[15]

The ensuing UN mission, UNOSOM, is a widely cited example of an international intervention overreaching and going tragically wrong. Initially, UN peacekeepers were only meant to assist in the delivery of humanitarian emergency relief. Lightly armed, and backed only by a UN Charter Chapter VI mandate[16] that precluded them from using aggressive force, the 500 Pakistani troops sent to Mogadishu never managed to leave the airport.

As the intervention evolved, the United Task Force (UNITAF), led by the United States and backed by a robust Chapter VII mandate,[17] took over the mission for a time before handing it over to a much less well-equipped UN follow-up mission (UNOSOM II). To test the will of the UN, the militia of one of the most important Somali warlords, Mohammed Farah Aideed, ambushed and killed a group of lightly armed UN peacekeepers. The attack was condemned in the strongest terms by the Security Council, which adopted a resolution authorizing "all necessary measures against those responsible."[18] A US-led manhunt on Aideed ensued.

On October 3, 1993, US Army Rangers and Delta Special Forces of the so-called Task Force Ranger initiated a raid near Bakara market and attempted to seize several of Aideed's top advisers. Somali militia forces fought back, shooting down two Black Hawk helicopters with rocket-propelled grenade launchers and kidnapping one of their pilots. In the ensuing battle 18 US soldiers were killed and 73 more were wounded while well over 500 Somalis lost their lives.[19] The graphic television coverage of this incident turned US public opinion against the operation, and the next day President Clinton appeared on television to call off the man-hunt for Aideed, and announced that all US forces would be home within six months."[20]

The US withdrew from Somalia in 1994 and the weakened UN force hunkered down in its compound until it also left the following year. When UNOSOM eventually moved into the field of nation-building, it was too little and too late. James Dobbins' assessment of the efforts, in a report for the RAND Corporation, concludes that they were "not successful; [overall] little was accomplished other than some humanitarian aid delivered in Mogadishu and other cities."[21]

The rise of the Islamic Courts Union

With the failure of international intervention, Somalia was once again left in the hands of warlords and their armed gangs struggling for power. Having repelled the outside threat to their existence, these gangs turned on each other again. The first years following the international withdrawals are widely remembered as some of the worst in the civil wars and horror stories of widespread lawlessness, atrocities, and massacres abound.[22]

As the vacuum of state authority continued, alternative societal structures arose throughout the country, including Islamic law courts. Many of the Islamic courts were established by clan elders

and drew their authority from the continued blessing of these traditional figures of authority. One of Southern Somalia's most influential shari'a scholars and judges explained the rise of Islamic law in Somalia in the following terms: "Faced with the challenges of the new urban environment [after the UNOSOM withdrawal] the traditional system failed to solve the political problems as well as the security problems that the armed gangs associated with the clans presented. In desperation the elders turned to the only available other system – religion. They established shari'a courts to control the gangs which had started to present a danger even to their own clans."[23]

Initially, most Islamic courts operating in Somalia were "less a product of Islamist activism than of Somalia's two most common denominators: clan and the traditional Islamic faith."[24] The president of a law-related NGO in Mogadishu confirms this assessment: "The shari'a courts depend mostly on the traditional elders for their legitimacy and power. They were built by the elders to control the militias."[25]

With the concept of Islamic courts spreading, efforts to consolidate the courts gained ground. Unification of the courts (and especially of their militias) was a formidable way of gaining political power and influence. This realization became obvious when the Islamic courts were encouraged to participate in the international peace-conference that led to the creation of the Transitional National Government (the predecessor of the Transitional Federal Government). "This was the point at which the courts were transformed into a political force," one source explained.[26] After operating successfully for over three years, this first union of Islamic courts (the "Shari'a Implementation Council") eventually lost its influence with the demise of the relatively pro-Islamist Transitional National Government in 2003.[27]

The point had been made, however, that Islamic courts could be more than just a means of stabilizing neighborhoods and solving small-scale intra-clan disputes. This was not lost on two of the Council's leading members, Sheikh Ali Dheere and the even more Islamist-oriented Sheikh Hassan Dahir Aweys, both of whom remained highly influential in the push to turn the Islamic courts into a unified and independent political as well as judicial force. Soon a new umbrella organization was established (the Supreme Council of Islamic Courts in Somalia) and Sheikh Sharif Sheikh Ahmed elected as its chairman.[28] Again, the focus of the new organization was at least as much on creating a strong militia as it was on Islamic jurisprudence.[29] More and more, the union of the participating courts was simply another warlord-like and highly politicized faction, referred to simply as the Islamic Courts Union (ICU).

After the establishment of the Transitional Federal Government (TFG) in 2004, the transitional parliament held its first meeting inside Somalia in Baidoa in early 2006. At the time, however, the TFG controlled barely any territory,[30] with the south split into countless "micro-zones of control."

By May 2006, Southern Somalia was being rocked by the heaviest inter-factional fighting in more than a decade. The ICU clashed with a loosely TFG-allied confederation of US-backed warlords, euphemistically named the "Alliance for the Restoration of Peace and Counter-Terrorism" (ARPCT).[31]

Within months, the ICU controlled seven out of ten regions in southern Somalia, including Mogadishu.[32] During its brief control of the capital, the ICU was credited with bringing "unprecedented stability,"[33] and branded "a huge success in dealing with criminality".[34] The lifting of roadblocks, clearing of rubbish, reopening of the air- and seaports, and emphasis on the judicial system led to increased security and freedom, and widespread support for the regime, reportedly as high as 95%.[35] Lewis notes, "for the first time since the collapse of Somalia in 1991, ordinary citizens found that it was safe to go about their business in the streets of Mogadishu, without fear of attack or molestation."[36]

Ethiopian intervention and Islamist insurgency

The disastrous experience of the US intervention in Somalia in 1993 continued to color American policy towards the country for years to come. Only after the 9/11 attacks on America and in the context of the ensuing war on international terrorism, did the US again display real interest in Somalia.

Under scrutiny for alleged links to international terrorism[37] and human rights abuses (particularly the implementation of harsh Islamic hudud punishments), the ICU sought to establish international credibility. In late 2006 the Courts signed a communiqué with the East African Intergovernmental Authority on Development (IGAD), pledging to "respect the territorial integrity of Somalia's neighbours, deny sanctuary to insurgent groups, and condemn all acts of terrorism."[38]

Nevertheless, driven by concerns that the ICU encouraged jihadi activity in the south of the country, the CIA collaborated with the ARPCT to "headhunt" terror suspects, and deliver them into US custody.[39] Popular support, however, swung behind the ICU. The courts were considered to have "a proven track record of restoring security and was associated with the provision of other social services and charitable works,"[40] whereas most Somalis saw the ARPCT as self-serving, corrupt, and a "pawn" of the United States.[41]

Ethiopia and the US remained concerned and were particularly disquieted when the ICU appointed Sheikh Aweys (a man placed on a sanctions list by the UN in 2001 for links to al-Qa'ida)[42] as the head of its consultative council. Nationalist statements and criticism of Ethiopia's involvement in Somali affairs by the leadership of the ICU further alarmed the Ethiopian government, prompting additional political and military support for the TFG.[43] After failed peace talks in Sudan, amid

on-going violence (including Somalia's first suicide bombing in September 2006) and a growing refugee crisis, Ethiopia announced itself "technically at war" with the Islamists.[44]

In late 2006 Ethiopian troops entered Somalia to support the TFG.[45] They used their superior military capacity to regain control in the south, reportedly killing hundreds of ICU militia.[46] As Ethiopian forces advanced, the ICU left Mogadishu on December 26,[47] and on December 28, TFG and Ethiopian troops entered the capital "unopposed".[48] Despite being urged almost immediately to pull out by the African Union, IGAD, and the Arab League, Ethiopian troops remained in Somalia until 2009.[49]

The chaos and violence that followed the arrival of the TFG in Mogadishu led to many looking back on the relative calm of the six-month ICU era as a "Golden Age".[50] Restricted to some key strategic points in the city, the TFG relied heavily on the continued Ethiopian presence. Ethiopian troops, however, were seen as foreign occupiers and increasingly unpopular with the local population. They were accused of committing widespread violations of international humanitarian law and human rights abuses and were soon faced with a rapidly growing insurgency.

Several ex-ICU members regrouped in the former militant "youth" wing of the Courts Union, al-Shabaab,[51] while others established the Alliance for the Re-Liberation of Somalia (ARS) headed by Sheikh Sharif Sheikh Ahmed.[52] In early 2007, the insurgency launched numerous attacks on Mogadishu, targeting government officials, military bases and police stations.[53] They also achieved significant territorial gains and by February 2007 the armed insurgency controlled a number of districts in Mogadishu and were taking over large swathes of Southern Somalia.

Al-Shabaab was added to the United States' list of Foreign Terrorist Organisations and eventually announced a formal allegiance to Al Qaeda.[54] The group has taken responsibility for several terrorist attacks, including some outside the country (most notably a July 2010 double suicide bombing in Kampala, which killed 74 people).[55] Several airstrikes by US forces have taken place in Somalia targeting terrorist suspects, at times causing violent retaliations from insurgent groups.[56]

AMISOM intervention

In the context of a growing insurgency, in January 2007 the African Union (AU) created the African Union Mission in Somalia (AMISOM),[57] which was initially given a six-month mandate. The mission was mandated to protect and support the government and to facilitate the provision of humanitarian assistance.[58] The mandate has been repeatedly extended and currently the mission is set to continue until 31 October 2012.[59]

An initial deployment of approximately 1,600 AMISOM troops from Uganda landed in Mogadishu

some two months after the creation of the mission, amid fierce fighting between the Ethiopian-backed TFG and the insurgents. This first detachment was far below the mandated 8,000 troops. The lack of capacity of the AU to organise, deploy, manage and pay a force of this scale soon became clear and was openly acknowledged by the AU itself.[60] Despite funding from the US, EU, UN and other states, the organisation struggled to secure promises for even part of the authorized troops.[61] Oxfam described the force as "never…adequately staffed or resourced."[62] By April 2009, AMISOM forces still numbered only around 4,300,[63] and with the eventual withdrawal of the Ethiopian forces, AMISOM's weakness began to impact much more significantly on the strength of the TFG.[64]

Although technically mandated to cover all of Southern Somalia, AMISOM (and with it the TFG) has effectively been restricted to Mogadishu. The failure to establish and maintain control of the country has regularly been blamed on the limits of the original AMISOM mandate, which only permitted the mission to "shoot back when attacked".[65] AMISOM has thus been criticized as having "neither the mandate nor the capacity to protect civilians in Somalia."[66]

The role and appropriate conduct of a peacekeeping force when there is "no peace to keep" has also been questioned.[67] In 2010, AMISOM's originally mandated strength of 8,000 troops was raised to 12,000.[68] The TFG has requested more AMISOM troops from Muslim nations,[69] however, no such pledges have been forthcoming and AMISOM currently consists of roughly 9,000 personnel from Burundi and Uganda.[70]

The current situation

As the AU struggled to build up a capable peacekeeping force, in January 2009 the Somali Parliament extended the TFG's mandate—initially limited to 5 years—for another two years. In February 2011 it then re-extended its mandate until 2014. This decision was taken without consultation with the international community, who "almost unanimously opposed this action due to the absence of a TFG roadmap for securing the end of the transition and completing the transitional tasks outlined in the Djibouti peace agreement, and the lack of projected governance reforms."[71] The United Nations described the move as "self-serving", emphasizing the ineffectiveness of the government thus far and its ongoing political in-fighting.[72] Subsequently, the Kampala Accord was signed in June 2011, postponing elections until only August 2012.[73] The UN Security Council welcomed the move.[74]

Lacking the military power of the Ethiopian forces, the TFG and AMISOM are limited to Mogadishu, where until very recently they were fighting for territory with al-Shabaab. The first half of 2011, however, saw several key strategic gains.[75] By May 2011, seven of the 16 districts of Mogadishu were said to be under TFG control; three under al-Shabaab control, and three contested.[76] By September, AMISOM commanders claimed to control 95 percent of Mogadishu.[77]

An estimated 1.5 million Somalis fled from al-Shabaab-controlled areas to other parts of the country, due to generalized violence, human rights violations and, most recently, famine and lack of livelihood opportunities. It has been reported that the insurgency was struggling to raise money by extorting shopkeepers, as many traders had relocated from Bakara market to areas controlled by the TFG.[78] Several other moderate Islamic groups, such as the Sufi group Ahlu Sunna Waljama'a, agreed to cooperate with the TFG.[79]

In early August 2011, al-Shabaab withdrew from Mogadishu in what a spokesperson for the group described as new "tactics",[80] but was credited elsewhere to a stronger AMISOM force, bolstered by funding from the Pentagon, and training from a US private security company.[81] In March 2011, the UN Security Council concluded that the UN presence should be "increased and better coordinated", and significant financial and equipment contributions were pledged.[82]

The insurgency, however, is far from defeated and remains a formidable opponent, as fighting continues throughout the country. Al-Shabaab troops are bolstered by Islamist fighters from other countries, including the UK,[83] US, and Pakistan.[84] Relying on political[85] and propaganda strategies[86] as well as increasingly on irregular warfare tactics such as roadside and suicide bombings, al-Shabaab remains in control of large parts of Southern Somalia. Ethiopian and Kenyan troops increasingly have also been supporting TFG forces in the South of the country.[87]

The almost daily violence from all sides continues to make Somalia today "a much more dangerous place for Somalis, for the region and for the rest of the world than it has ever been."[88] Ongoing drought has led to a worsening humanitarian crisis, and famine has spread through the south of the country.[89] Over 87,000 people fled the country for Kenya in the first seven months of 2011.[90] The main reception center, the Dadaab camp, which was originally meant for 90,000 people, now accommodates over 400,000.[91] Kenyan authorities have begun attempts to create a "buffer zone" between the Kenyan border and the Somali territory controlled by al-Shabaab, where refugees fleeing drought and famine may in future be directed. Opposition to this development has cited the right of refugees to seek asylum in a third country.[92]

Civilian Harm in the Current Conflict

In 2011 Somalia was ranked as the world's most dangerous nation out of 153 countries surveyed by the Global Peace Index.[93] The prevailing violence and continuing armed conflict have had a severe impact on the civilian population. The GPI report notes that the recent "outbreaks of fierce fighting frequently engulfed parts of the capital, Mogadishu, and towns across southern Somalia, resulting in the deaths of hundreds of civilians and the displacement of thousands more."[94]

A history of civilian casualties

Civilian casualties in Somalia have been a common occurrence since Somalia descended into civil war in the early 1990s. During inter-clan fighting "many civilian citizens were killed," according to a 2000 report by the US Department of State.[95] Significant numbers of civilian casualties and violations of human rights and humanitarian law continued to occur during the UNOSOM[96] intervention, and the fighting between the ICU and local warlords, before the ICU rose to power in 2006.[97]

The problem persisted with the renewed international intervention in support of the TFG against the ICU. Amnesty International reported that "some 6,000 civilians were killed in attacks in 2007" and that "all parties to the conflict … committed human rights violations or abuses, which include unlawful killings, extrajudicial executions, torture and other ill-treatment, including rape and beatings, arbitrary detention and enforced disappearances."[98] The ICU was also condemned by human rights groups for imposing harsh Islamic punishments on the population.[99]

Particular criticism, however, was focused on the actions of the Ethiopian forces in Somalia. In reports by Amnesty International and the US Department of State[100] during 2008, the Ethiopian National Defense Force (ENDF) was singled out as having inflicted large-scale atrocities on the civilian population, including the killing of street children, indiscriminate sniper fire and killings by the slitting of throats.[101] Amnesty International concluded, after interviewing more than 75 witnesses, that Ethiopian troops routinely used torture, rape, extra-judicial killings and indiscriminate violence against Somali civilians."[102]

Civilian casualties in the current conflict

Following the Ethiopian withdrawal, the overall number of civilian casualties appears to have declined.[103] Nevertheless, civilians continued to be severely affected in the violence between the TGF/AMISOM and insurgents. Human rights abuses remain widespread and Human Rights Watch claimed in 2010 that, "all sides have violated the laws of war by conducting indiscriminate attacks and other abuses."[104] Similarly, in October 2010, the UN stated that civilians remained "at high risk of being killed and injured in indiscriminate attacks by all parties to the internal armed conflict."[105] The situation in 2011 remains challenging, though in particular on the TFG/AMISOM side im-

provements have been reported.[106] The UN Secretary General Ban Ki-moon reported that in 2011, "AMISOM has taken steps towards restricting operations that will indiscriminately harm civilians by refining its policy on the use of indirect fire."[107] Similarly, Human Rights Watch reported in August 2011 that instances of indiscriminate shelling "appear to have diminished, indicating possible efforts on the part of AMISOM to improve its targeting and reduce indiscriminate fire, notably through the identification of no-fire zones."[108]

Despite such improvements, there is broad agreement that overall civilian casualty rates remain high. The effort to track such incidents and the number of resulting deaths and injuries, however, remains far too limited and accurate statistics are hard to obtain.

The main reasons for this are the limited on-the-ground presence of most organizations working in Somalia, and the difficulty and danger of accessing conflict-affected areas, and a lack of inter-agency agreement on who should be leading any tracking effort. The frequent territorial shifts and similar weaponry used by the different parties to the conflict often also make it especially hard to determine which side is responsible for specific incidents. Difficulties are compounded by the limited forensic and IT capacity as well as the absence of any effective system tracking operations and weapon usage by AMISOM forces. The UNHCR is the lead agency on a tracking effort begun by the International Agency Standing Committee (IASC) Protection Cluster, and continues to gather incidents of civilian casualties. At present, there is no comprehensive monitoring and reporting mechanism in place that could provide systematic updates on the scope of the problem.[109]

One respected national source of information is the Somali NGO Elman Peace and Human Rights Centre, which works with volunteer field monitors, Mogadishu hospitals, and the city's voluntary ambulance service to track civilian casualties.[110] Elman's data is mostly limited to incidents in Mogadishu and suggests that 1,739 civilians were killed there in 2009, with 2,200 deaths in 2010 and around 1,400 in the first half of 2011.[111] Human Rights Watch estimated that the fighting since late 2010 has resulted in around 1,000 civilian fatalities and 4,000 civilian casualties.[112] The World Health Organization reported in July that 6,543 individuals (a mix of civilians and combatants, likely) had been admitted to hospitals in Mogadishu with "weapon-related injuries" since the beginning of the year.[113] As such, the overall civilian death toll is likely to exceed, for instance, that in Afghanistan, which is much more systematically recorded and widely reported.[114]

Causes of civilian casualties

Indirect fire & use of human shields

Contrary to the tactics seen in other insurgency-affected nations, such as in Iraq or Afghanistan, much of the fighting in Mogadishu has been conducted along traditional frontlines.[115] With TFG and AMISOM controlling one part of the city and al-Shabaab another, the warring parties were separated by trenches and sandbag walls.

In these circumstances, all parties relied to a significant extent on artillery fire. Indirect fire and in particular so-called "artillery duels" are widely cited as the main cause of civilian deaths in the recent fighting.[116] All sides—AMISOM, TFG, and al-Shabaab—have been accused of using indirect fire weaponry indiscriminately.[117] Field commanders rely on this tactic to "flush out" opposition troops, tracking any retaliatory mortar fire and then directing counter-retaliatory fire at the relevant zone. In densely populated areas of Mogadishu and other towns in southern Somalia, this tactic inherently puts civilians at high risk for deaths, injuries and property damage.

In one frequently mentioned tactic among CIVIC's interviewees, al-Shabaab would exploit this situation and fire mortars towards AMISOM troops from locations with a significant civilian presence. They then reportedly refused civilians permission to leave the areas they were firing from, "because they want to be with them and use them as a human shield."[118] When AMISOM or TFG troops fired back in response to such attacks (and in the past they have acknowledged doing so even when civilians were at risk[119]), civilian casualties were frequently inevitable.[120] This further assists the insurgents as, according to one individual interviewed by Human Rights Watch, "al-Shabaab uses this as a propaganda war. They know it's good for them when people blame the TFG."[121]

INDIRECT FIRE IN MOGADISHU

One refugee now living in Dadaab camp recounts how indirect fire hit his home in Mogadishu: 'Al-Shabaab had been attempting to defend the area against a push by Burundian AMISOM troops. Several al-Shabaab fighters entered my house around 2am. They were dressed in black and had their faces covered. When I refused to join them, they took all my belongings and went outside. They were shooting artillery shells from outside my house but they did not allow me to leave. They said, "You will be killed very soon. Do not leave the house." They killed two of my neighbours when they tried to escape. Then a Burundian shell came and hit us. It destroyed my house and damaged three others. I survived with my wife and my child but my father, two brothers and a cousin were killed. We escaped the next morning at dawn.[122]

In a different incarnation of this tactic, al-Shabaab forces have been known to use converted Toyota minibuses as mobile artillery launchers. Vehicles apparently arrive in crowded locations, open the door and fire off a few shells into AMISOM areas. The mobile mortar team then departs the scene after a few minutes, leaving the people in the area exposed to the likely retaliatory fire.[123]

In addition to retaliating against Shabaab attacks using indirect fire, including into civilian areas, AMISOM's tactical procedures prior to 2011 did not adequately control indirect fire, allowing for significant civilian casualties. African Union and AMISOM leadership in late 2010/early 2011 committed to minimizing civilian harm in both planning and operations, including through denoting "no-fire zones" if civilians were present, a more formalized chain of command for the

firing of mortars and artillery, and the creation of an indirect fire policy. The formal policy was endorsed by AMISOM Force Commander General Nathan Mugisha and Special Representative of the Chairperson of the AU Commission for Somalia, Ambassador Boubacar Gaoussou Diarra in spring 2011. It appears that civilian casualties caused by AMISOM have decreased thanks to tactical mentoring and these policy improvements, though implementation of the full indirect fire policy remains stalled due to lack of donor investment and formal AU endorsement.

The TFG and allied militias have been documented to be significant offenders, using indiscriminate indirect fire to retaliate against al-Shabaab. Of particular concern in reining in this practice is the lack of rules of engagement for TFG forces (currently under development). Recent efforts to provide soldiers with training on proper use of weapons, command and control and international humanitarian law are worthwhile, but are not extensive enough to create the necessary policies and practices that truly mitigate civilian harm. The Ministry of Defense contains only several dozen personnel, with competing and urgent priorities. It will take a concerted international (UN and donors) and regional effort (AU and AMISOM troop contributing countries) to equip the TFG military with the human, technical and financial resources it needs to protect—and not harm—its own people.

Small arms fire

Crossfire presents a further hazard for Somalia's civilian population. In Mogadishu the frontlines were liable to move unpredictably, endangering civilians who generally continued a relatively normal life within just a couple of blocks of the front. Similarly, in rural areas, skirmishes between al-Shabaab and militias allied to the government can break out with no warning, impacting severely on any bystanders. Farmers tending their fields are particularly exposed and are routinely hit in the crossfire of such incidents.

CAUGHT IN THE CROSSFIRE

A 43-year-old woman, now living in Dadaab refugee camp in Kenya, was caught in the crossfire six months ago when fighting between al-Shabaab and the local administration allied to the government broke out nearby. She was working on her farm, when bullets fired from so-called "technicals"[124] hit her in the right shoulder and leg. In the same incident, her brother was shot in the head, and later died from his wounds. She still does not know where the bullets came from.[125] A 50-year-old man living in the same refugee camp also recalled how he left Baidoa in 2010, after losing his leg as a result of a bullet wound caused by a sudden outbreak of fighting. Again, he does not know who was responsible for the shooting.[126]

Small arms have also been turned upon citizens in retaliation following insurgent attacks. In 2009, AMISOM troops opened fire on four passenger buses after the explosion of a roadside bomb.[127] TFG forces have been responsible for several incidents of opening fire on civilians, including four between February 15 and 21, 2011.

Five soldiers were tried and sentenced to between two and five years, and the Military Court issued a "stern warning against the killing of civilians."[128]

Direct targeting and assassinations

There are numerous documented instances of civilians suspected of having links to AMISOM or the TFG being targeted by al-Shabaab and reports suggest that such attacks are on the increase.[129] In some instances individuals or groups of people were assassinated, whereas in others non-fatal punishments were administered, such as the cutting out of tongues[130] or the amputation of limbs.[131] There are at least 20 known cases of double-amputees (one hand and one foot) in Dadaab camp, all due to amputations by al-Shabaab.[132] These attacks, designed to intimidate the wider population, are often carried out in public arenas. There are also reports of executions carried out by militias allied to the TFG,[133] although they appear to be less frequent and less organized than those done by al-Shabaab.

Individuals can be singled out as a target for the most minor of reasons, ranging from allegations of collusion to a refusal to join ranks with a group as a soldier. Movement across the front lines in Mogadishu was particularly dangerous, as both sides have reportedly killed civilians coming from enemy territory. One former resident of Mogadishu complained that, "Al-Shabaab do not stop us from moving in the area they control but they shoot people coming from the government side. The government shoots people coming from the al-Shabaab side because they think they are spies."[135] Those attempting to flee the country have also reported threats, arrests and attacks by al-Shabaab.[136]

PUBLIC AMPUTATIONS

CIVIC interviewed several refugees who had been subjected to public amputations by al-Shabaab. One man recounted his ordeal thus:

"I was at my farm in [Southern Somalia] when an armed team from al-Shabaab came and asked me whether I supported them or the government. I told them that we were just farmers and did not support either side. A few days later a large group of some 25 armed men returned. All the farmers tried to run away but they shot anyone trying to flee. I was hit in the right shoulder.

I and two other men were caught. They accused me of supporting the government. I denied this but was taken to a prison, where I was held for 45 days. I was beaten every night. On day 46 they then took us to a public area, where many people were gathered. The insurgents had stopped all activity including trading at the market, and everybody was required to attend.

Masked men publicly amputated the right arm and left leg of the other two men with an electric knife. They had brought along a generator to power the knife. Then they came to me. My right hand and left leg were chained together with handcuffs. 10 men held me down and one cut. They only amputated my leg [at the ankle] because of the injury to my shoulder. The amputation took twenty minutes, and was performed without any painkillers. At the end they informed the crowd, "This is what we will do to anyone who does not support us, fights against us, or steals."[134]

Direct targeting of civilians can also take the form of kidnappings, a tactic commonly employed by smaller militia groups. The majority of such incidents, however, are opportunistic and have financial rather than strategic goals. According to the US State Department, "clan militia groups and criminal gangs made ransom demands on abductees or demanded property or hostage exchanges as preconditions to the release of abductees."[137]

Improvised Explosive Devices (IEDs) and suicide attacks

The first known suicide bombing in Somalia took place in 2006, when an attacker targeted the then-president.[138] In the following years, attacks have continued and suicide bombings have on several occasions killed officials, peacekeepers and civilians.[139] In 2011 the frequency of suicide bombings has increased notably, with several high-profile attacks on targets throughout Mogadishu.

One period of only a few weeks, for instance, saw three major attacks: On 30 May 2011 a bomber detonated himself at an AMISOM base killing several soldiers;[140] on 9 June two suicide-attackers targeted Mogadishu's seaport; and on 10 June al-Shabaab claimed responsibility for a suicide bomb which killed the Somali interior minister.[141] Most recently, on 4 October 2011, a major truck bomb was detonated in front of a TFG compound in Mogadishu. The blast killed at least 50 people[142] and wounded numerous more, with many of the victims students who had been queuing for their exam results.[143] A BBC correspondent described it as, "the worst incident he had ever come across," and a nurse at Medina hospital similarly said that "it is the most awful tragedy I have ever seen."[144]

SUICIDE BOMBINGS

On June 9th 2011, two suicide bombers targeted Mogadishu seaport. According to the AMISOM press release: "Several insurgents carrying pistols, two of whom were wearing suicide vests, infiltrated the area and directed an attack against the business community trading through the port."[145] The attack killed two civilian port workers and injured three AMISOM soldiers and several further civilians.[146] One eyewitness said, "it was terrifying. I could see body-parts lying around and hear people groaning."[147]

With the possible exception of the 4 October 2011 truck bomb and a few other incidents, attacks to date have not appeared to specifically seek maximum civilian casualties (such as, for instance, some attacks seen in the insurgency in Iraq). Nevertheless the civilian death toll has been high. Bystanders not connected to the conflict are routinely killed or severely injured. The use of roadside bombs is also becoming more common, with Somalia increasingly rated as an area of extreme risk for IED attacks.[148] As with suicide bombings, the impact on civilian bystanders (as well as on the mobility of the civilian population more generally) has been severe, significantly affecting the population's ability to move around freely and live without fear.

Road traffic accidents and force protection incidents

During CIVIC missions in Somalia, AMISOM convoys appeared to drive notably more carefully than military convoys in comparable conflict environments. For instance, while international military convoys in dangerous areas of Iraq or Afghanistan may treat civilians running into the road between vehicles as a threat and respond accordingly, AMISOM convoys were liable to stop and allow civilians to cross between vehicles.[149] Nevertheless, both road traffic accidents and so-called force-protection incidents (use of force resulting from a real or perceived threat to soldiers, such as a failure to slow down for a checkpoint) continue to impact the civilian population and cause casualties.

FORCE PROTECTION INCIDENTS

A relative of a victim recounted one incident, which occurred in early 2010: "AMISOM were attempting to take new ground and their tanks [referring to armored vehicles in general] were moving around the city. They could be heard in nearby houses, where people were eating their breakfast. My relative was on his way to a funeral by minibus, when they encountered AMISOM. The soldiers fired shots at the minibus and hit my relative. He died on the way to hospital. I don't know why they opened fire – there were no terrorists on that bus. This is only one of many such incidents."[150]

Traditional Somali dispute resolution & compensation mechanisms

Based on traditional Somali culture and spurred on by the country's extended absence of any effective government, Southern Somalia has seen the development of several dispute resolution mechanisms. These provide for mechanisms to address the killing or injury of individuals in the course of violent disputes, including larger-scale fighting. Such mechanisms play a major role in shaping Somali expectations regarding how incidents of civilian casualties resulting from the armed conflict should be dealt with. They are also of significant potential relevance in designing and setting up response mechanisms to effectively address such incidents.

The following main mechanisms must be considered, both in their traditional form, and in how they have adapted to modern life:

Traditional law (Xeer)

Traditional Somali law, known as Xeer, operates in the context of the clan-system, one of the most defining features of Somali society. It provides a broadly effective compensation (known as diyya or blood money) and reconciliation-based structure for the resolution of disputes. Xeer covers intra- and inter-group killings, injuries and misconduct as well as laws relating to other issues including marriage, family, land, and natural resources.[151] Using Xeer as a way of solving problems arose out of the nomadic lifestyle, which most Somalis follow even today.[152] Accordingly, the system reflects many of the priorities inherent in such a lifestyle and is frequently calibrated towards its specific concerns.

Most other bodies of dispute resolution tend to defer to a settlement reached by the clan elders. For example, an ICU-affiliated shari'a court in Mogadishu would commonly act on the following basis: "If the clan elders succeed they inform the court which registers their decision as its judgment. If the elders fail because of the parties' refusal to comply with their decision then they may tell the court and it will enforce it."[153] Some of the more radical al-Shabaab affiliated courts operating since the demise of the ICU have shown less deference to traditional methods, especially when there is a suggestion that the relevant settlement might not accord to al-Shabaab's strict interpretation of Islamic law.[154] Generally, however, deference to elders remains ingrained, and a broadly agreed solution to a dispute is still likely to be respected.

Kinship and the clan structures

Contrary to many other African states, the ethnic composition of Somalia is extremely homogenous. Somalis, at an estimated 85% of the population[155] constitute a large majority. They, along

with most of the minority groups[156], all speak the same language (Somali) and share a common religion (Sunni Islam) and culture. Rather than along ethnic or tribal lines, Somali society is organized along binding ties of patrilineal kinship. Clans are the most important form of organization in Somali society.

It is the clan which acts as an individual's ultimate protector and so guarantees his rights and freedoms. "The clan is your personal protector," Ahmed Mohamed Sulayman, a Somali intellectual explains, "If somebody hurts you or does you wrong they will seek your rights".[157] A prominent Sheikh[158] and legal expert emphasizes: "the clan is the strongest entity in Somalia. You cannot survive for a day without your clan's backing."[159] Affiliation to and within a clan, however, is extremely complex and divisions are by no means clear-cut.

The diyya system

In the complex system of kinship and clan allegiances, probably the most important form of everyday social attachment is what Lewis terms the "diyya-paying group"[160] (confusingly, often referred to simply as "clan"). These groups form the cornerstone of Somalia's customary law known as Xeer. This traditional system is based on collective compensation and reconciliation rather than on individual punishment, but is backed by the threat of the use of direct retaliatory force by the victim's clan in the absence of a settlement.

Diyya is administered by the elders of the different clans who serve as negotiators and mediators. They seek to prevent revenge-motivated violence by setting an appropriate level of compensation (known as diyya or blood money) that must be paid to the victim. While on the surface the system is focused on the payment of blood money, the process goes beyond just providing compensation. There is significant emphasis on healing and reconciliation. By establishing what happened in an incident, the elders create closure and address lingering doubts and disputes. Similarly, the traditional rituals surrounding payments (e.g. the joint slaughter of livestock) emphasize reconciliation between the parties.[161]

Harm done to any one member of a "diyya-paying group" constitutes harm done to the whole group. It is thus the responsibility of the each and every member to either seek revenge or ensure the payment of an appropriate amount of diyya in compensation. Diyya, accordingly, is paid to the group rather than the individual. Equally, if one group member does harm to somebody from a different group, then the entire group and not just the perpetrator is responsible for either paying compensation or becoming a target of potential revenge. In the words of Hassan Hagi Omar, a chairman of Hawiye clan elders, "blood money is paid by the whole clan and not by the individual."[162]

Michael van Notten compares the diyya payment system to a compulsory insurance scheme under

which "every Somali is insured against liabilities that he might incur under the customary law."[163] Arguably, however, it is more than just this. In a society completely lacking any monopoly on the use of force, the concept of legal liability (customary or not) is an inherently vague one. But collective liability backed up with the real threat of collective punishment enforced by a victim's clan, obviously much improves the attraction and efficiency of a compensation-based dispute settlement system. Especially in periods of less intensive fighting, parties to most disputes (particularly those arising out of violent crimes and theft but also conflict-related deaths) choose to avoid a potential spiral of revenge acts by relying on customary law and blood payments.[164]

The collective diyya system also serves as a convenient way of controlling the behavior of problematic individuals. Whether they desire it or not, their actions will directly affect their clan, potentially forcing it to pay blood money or face the threat of retribution. Diyya-paying groups will thus soon "lose patience with the costs of criminality by a member of their group"[165] and respond accordingly. The lowest level of crime-prevention and policing thus takes place within the individual diyya-paying groups.

Notably, diyya does not generally assign fault (beyond determining that a payment is required). Neither is it limited to intentional harm, covering also instances of negligence or accidents. In cases such as unintentional killings, however, this may impact to some extent the level of compensation awarded.[166]

The administration of Xeer[167]

Somali customary law is administered by the clan elders[168] of the diyya-paying groups involved in the relevant dispute. Elders are the patriarchal heads of the extended families that together constitute a diyya-paying group. Van Notten describes the elaborate process that leads to such an appointment: "Candidates for this position are generally known long in advance of a vacancy and are closely observed by the clan. When the time comes to appoint a new head, the various clan elders meet during several weeks or months and discuss every detail of the lives of the candidates. The discussion lasts until a consensus forms."[169]

Traditionally, the elders had full authority and jurisdiction over the members of their clan. Their level of influence, however, has been increasingly eroded by the rise of Islamist forces and by the numerous armed youths (mooryaan) that make up Somalia's militia factions and don't always feel bound by traditional structure. Most Somalis, however, do honor the customary authorities. Arguably, while traditional structures have clearly weakened significantly, its efficacy as a mechanism for dispute resolution and a basis of expectations should not be underestimated.[170]

In most cases clan elders will, at the very least, "do the initial crisis management"[171] – they form the

primary instance for problem solving and the liaison point for any interaction with other groups. One elder described their function in the following words: "We are the chiefs of [our] area. If something happens then we come and solve the problem."[172] A clan member who is negatively affected by an incident involving another person or group will, together with his closest relatives, first of all inquire privately into the circumstances of the event and, if necessary, seek to identify the perpetrator. Once this has been done they will contact his clan elders, provide them with the details of the case and demand either redress or revenge. Depending on the issue the elders will then sometimes engage in additional inquiries and investigations. Only once they are satisfied with their level of information will they proceed with the case.

If an incident took place between different clans they will contact the elders of the alleged perpetrator's diyya-paying group and arrange a meeting with them so as to resolve the dispute peacefully. Under Somali tradition the elders of the other clan are obliged to respond to such a request.[173] A meeting will be convened as soon as possible and depending on the importance of the issue under discussion, anywhere in between 3 and 15 elders on every side participate.

The elders of the complaining clan will make their demand for compensation and present those of the other clan with the evidence documenting the incident that triggered the demand. If it is deemed necessary then all parties or any party to the original dispute can be called upon to present their side of the story and witnesses may appear to corroborate accounts. The questioning process can be quite rigorous and according to one elder the convened arbiters "ask whatever questions [they] want and conduct the investigation in front of everybody. [The elders] look for proof and make sure that nobody can lie [to them]."[174]

If a decision on the facts has been reached and somebody was found responsible the elders will then seek to find an appropriate resolution. This generally means either a reversal of the offending action or, if this is impossible, the setting of an appropriate amount of compensation. As soon as compensation is paid, the reconciliation of the two sides is complete, revenge is unnecessary and traditional Somali law requires no other punishment.[175] One clan elder explains the underlying philosophy in the following words: "Everybody can make mistakes but these mistakes must then be rectified."[176]

Under the rules of Xeer there exists a basic measure of diyya for most incidents. Ideally, this measure should roughly equate to the undoing of the offensive action. Given the nomadic and pastoralist traditions that dominate Somali culture most of the measures operate on what Lewis terms "a camel standard".[177]

In case of a killing, for instance, the standard rule (derived from the Koran) requires a perpetrator to pay his victim's family 100 camels if a man was the victim and 50 camels if it was a woman. This

standard is widely know and very frequently referred to by Somalis when discussing potential compensation for war victims.[178] Other standardized tariffs for damages include 60-70 camels for the unintentional killing of a man (30-35 for a woman), 50 camels for the loss of an eye, 10 camels for the loss of a thumb, 10-20 camels for the cutting down of somebody else's gum-tree, a new car for the theft and non-return of a car and a new replacement animal for the killing of another's animal in a car crash.[179]

However, such baseline figures are only a starting point for setting the final payable amount of compensation. Xeer is an extremely dynamic system of rules, which can be adapted according to clan, circumstances and policy considerations.

Challenges

In spite of its generally widespread popularity with the population of Somalia, Xeer, the diyya system and its administration by clan elders do face several problems. Most of the issues specific to Xeer arise due to the fact that a traditional body of customary law, developed for nomadic communities, is applied to the often entirely different issues faced in the context of modern urban environments and intensive armed conflict.

First, elders will frequently find themselves confronted with disputes involving circumstances that are vastly more complex than their traditional areas of expertise. "Methods adjusted to dealing with disputes about water rights and women will often be out of their depth when dealing with [modern] issues such as traffic accidents, on which no basic customary law exists"[180] argues one Somali expert. The difficulties encountered in disputes relating to military operations are similarly likely to challenge the understanding of the elders, potentially reducing their role to a merely symbolic one.[181]

Second, the money at stake in some disputes or indeed the sheer number of cases to be handled may exceed the range within which elders are capable of reaching a settlement. Traditionally, clan elders are used to dealing with grievance that can relatively easily be settled within the means of a diyya-paying group and would expect to handle roughly the same amount of incidents that require pay-outs as those in which payments are received. A relationship that was mostly one-sided (e.g. elders negotiating compensation payments with AMISOM), would likely lack that balance and be notably less realistic and effective.

Third, in the context of a clan-based rural and pastoralist population the territorial range of influence of clan elders was much clearer than it is in densely populated cities or IDP camps, where a plethora of different clans live in close proximity, and are frequently displaced as violence shifts around the city. This situation vastly complicates both the identification of truly representative

elders and the effective enforcement of any decision taken by them. In a nomadic community the other clan-members would automatically back up their elders' decisions with force if this proved necessary. According to van Notten "no cases are known in which the village refused to execute a verdict … or where the defendant did not ultimately agree to comply."[182] In Somalia's cities and camps, however, there are many different and frequently competing authorities, which undermine such traditional societal structures.

Fourth is the problem of sexual discrimination. Though not widely perceived as a concern by most Somalis (male and female), several women have pointed out that "everything in the old customary law works for the man's side" and that it "dominates women."[183] They argue that nomadic traditions are used by Somali men to subjugate the women in their society, along with incorrectly interpreted influences from Islamic shari'a law. "I like our traditions and shari'a but these people don't really understand shari'a and they focus too much on the traditions of the nomads so that they can discriminate [against] us,"[184] a female politician complains. Female Somali diaspora interviewees similarly felt that the traditional rule that a man's life was worth 100 camels, and a woman's only 50 was discriminatory, and that any modern scheme to address civilian harm should not reflect this distinction.[185]

The fifth, and arguably most serious problem, is the undermining of clan elders' traditional authority by the dynamics of the ongoing armed conflict and the many heavily armed young men that make their living as militia soldiers and gunmen allied to the different parties. In many areas their prominent presence and heavy weaponry have eroded the authority of clan elders and constrained customary dispute settlement methods.[186] Frequently, "local clan elders would find themselves attempting to negotiate with young militiamen and bandits from distant clans, rather than with 'peer' elders."[187] Emphasizing this issue, one cynical militia leader argues that "the elders are out of the picture because young militia men with guns do not care about clans and elders."[188] Traditional elders and the Xeer system are further undermined by the rhetoric of some (but notably not all) members of al-Shabaab, who on occasion have seen it as a potential threat to strict Islamic law and their own authority.[189]

Outside of Somalia's few larger cities (most of all Mogadishu) and the biggest camps, traditional social structures are still very influential, though again impacted to some degree by the influence of al-Shabaab. Generally, however, respect for traditional structures and authorities remains significant throughout the country and the diaspora. In part this may be explained by the almost universal exceptionally strong sense of Somali identity, which prevails amongst militia soldiers just as much as amongst other Somalis. Most young gunmen do feel strongly about their clans and one militiaman's sentiment that "you must always stand with your clan – without your clan you are nothing,"[190] remains widely echoed by his colleagues today.

The problems outlined here constitute substantial limitations on the overall effectiveness of Xeer as a general dispute resolution system. However, given the circumstances it has been remarkably effective – so effective indeed that one important Sheikh, reflecting on some 20 years without government, opines half in jest: "Unfortunately Somalia has a very effective traditional way of solving problems. We seem to get by just well enough without a state so people are reluctant to take the risks [involved in establishing a lasting new government]."[191]

Regardless of its drawbacks, the operation of the customary dispute resolution process is overwhelmingly perceived by Somalis as beneficial. At the very least it is seen as better than nothing, and many people consider it a widely beneficial and trusted system without which it would be "so much more difficult to solve problems."[192] Even the Sheikh agrees that "if the traditional system were not in place then things in Somalia would be worse, worse, worse."[193]

Islamic Shari'a (Xaq)

Islamic courts in Somalia

Somalia's population is 99.9% Muslim[194] and most people observe their religion strictly.[195] Relying on Islamic law (shari'a or in Somali also Xaq) as a means of resolving disputes in such a society seems like a natural development – especially in the absence of another state-run system. Shari'a, with its detailed commands and prescribed punishments, is a very different kind of dispute resolution system than the traditional Somali Xeer with its focus on compromise and reconciliation.

Until the reign of the ICU, the strict interpretation and widespread application of Islamic law did not have a prominent position in Somalia. Certain types of dispute, such as family law matters and inheritance issues, had always been settled according to Islamic principles.[196] The eventual creation and rise of pure shari'a courts (usually based within—and with jurisdiction limited to—a specific clan) which adjudicated on all issues including penal ones, owed much more to prevailing circumstances than to any inevitability.

Within their domains, the clan-established Islamic courts proved relatively successful. They ran generally well-disciplined militias and an International Crisis Group report quotes a critic grudgingly acknowledging this fact: "people like them, because they don't chew qaad,[197] they don't rape, and they are more disciplined."[198] As discussed above, areas in which Islamic courts operated were often significantly safer and faced fewer mooryaan and street-crime problems than those without. Deemed broadly beneficial, the concept of establishing basic Islamic courts to secure a neighborhood or area was soon adopted by more and more clans around Southern Somalia.

Militarized religious and political collaboration across clan divides saw the rise and fall of the ICU, and the emergence of hardline Islamist groups including al-Shabaab and Hizbul-Islam, which

eventually merged into one group.[199] The militarization of the Islamic courts has, however, deprived them of much of their previous widespread appeal and effectiveness as a mechanism of dispute resolution. Al-Shabaab's enforcement of the "extreme measures it justifies as Shari'a",[200] and consequently the concept of Islamic courts as a positive mechanism of dispute resolution, has become increasingly unpopular with the population.

This section considers only those Islamic courts that operate primarily as a means of dispute resolution rather than as political or military actors.

The administration of shari'a in Somalia & its public perception

In the operation of Islamic courts there is a fundamental difference between mostly local clan-established courts based on Islamic values and the more independent and strictly Islamist shari'a tribunals.

In the former kind of court "cross-fertilization of Xeer and shari'a is rampant".[201] Decisions are rarely based on carefully discovered religious principles found in normative Islamic legal custom or precedent (sunna). "We mainly rely on what is written in the Koran and only sometimes use hadith, but we are not Sheikhs and have never been trained in the legal tradition,[202]" one judge explained.

The clan-elders' position of final authority means decisions that would contradict Somali tradition are generally avoided and corporal hudud punishments that go beyond lashings (such as amputations) are rarely, if ever, executed. "Somalis love their freedom so much that being in prison is fearful enough for them. There is no need for amputations" was one response to the question why an Islamic tribunal would not follow the shari'a in some instances.[203] In general, the clan-based shari'a courts face far fewer legitimacy problems than their more religion-focused counterparts.

The more strictly Islamic dispute resolution bodies take the application of shari'a far more seriously. They traditionally adhere to the relatively tolerant shafi'i school of legal interpretation (one of the four schools of religious law in Sunni Islam),[204] though stricter wahabi influence is increasingly significant. "Procedures are much like those in any other international Islamic tribunal," judges repeatedly stated, though one suggested in private that "sometimes process can be relatively primitive and not all requirements are met."[205]

Accompanied by an international media outcry, some strict Islamic punishments, including amputations[206] were carried out in shari'a courts in Somaila in the 1990s. Until the rise of al-Shabaab, however, there were extremely few examples of this type of penalty.[207]

The version of Islamic law now propagated by al-Shabaab and particularly its frequent use of extreme corporal punishments has been widely criticized amongst Somalis. Citing in particular the

arbitrary offences triggering them, the lack of fair process and the way in which such "punishments" are implemented, they have repeatedly been described as un-Islamic by Somali scholars[208] and the wider public. One local official, for instance, argues that "the fundamentalist shari'a courts are not good Muslims and go against [Somali] tradition by not following the Sufi strain of Islam but extremist practices that came from Saudi Arabia."[209]

Similarly, draconian new rules imposed by al-Shabaab are broadly unpopular and often bear little or no resemblance to any principles of shari'a. Bans have been imposed on khat, television, movies, dancing at weddings, smoking cigarettes, musical cellphone ringtones and playing soccer.[210] Following peaceful protests over the khat ban, al-Shabaab violently dispersed crowds, made mass arrests, and opened fire on khat traders, killing one and injuring three others.[211] Prohibitions also frequently target women, including prohibitions on trading with male crews at seaports, travelling alone, shaking hands with men in public, working in an office, selling goods,[212] and wearing bras.[213]

In November 2010, then Somali Prime Minister Mohamed Abdullahi Mohamed claimed that 78% of the population stood against the extreme Islamist stance of al-Shabaab and their "reign of terror."[214]

Wider concerns

With the increased radicalization of Islamic law in Somalia, international concerns about the Islamic courts, such as the potential incompatibility of a genuine implementation of shari'a law with international human rights standards,[215] have been replaced with an outcry. Punishments carried out by courts are routinely described as "torture,"[216] and the United Nations has accused al-Shabaab of "taking Somalia back into the Stone Age".[217]

A number of high-profile cases in particular have received coverage throughout the world, including a story of a 13 year-old girl stoned to death for adultery after reporting to al-Shabaab that she had been gang-raped.[218] In Britain in 2009, an illustrated article of a man accused of adultery being stoned to death by Hizbul-Islam was published by the *Daily Mail*, and the same year *The New York Times* covered a story about the compulsory viewing by civilians of amputations as punishment for alleged thieves.[219]

Secular laws

In the limited areas controlled by the TFG, a secular legal system is supposed to be in operation, though significant effort will need to be invested in strengthening this and increasing its relevance.

Secular dispute resolution mechanisms have also sprung up in other areas of Southern Somalia. These take the form of combined court and police hybrid-institutions that apply laws imposed by a local administration – in effect systems that generally incorporate some form of militia policing

coupled with the varyingly principled application of a mixture of traditional, shari'a, old secular laws, and possibly newly invented codes.[220] Menkhaus terms them "informal and sub-national polities"[221] but in many cases they amount to nothing more than "clanustans," a Somali version of a "Balkan solution"[222]. Overall, the influence such bodies have in modern Somalia is extremely localized and generally less than that of either Xeer or Islamic law.

Contrary to institutions relying on Xeer and shari'a, secular bodies of dispute resolution tend to be created, funded, and directly controlled by the factions in control of the area in which they operate. This obviously limits the inherent legitimacy they enjoy with anyone beyond the immediate supporters of their backing power. It also means that the procedures followed tend to vary substantially between different courts and regions. The primary uniting characteristics amongst them thus seem to be the goal of promoting a minimum level of stability and rule of law and the rejection of using strict Islamic law as a means to this end: "We are not a religious court but a police station working for justice and peace," the head of one such body explained.[223]

In some areas there are also small local courts and police stations implementing a low-level local system of dispute resolution. They tend to rely on a combination of the pre-1991 regime's legal code, their previous judicial or police training, intimate knowledge of the neighborhood they operate in, and common sense, with one official comparing this system to the British use of lay magistrates to decide smaller court cases.[224] It must be noted that despite being declaredly secular most stations will still frequently take into account "basic Islamic concepts found in the Koran" when reaching their decisions and/or will also be open to accept any compensation arrangements reached between the parties.[225]

Several station officials emphasized their willingness to refer the hardest cases to the relevant clan elders but said that many cases could be solved without taking this step. Indeed, outside their own area and small to medium-scale disputes, their influence is likely to be extremely limited. "We cannot do anything outside of our area," one official lamented. "If there is any inter-district incident we absolutely must call the elders who have no space-limitations but use the traditional and not the police methods."[226]

Somali expectations regarding responses to civilian harm

Somali views on what should be done in response to incidents of civilian casualties are broadly consistent amongst the diaspora,[227] recent refugees and IDPs[228], and those currently affected by the fighting[229]. Almost all individuals drew a sharp distinction between what they would ideally like to see ("best practice") and what was in fact happening or likely to happen ("reality"). Expectations were almost uniformly very low in regard to the latter. Notably, the closer an individual was to the fighting, the more emphatically this distinction was generally articulated.

Civilian harm and casualties

Amongst the Somali diaspora, there is widespread condemnation of human rights abuses perpetrated by all parties to the conflict. Generally, the diaspora interviewees had not been to Somalia in several years.[230] They explained that they remained up to date with events through media reports and contact with friends and relatives still in the country.

None of the interviewees lost immediate family members in the violence in Somalia but all knew of incidents of civilian casualties and alleged human rights abuses. Even amongst those who left Somalia in the early 1990s, most held strong views on AMISOM and al-Shabaab. Although there was almost universal opposition to al-Shabaab, several interviewees expressed particular concern about the apparent immunity of AMISOM troops from disciplinary action or other forms of accountability.[231]

Refugees in Dadaab frequently experienced serious incidents either themselves or through close family members. Most of the blame was placed on al-Shabaab, though several also criticized AMISOM.

In Mogadishu, nearly everyone interviewed had been a victim of or eyewitness to several incidents and blame was generally attached to all parties to the conflict.

Addressing civilian harm

In principle

The vast majority of individuals interviewed expressed support for a mechanism to address civilian harm as a result of the armed conflict. No private individuals, however, recalled any instances in which civilian harm had been fully addressed, and few were hopeful such a system would ever be implemented in reality. Most victims of incidents stated that they had no hope of ever receiving compensation for the harm they suffered. One international aid worker at Dadaab explained that "compensation is good and decent and something people would like to see, but they do not necessarily expect it; after twenty years of conflict, their expectations have been lowered."[232]

Although experience has taught people not to expect compensation in practice, many expressed a strong expectation of compensation or diyya in principle. A 23-year-old woman in Dadaab camp said that she had not heard of any instances of al-Shabaab making diyya payments but, "according to shari'a there should be compensation for deaths, although they don't do that."[233] A 32-year-old man in the camp agreed: "In Somali culture, if somebody is killed, the killer should come and talk to me, help me bury the dead and compensate me."[234]

Notably, when speaking of possible mechanisms for warring parties to address civilian harm, the large majority of interviewees tended to focus on AMISOM and international forces rather than on the Somali TFG or any of the armed groups. Arguably, that is more a reflection of realistic expectations and overall capacity than any view that only foreigners should pay compensation. While in principle expectations seem to exist vis-à-vis any and all parties causing harm, they manifest themselves particularly in relation to those with the perceived will and capacity to meet such expectations.

What constitutes appropriately addressing civilian harm?

There was great divergence of opinion as to the various ways in which civilian harm ought to be addressed. Most interviewees focused on material compensation.[235] The majority favored payments to the individuals or families directly affected by an incident. A significant number, however, thought that compensation should be awarded to communities rather than individuals, for example in the shape of a clinic or school.[236] Several experts emphasized the importance of the investigations in determining claims, noting that acknowledgement of harm and resulting infomration made the process much more valuable than just financial compensation.

Some individuals suggested that it would be preferable to make alternative use of any finances available. A 40-year-old woman in Dadaab camp felt that "civilians don't want money, but want peace," and therefore AMISOM should use any available money to fund the fight against al-Shabaab.[237] Others suggested that the most vulnerable (such as orphans and the sick and elderly) rather than victims of certain incidents should be prioritized for assistance.[238]

Another suggestion was to direct any available funding for civilian casualties toward the establishment of a legitimate justice system. This system would then have the power and capacity to properly investigate any incidents resulting in civilian casualties and to prosecute any cases of misconduct.[239] According to this interviewee, such a system would be a better place to determine to whom, when, and how compensation should be awarded.

There was similar disagreement regarding the financial value of any payments. Several interviewees suggested the traditional Somali diyya sum of 100 camels for a death.[240] Estimates of the value of a

camel, however, varied from $150 to $500 and above. At the upper end of this scale, compensation could thus total $50,000. While some interviewees considered such a sum entirely appropriate and noted its deterrent value,[241] others (especially those in Southern Somalia) raised concerns that introducing such sums into a country where the average annual income is well below $1,000[242] could have a hugely destabilizing effect on communities.

Some Somalis living in the US and Kenya suggested that any amount less than $10,000 would be tantamount to "an insult".[243] Generally though, even those who felt similarly acknowledged that a significantly lower sum may be preferable to nothing and accepted as a "symbolic gesture." This was particularly so if the process entailed a serious investigation, apologies and/or the creation of a support network for victims and their families.[244] On the ground in Southern Somalia, people whose lives had been affected by the violence widely felt that even modest compensation payments accompanied by an apology would be "definitely better than nothing."[245]

How to organize a mechanism addressing civilian harm?

The majority of interviewees expressed support for the creation of mechanisms for warring parties to address civilian harm, although there were reservations about the ability of AMISOM, or any of the other conflicting parties, to oversee and administer a compensation system. In addition to the previously outlined concerns affecting the general recording and investigation of casualty incidents,[246] officials working in the field identified several other factors as likely to affect the success of any mechanism.[247]

There was repeatedly expressed concern about so-called "floodgates" issues. Several interlocutors worried that a huge number of claims would soon overwhelm any adopted system. This problem is linked to the risk of orchestration, with one official suggesting that "every injured person in Mogadishu will claim he was hurt by AMISOM."[248] The difficulties in investigating which claims are genuine and which are false would certainly place a burden on any system, as "significant effort and activity would be required to prove or disprove a claim."[249]

The corollary to the floodgates issue is the danger of raising expectations that either cannot or will not be met. Any number of factors (from a too limited compensation budget, to a strict evidential standard in proving claims, or a narrow definition of eligible incidents) might result in individuals who feel they have a genuine claim being turned away and their expectations unmet.

A further potential problem was that the commonly held perception of outsiders' "infinite deep pockets" would undermine the diyya system, which ultimately orients itself by the known resources of other clans. Similarly, there were concerns raised about the inflow of significant outside money affecting the political balance between different clans, communities or areas.

The range of proposed solutions was almost as wide as the problems raised. Commonly identified suggestions included focusing (at least initially) on clear-cut and well-documented cases and/or incidents occurring within a limited timeframe. Careful expectation management would require clear and public compensation amounts and criteria for payouts, while an effective process should emphasize acknowledgment, apologies and accountability as much as any financial payouts.

Importantly, the vast majority of interviewees agreed that the various problems raised were not insurmountable; despite the risks, a properly conceptualized response mechanism for civilian casualty incidents was almost uniformly agreed to be a desirable development.

What should be the role of the traditional system?

There is some support amongst the Somali diaspora for traditional systems, and the involvement of clan elders in any mechanism for warring parties to address civilian harm. One interviewee noted, "the best way is for the head of clans to meet with the government and to discuss [an incident]."[250] Another individual stated: "Village elders, the courts system, the government must be involved. Everyone should be on-board and work together."[251]

This faith in the institutions of government and clan hierarchies may demonstrate the difference between the perspective of Somalis who have been out of the country for some time, and the current Somali population, who have witnessed the deterioration of these structures. Within Somalia, there seems an increasing lack of consensus on the involvement of clan elders in any system to address civilian harm, within and across agencies and the civilian population. One agency official suggested that compensation money should be given to the clan as a collective, rather than to individuals, as the clan is a "structure that [Somalis] recognize, value and use," and to ignore it would risk "re-victimizing victims."[252] Others stated that to involve the clans would invite partiality and corruption into the process, while also hugely politicizing it.

Members of the Somali diaspora in the UK and the US expressed support for the use of shari'a law as a framework for a civilian harm response mechanism. One interviewee opined that "shari'a law is something that 99.9% [of] Somali people would say 'yes' to, because they know their rights will not be given to someone else."[253] While it was also observed that "there are very different ideas on shari'a. Some people are fanatic. But if they [as part of such a system] were doing real shari'a, it would be very good."[254]

Possibly as a result of the brutal tactics and punishments used by al-Shabaab, inside Somalia there appears to have been a marked decline of enthusiasm for using shari'a as a basis of dispute resolution.[255] Nevertheless, many Somalis still feel that "real shari'a" should underlie any mechanism to address civilian harm and will repeatedly refer to concepts of Islamic law when attempting to describe how such a system should ideally look.

The subjective notion of "real shari'a" is clearly problematic when attempting to design a system that will be appropriate and acceptable across the country. Some Somali experts suggested, however, that it should be possible to identify some broadly accepted general principles and concepts of shari'a that could realistically inform a response mechanism for civilian harm, thereby ensuring its appropriateness and widespread acceptability.

Addressing civilian harm: Rationale & practice of the conflicting parties

Why address civilian harm?

Moral reasons

At the most elementary level, there is a moral imperative for parties to an armed conflict to recognize and address any harm done to civilian victims. Of course, cases of alleged violations require further investigation and, if necessary, due accountability and reparations.

From a human dignity perspective, those responsible for causing suffering ought to acknowledge and attempt to mitigate harm caused by their actions. Compensation helps civilians recover from losses and is appreciated as an expression of regret and acknowledgment of the harm caused. Financial compensation may allow a family to rebuild a damaged home, or to relocate should they wish to do so. Similarly a payment to an individual who has suffered a loss of earnings due to injury will help to minimize the negative consequences of this harm.

The process of offering monetary compensation itself offers an opportunity to provide victims with answers and reinforce the message of regret. By publicly examining behavior and acknowledging lessons learned, whole communities can rest assured that harm caused to them is not indifferently repeated, and understand that their lives are recognized and respected as important. Investigating incidents and negotiating payments also offer forces the opportunity to provide victims with an explanation for what happened in a specific incident. This is particularly important in the case of serious injury or death. More than money, many victims often want to know why they were harmed and whether it was accidental or intentional.

Regarding payments to bereaved families, it goes without saying that nothing can bring back or adequately compensate the death of a loved one. However, acknowledging their losses and suffering helps provide civilians, their families, and communities the recognition they deserve.

Strategic reasons

The strategic impact of civilian casualties and the way in which incidents are managed is hard to overestimate – their role in shaping the perceptions, sympathies, and loyalty of the local population towards the respective warring parties is significant.

Al-Shabaab has made efforts to exploit this, firing from residential areas in an all too often successful attempt to draw indiscriminate retaliatory fire from TFG and AMISOM forces. Having left the area by the time government forces return fire, civilians are often the only casualties, a potent source of "useful propaganda" for the insurgents.[256] Hassan Elmi, a peace activist in Mogadishu

described the civilian population's perspective in 2010: "The people are saying, 'What is the difference between AMISOM and al-Shabab… AMISOM are killing me. And they [al-Shabaab] are also killing me.'"[257]

The anger and resentment harboured by civilians impacted by fighting may be enough to cause an individual or an entire community to lose faith in the legitimacy and mandate of those perceived as responsible. It may even persuade them to support or fight for opposition forces. In Afghanistan it was noted that "it only takes seeing one family maltreated and ignored by military forces for a community to turn against the international effort", and that "[E]very family with losses not recognized and addressed is another obstacle to Afghanistan's stabilization and development."[258]

In counterinsurgency strategy, properly addressing civilian harm is widely considered an important element in building the trust and goodwill of the civilian population. Proper recognition for civilian victims can prevent communities turning against those responsible, thereby potentially furthering long-term stability.

CASE STUDY: CURRENT PRACTICE

CIVIC observed the follow-up to an incident in which a child had been accidentally run over and killed by an AMISOM armored vehicle. An initial investigation had been conducted. It concluded that the driver had not been at fault as the boy had run out in front of the car while playing football. Nevertheless, a meeting with the deceased's family had been arranged by AMISOM. In the meeting, the officers present explained what had happened and offered their sincere regrets, apologizing for what had happened. Clearly, the family, who had attended the meeting with some of their clan elders, appreciated the mission's efforts. Equally clearly, however, they expected to receive some kind of payment. The impression was that AMISOM's inability to offer any kind of condolence payment or similar assistance in the eyes of the family turned the whole meeting into a much less meaningful gesture than it would otherwise have been.

Military actors may thus view the concept of recognizing and addressing civilian harm as a strategic asset. In particular, in the context of inadvertently caused harm, promptly and appropriately responding to civilians' harm may mitigate anger and community-backlash over losses, as well as build trust and confidence among the population. This in turn may contribute to keeping troops safer and bringing a swifter end to hostilities.

Cultural reasons

The Somali tradition of diyya and its impact on local expectations has been outlined above. However, there are also wider cultural precedents for compensation in response to civilian death or injuries, including in the main AMISOM troop contributing countries Uganda and Burundi.

Both countries have their own recent experiences with armed conflict and internal violence. Both were involved in the armed conflict in the Democratic Republic of the Congo. In Uganda the long internal conflict with the Lord's Resistance Army in the north of the country continues, whereas

Burundi has experienced much inter-ethnic fighting between Tutsis and Hutus and still faces an ongoing insurgency by the Forces for National Liberation (FNL).

Each of these conflicts cause significant harm to the civilian populations. However, both Uganda and Burundi have traditional methods of addressing such harm and working towards reconciliation. Indeed, it has been said that, "The reconciliation processes of Mato Oput, an Acholi tradition in northern Uganda, and the Ubushingantahe in Burundi, uniquely achieve justice and healing of the concerned parties in a way that a formal justice system cannot. These methods of restorative justice emphasize community-building and the need to reconcile an entire society after conflict."[259] This background is likely to be of substantial assistance to Burundian and Ugandan troops in understanding the importance of AMISOM creating and implementing a system to address civilian harm in Somalia.

Ugandan Cultural Traditions

Ugandan tradition includes numerous cultural forgiveness and cleansing rituals, which have become particularly important in the conflict-affected north of the country. A well-known and widely respected example is the Acholi traditional cleansing and reconciliation ceremony, known as Mato Oput (drinking the bitter herb).[260]

The Acholi justice system is based on compensation, reconciliation, and reintegration. It has been said that, "at the very core of the Acholi pride for their cultural wisdom on forgiveness is the traditional reconciliation ceremony called Mato Oput. [It is] the last step in an involved reconciliation process, which involves an investigation of the circumstances; an acceptance of responsibility; and an indication of repentance. The elders lay down terms of compensation and reconciliation is sealed by sharing a bitter root drink from a common calabash."[261] The payment of compensation follows the ceremony and is usually made by transferring livestock (normally cows and goats).

The Acholi conduct the Mato Oput ceremony because they believe that after the ceremony the "hearts of the offender and the offended will be free from holding any grudge between them."[262] It is believed by many Acholi that Mato Oput "can bring true healing in a way that formal justice system cannot."[263] The symbolic exchange of animals between the groups or clans symbolizes reconciliation and the drinking of the bitter herb means that the two conflicting parties accept "the bitterness of the past and promise never to taste such bitterness again."[264]

The similarities to Somalia's diyya system are readily apparent. Neither system is intended to allocate blame or determine if an accused individual is guilty or innocent. Rather, the objective is to give the families and wider communities involved closure, to restore marred social harmony between the parties, and to heal divisions in the respective communities. Nevertheless, in both pro-

cesses the victim (or the victim's family) receives material compensation for any harm done. In both cultures the form of compensation is usually livestock or the cash equivalent. Finally, both systems emphasize the role of traditional elders, who conduct negotiations according to long-established traditional rules.

Burundian Cultural Traditions

The concept of restorative justice has played an important part in Burundi's national healing process following the violence of recent decades. Central to this has been the traditional belief system known as Ubushingantahe, which describes "a set of personal virtues, including a sense of equity and justice, a concern for truth, a righteous self-esteem, a hard working character."[265] This collective set of values was described by Burundian negotiators at the Arusha peace talks simply as "humanism" or "dignity," and is common to many African cultures.[266]

Somewhat different than diyya, Ubushingantahe works towards reconciliation by stigmatizing and isolating guilty individuals or parties from the community for a determinate period of time. As in the Somali clan system, however, the Burundian process relies on a council of wise men or elders (the so-called Bashingantahe) to settle disputes.[267] Council members are selected from the community and are chosen for their wisdom, honesty, sense of justice, experience, and impartiality. The councils are supposed to adhere to the principles of neutrality and equity, and do not charge for their services.[268]

Akin to Somali Xeer's attribution of responsibility to the diyya-paying group rather than the individual, in the Burundian system the interests of the community are also placed ahead of the individual's. "Within the council of Bashingantahe, decisions were made by consensus. Consensus was expected to favor the common interest, the interest of the family over the individual, and the interest of the community over any particular family."[269]

Therefore, as in the Somali system, traditional structures with a collectivist approach and reliance on broad local community support play a key role in responding to violent incidents. By ensuring that "the issues are dealt with locally among neighbors… through traditional legal approaches and values,"[270] the systems attempt to bring about the peaceful resolution of potentially incendiary incidents and achieve reconciliation between the parties. Again, Ubushingantahe may thus offer valuable lessons regarding the creation and operation of an AMISOM system to account for and address civilian harm in Somalia.

Current Practice

AMISOM[271]

There have been notable positive developments regarding AMISOM's response to the issue of civilian casualties. Previously, the mission was widely criticized for its unwillingness and/or inability to respond properly to allegations of civilian harm.[272] Now, however, the impact of civilian casualties

as well as the importance of addressing such incidents appear to be well understood. From the level of the Force Commander downwards, there is broad agreement that the mission must aim to minimize civilian harm, fully investigate allegations of civilian deaths or injuries, ensure accountability, and, where appropriate, offer compensation, apologies and assistance.

In several instances, including one when two civilians were killed in an incident on 23 November 2010, AMISOM has apologized and launched investigations.[273] Several of these have resulted in recommendations to prosecute and, to date, at least three Ugandan AMISOM soldiers have separately been found guilty of misconduct and sentenced to imprisonment in their home country.[274] Though such instances involving criminal misconduct trigger stricter obligations of legal accountability and redress for the victims, they nonetheless demonstrate a broader willingness by AMISOM to acknowledge and address civilian harm it causes. This is a welcome step that can help bolster a comprehensive system for accounting for and addressing civilian harm caused by AMISOM.

There is express acknowledgement across the mission that AMISOM needs to continue improving its practices and procedures in this regard. In particular, it is widely agreed that it should set up a more systematic and integrated process for dealing with allegations of civilian harm and in cases not involving intentional harm, make amends. Senior commanders appear to be aware of the related organizational and wider challenges, with several identifying recommendations as to how to overcome them.

Out of the problems affecting AMISOM's efforts in this area, the most obvious and severe limitation remains the mission's inability to access and pay any kind of monetary compensation or assistance to victims. Compensation certainly is not the only aspect of responding to civilian harm but, as outlined above, Somali victims attach significant importance to it, which is arguably as much symbolic as linked to any actual sums given.[275] As such, even the most well intentioned effort to deal with civilian casualties incidents risks being undermined and perceived as hollow if AMISOM is not in a position to offer victims anything other than words.

AMISOM is conscious of this issue and has attempted to address it by referring four specific cases of civilian harm to the African Union, recommending them for compensation. The victims in these test cases were informed of this. Unfortunately, a year after the incidents the African Union has yet to respond, leading to frustration and disappointment among victims. Further, all of the test cases referred related to incidents in which investigations had identified some wrongdoing on the part of the troops involved. Any system put in place by AMISOM to address civilian harm should, however, be available in relation to all civilian harm caused by AMISOM forces, regardless of fault and indeed entirely separate from any reparations due in cases of violations.

The single documented incident in which material amends were provided by AMISOM relates to a payment of $7,600 to local traders for a number of camels that AMISOM troops accidentally

killed in Mogadishu.[276] While very much a positive gesture, and no doubt of great importance to the affected traders, the fact that the only known payment was made in relation to camels rather than human victims angered many Somalis. One local news article wrote that, "AMISOM's recent compensation for killed camels in contrast to the standard denial of shelling, killing, wounding and displacing innocent civilians and destroying their properties has deeply offended and angered the local population who composed poems decrying AMISOM's abuses."[277]

A second major limitation remains the AU mission's still-too-limited approach to dealing with and investigating allegations of civilian harm. While the response to incidents directly reported by troops is relatively robust, there is much less focus on allegations raised by the local population. Even less effort is devoted to proactively identifying popular concerns, be they in relation to current incidents unknown to AMISOM (e.g. collateral damage during an operation) or past issues that were never fully investigated (e.g. the shelling of Bakara market).

AMISOM's capacity to take a more pro-active approach to investigations and making amends is hampered by many of the practical concerns discussed in the sections *Civilian Harm in the Current Conflict* and *How to Organize a Mechanism Addressing Civilian Harm*, above. It is obviously limited by technical and funding restrictions on the military side, such as the availability of weapons-tracking mechanisms and sufficient aerial drones. Underlying these problems, however, is also an insufficient focus in AMISOM's mandate, including in the September 2011 renewal (Resolution 2010) from the Security Council, on the issue of tracking, responding to, or properly addressing civilian harm when it occurs. Several senior officers in the mission were eager to put in place more sophisticated and wide-ranging mechanisms if the necessary support could be provided to them.

Other parties

The present capacity of the forces of the TFG fighting alongside AMISOM troops is clearly limited. Nevertheless, the unambiguous goal must be to build the same level of accountability and response mechanisms within the national forces as within the international ones. As such, efforts to ensure effective avoidance of and responses to incidents of civilian harm should be an integral part of all mentoring and training activities as well as operational cooperation with TFG forces. In the long run, the aim must be to create a viable Somali process for dealing with the issue.

Regarding al-Shabaab and other groups, of all individuals interviewed in Dadaab refugee camp, no one was aware of any apology or compensation being given by al-Shabaab. One woman stated that they "may" give money and sometimes compensation "to their fans."[278] In Mogadishu, any payments by al-Shabaab, appeared to be linked only to political support rather than to any harm caused. Similarly, CIVIC is not aware of any instances in which other local armed groups have offered apologies or compensation for civilian harm they caused outside the normal operation of the traditional diyya system discussed above.[279]

The way forward: Effectively responding to civilian harm

Conflict-related civilian harm remains an acute problem in Somalia. In light of the continuing political impasse, this is unlikely to change in the short to medium term. The research underlying this report shows a significant Somali tradition of dealing with the impact of civilian casualties. In such cases, Somalis expect and deserve a concerted response, encompassing investigation, accountability, assistance, and amends.

AMISOM in particular, is an obvious first target for ensuring an effective institutional response mechanism to civilian casualties is in place. The cultural, strategic, and moral reasons for this are obvious and readily accepted by the mission leadership. Many lessons can be learned from the traditional Somali systems, though given their respective limitations these should inform the process rather than shape it outright.

With sufficient international support, AMISOM arguably has both the will and the capacity to become a fully responsible and effective international force in both avoiding and addressing incidents of civilian harm. AMISOM would then be well placed to instill these lessons in the TFG's military and ensure that the wider Somali population can benefit from them.

Recommendations

To All Warring Parties

- Immediately cease attacks targeting civilians and humanitarian agencies.
- Comply with international humanitarian law, including the principles of proportionality and distinction.
- Respond promptly to incidents and allegations of civilian harm. Investigate all relevant incidents, make findings public, and, where appropriate, both acknowledge responsibility and implement strategic and tactical changes to prevent future incidents of the same type.
- Provide assistance and compensation to civilians harmed as a result of legitimate combat actions, while acknowledging that such assistance in no way justifies or excuses attacks that target or disproportionately affect civilians.

To AMISOM

- Ensure all troops understand the strategic, moral, and legal importance of minimizing and properly addressing civilian harm, including through strong leadership from the Force Commander, contingent commanders, and African Union representatives.

- Fully implement the 2011 IDF policy, particularly with regard to exercising extreme caution when deploying indirect fire in response to attacks.
- Develop a Civilian Casualty Tracking, Analysis and Response Cell (CCTARC) to: Investigate all incidents of civilian harm; analyze the data for trends; acknowledge responsibility for causing harm where appropriate; in cooperation with AMISOM public affairs, coordinate the public response; participate in a lessons learned feedback chain; and respond appropriately to victims.
- Within the CCTARC, develop a mechanism for making amends for civilian harm that references and has due regard for existing traditional Somali reconciliation and dispute resolution mechanisms.
- Ensure the CCTARC is accountable and transparent to the African Union, AMISOM leadership, donors and, most importantly, the Somali people, through robust record-keeping capabilities, clear and publicized guidelines, and official oversight.
- Equip the CCTARC with sufficient and appropriate resources to effectively carry out its mandate, including: Appropriate staff, drawn from both military and civilian personnel, to include at least one expert with a background in bringing pragmatic solutions to civilian casualty issues, a legal expert, and experts on investigation and data analysis.Ensure sufficient funding to be able to assist victims materially in applicable cases.
- Mentor the TFG on the issue of civilian protection and harm, including through the development of appropriate rules of engagement that prioritize accountability and minimizing civilian casualties.

To the African Union

- Create a funding stream to allow AMISOM to set up a fully effective CCTARC and ensure funds for making amends for harm caused to Somali civilians by AMISOM combat operations.
- Ensure all troops deployed to Somalia are appropriately trained on IHL as well as inculcated with a mindset of civilian protection, restrictive combat behavior, and appropriate response to civilian harm allegations or incidents.
- Prioritize the issues of civilian protection and properly addressing harm in interactions with the TFG, including in support of the TFG's national security strategy and development of rules of engagement.

To the UN and international donors

- Make civilian protection and mitigation of civilian harm a priority in all engagements with warring parties in Somalia.
- Encourage all warring parties to abide by international laws and, where appropriate, to provide amends to recognize and assist civilians harmed in combat operations.
- Provide material support to the African Union in supporting AMISOM to create a CCTARC

as well as a harm-response fund and ensure these are effective and transparent in their operations.

- Provide material support for training both incoming and in-theater AMISOM troops as well as TFG troops on IHL, appropriate responses to civilian harm and best practices in the Somalia context.
- In all activities under the SC's renewal of AMISOM's mandate requesting UN technical and expert advice, the United Nations agencies should prioritize issues of civilian protection and addressing any civilian losses through tangible amends in their assistance to AMISOM.

NOTES

1 Robert I. Rotberg, 'Failed States in a World of Terror', 81 (4) Foreign Affairs 127, 133 (2002).
2 BBC News, *Puntland Profile*, BBC NEWS ONLINE, last updated Jul. 11, 2011, http://news.bbc.co.uk/1/hi/world/africa/country_profiles/4276288.stm (last visited 31 Aug. 2011).
3 Kenneth Menkhaus, *Somalia: State Collapse And The Threat Of Terrorism* (Oxford: Oxford University Press, 2004) 17.
4 Terrence Lyons & Ahmed I. Samatar, *Somalia: State Collapse, Multilateral Intervention, and Strategies for Reconstruction* (Washington DC: Brookings, 1995) 1.
5 Ioan M. Lewis, *The Somali Lineage System and the Total Genealogy: A General Introduction to Basic Principles of Somali Political Institutions* (s.n.: Ann Arbor, 1957).
6 Interview #3, Mogadishu (Jan 2006).
7 Lyons & Samatar, 1.
8 Ioan M. Lewis, *A Modern History of the Somali: Fourth Edition* (Ohio: Ohio University Press, 2003) 205-06.
9 Amnesty International, *Somalia: A Long-Term Human Rights Crisis* (1988).
10 Lyons and Samatar argue that is was actually the regime's practice of targeting clans to punish opposition movements that "pushed Somalis to organize along clan-lines." (Lyons & Samatar, *supra* note 8, at 19).
11 Neil Henry, 'Rebels, Rights Groups Attack Somalia', Washington Post, Feb. 18, 1990, at A23.
12 The Economist, *The Mayor of Mogadishu*, Economist, Sep. 29, 1990, at 47.
13 US Department of Defense, *Quadrennial Defense Review Report 5*,2001. See also EU-US Summit 1995 in Madrid, *CFSP Presidency Statement*, Press 356, Nr.12296/95, Dec. 3, 1995, available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/er/025a0001.htm (last visited Aug. 30, 2011.
14 This eventually culminated in the adoption of the "R2P – Responsibility To Protect" doctrine; see generally Gareth J. Evans & Mohamed Sahnoun, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, Government of Canada,2001.
15 Lyons & Samatar, *supra* note 8, at 6.
16 UN Security Council Resolution 733 (Jan. 23, 1992).
17 UN Security Council Resolution 794 (Dec. 3, 1992).
18 UN Security Council Resolution 837 (Jun. 6, 1993).
19 For a detailed account of the incident *see* Mark Bowden, Black Hawk Down (New York: Atlantic Monthly Press, 1999).
20 Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Perennial, 2002) 317.
21 James Dobbins et al., *America's Role in Nation-Building* (Santa Monica: RAND, 2003) 57.("The rehabilitation of government institutions was a daunting task and not one that the international community planned to tackle during UNITAF.")
22 Several interviews in Southern Somalia (Aug/ Sep 2002), see also interview #43, Somalia (Jan. 2006) and interviews #7a and #8a, Nairobi (Jul 2011).
23 Interview #46, Somalia (Jan 2006).
24 International Crisis Group, *Somalia's Islamists*, International Crisis Group, Dec. 12, 2005, at 19, available at http://merln.ndu.edu/archive/icg/terrorismsomalia.pdf (last visited Aug. 30, 2011)
25 Interview #30, Mogadishu (Jan 2006).
26 Interview #24a, Somalia (Jul 2011).
27 International Crisis Group, *Somalia's Islamists*, International Crisis Group, Dec. 12, 2005, at 20, available at http://merln.ndu.edu/archive/icg/terrorismsomalia.pdf (last visited Aug. 30, 2011)
28 *Ibid.*
29 Andre Lesage, *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives*, unpublished draft (2006), at 30.
30 UN Secretary General, *Report of the Secretary General on the Situation in Somalia*, October 11, 2005, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/544/15/PDF/N0554415.pdf?OpenElement (last visited Aug. 30, 2011).
31 Ioan Lewis, *Understanding Somalia and Somaliland* (London: Hurst Publishers, 2008)84-86. See also BBC News, *Fighting Rages in Somali Capital,* BBC News Online, May 8, 2006, available at http://news.bbc.co.uk/2/hi/africa/4750171.stm (last visited May 27, 2011).

32 Human Rights Watch Report, *Shell-Shocked: Civilians Under Siege in Mogadishu*, 2007, 20, available at http://www.hrw.org/reports/2007/08/12/shell-shocked (last visited Aug. 30, 2011).
33 *Ibid.*, at 3.
34 Chatham House, *Briefing Paper: The Rise and Fall of Mogadishu's Islamic Courts*, Chatham House, 2007, available at http://www.chathamhouse.org.uk/files/9130_bpsomalia0407.pdf (last visited May 27, 2011).
35 Xan Rice, *Mogadishu's Miracle: Peace in the World's Most Lawless City*, GUARDIAN, Jun. 26, 2006, available at http://www.guardian.co.uk/world/2006/jun/26/mainsection.international11 (last visited May 27, 2011).
36 Lewis, *Understanding Somalia and Somaliland*, 88.
37 Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2004*, US State Department, Apr. 27, 2005, available at http://www.state.gov/s/ct/rls/crt/45388.htm (last visted May 28, 2011).
38 Matt Bryden, *Storm Clouds Over Somalia as Rivals Prepare for Battle*, NATION, Dec.8, 2006, available at http://www.crisisgroup.org/en/regions/africa/horn-of-africa/somalia/storm-clouds-over-somalia-as-rivals-prepare-for-battle.aspx (last visited May 28, 2011).
39 *Ibid*., at 10.
40 Cedric Barnes and Harun Hassan, B*riefing Paper: The rise and Fall of Mogadishu's Islamic Courts*, Chatham House, 2007, available at http://www.chathamhouse.org.uk/files/9130_bpsomalia0407.pdf.
41 BBC, *Fighting Rages in Somali Capital*, BBC NEWS ONLINE, May 8, 2006, http://news.bbc.co.uk/1/hi/world/africa/4750171.stm (last visited Aug. 11, 2011).
42 UN Security Council Consolidated List 10255.
43 HRW, *Shell-Shocked,*at 21. See also, Barnes and Hassan, at 4.
44 BBC News, *Ethiopia is 'technically at war'*, BBC NEWS ONLINE, Oct. 22, 2006, http://news.bbc.co.uk/1/hi/world/africa/6083854.stm (last visited May 28, 2011).
45 Reportedly also drawing on significant US support. See Rob Prince, *WikiLeaks Reveals US Twisted Ethiopia's Arm to Invade Somalia*, BLACK AGENDA REPORT, Oct. 21, 2010, at http://www.blackagendareport.com/?q=content/wikileaks-reveals-us-twisted-ethiopias-arm-invade-somalia (last visited May 28, 2011).
46 *Ibid. See also* Interview #27a, Dadaab (Jun. 2011)
47 HRW, *Shell-Shocked,* at 24.
48 Barnes and Hassan, *Briefing Paper: The Rise and Fall of Mogadishu's Islamic Courts*, at 6.
49 BBC News, *Ethiopia urged to leave Somalia*, BBC NEWS ONLINE, Dec. 27, 2006, http://news.bbc.co.uk/1/hi/6212807.stm (last visited May 27, 2011).
50 Barnes and Hassan, at 6.
51 Amnesty International, *Somalia: International Military and Policing Assistance Should be Reviewed*, AMNESTY INTERNATIONAL, Jan. 2010, at 9, available at http://www.amnesty.org.uk/uploads/documents/doc_20076.pdf (last visited Jun 10, 2011).
52 Jack Kimball, *Islamists to Lead Somali Opposition Alliance*, Reuters, Sep. 14, 2007, available at http://uk.reuters.com/article/2007/09/14/idUKL14772138200709 14 (last visited May 29, 2011).
53 Human Rights Watch, *Shell-Shocked*, at 30.
54 BBC News, *Somali Islamists Al-Shabab 'Join Al-Qaeda Fight'*, Feb. 1, 2010, BBC NEWS ONLINE, http://news.bbc.co.uk/1/hi/8491329.stm (last visited May 29, 2011).
55 Max Delany and Jason Straziuso, *Uganda Bomb Attacks Kill World Cup Fans: Al Shabab Suspected in Kampala Explosions*, HUFFINGTON POST, Jul. 12, 2010, available at http://www.huffingtonpost.com/2010/07/11/uganda-bomb-world-cup_n_642336.html (last visited May 29, 2011).
56 Nick Wadhams, *After U.S. Airstrike, Somali Peacekeepers Pay*, TIME, Sep. 18, 2009, available at http://www.time.com/time/world/article/0,8599,1924902,00.html (last visited May 31, 2011).
57 Official internet presence at http://www.amisom-au.org (last visited 8 August 2011).
58 UN Security Council Resolution 1744 (Feb. 20, 2007).
59 See UN Security Council Resolutions 1766 (Jul. 23, 2007), 1772 (Aug. 20, 2007), 1801 (Feb. 20, 2008), 1831 (Aug. 19, 2008), 1863 (Jan. 16, 2009). 1872 (May 26, 2009), 1910 (Jan. 28, 2010), 1964 (Dec. 22, 2010), 2010 (Sep. 30, 2011).
60 Report of the African Union-United Nations panel on modalities for support to African Union peacekeeping operations (A/63/666-S/2008/813), Dec. 31, 2008, para. 16, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2008/813 (last visited Jun 10, 2011).
61 Paul D. Williams, *AMISOM's Five Challenges*, Centre for Strategic & International Studies, undated, available at http://csis.org/blog/amisom%E2%80%99s-five-challenges (last visited Jun 10, 2011).

62 Shannon Scribner, *Oxfam Testimonial on Somalia*, OXFAM AMERICA, May 20, 2009, available at http://www.oxfamamerica.org/articles/oxfam-testimony-on-somalia (last visited Jun. 10, 2011).
63 Paul D. Williams, *AMISOM's Five Challenges*, Centre for Strategic & International Studies, undated, available at http://csis.org/blog/amisom%E2%80%99s-five-challenges (last visited Jun. 10, 2011).
64 Just one day after the departure of Ethiopian troops, in January 2009, al-Shabaab took control of the former government stronghold Baidoa. *See* Bill Roggio, *Former Islamic Courts Leader Elected President of Somalia*, THE LONGWAR JOURNAL, Jan 31, 2009, available at http://www.longwarjournal.org/archives/2009/01/former_islamic_court.php (last visited May 29 2011).
65 Nuradin Dirie, *Somalia Needs Good Government to Turn Back the Terrorist Tide*, GUARDIAN, July 12, 2010, available at http://www.guardian.co.uk/commentisfree/2010/jul/12/somalia-al-shabab-terrorist-tide?INTCMP=SRCH (last visited May 31, 2011).
66 Amnesty International. *Routinely Targeted: Attacks on Civilians in Somalia*, AMNESTY INTERNATIONAL, 2008, at 6, available at http://www.amnesty.org/en/library/asset/AFR52/006/2008/en/1162a792-186e-11dd-92b4-6b0c2ef9d02f/afr520062008eng.pdf (last visited Aug. 30, 2011).
67 Williams, see *footnote 65*
68 UN Security Council Resolution 1964 (Dec. 22, 2010).
69 BBC News, *African Union Pledges to Reinforce its Somalia Force*, BBC NEWS ONLINE, Jul. 27, 2010, http://www.bbc.co.uk/news/world-africa-10753009 (last visited May 31, 2011).
70 *Report of the Chairperson of the Commission on the Situation in Somalia*, AFRICAN UNION, April 21, 2011, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_344.pdf (last visited Aug. 9, 2011).
71 US Department of State, *Background Note: Somalia*, May 17, 2011, available at http://www.state.gov/r/pa/ei/bgn/2863.htm (last visited Jul. 27, 2011).
72 Jeffrey Gettleman, *U.S. Critical of Assembly in Somalia*, NEW YORK TIMES, Feb. 4, 2011, available at http://www.nytimes.com/2011/02/05/world/africa/05somalia.html (last visited May 29, 2011).
73 Available at http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/110609%20-%20Kampala%20Accord%20(signed).pdf (last visited Aug. 26, 2011).
74 Statement by the President of the Security Council, UNITED NATIONS SECURITY COUNCIL, Jun..24, 2011. S/PRST/2011/13, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/PRST/2011/13 (last visited Aug. 26, 2011).
75 Interviews #9 and #11, Mogadishu (July 2011). See also BBC News, *Somalia: Government Captures al-Shabab Militia Bases*, BBC NEWS ONLINE, March 5, 2011, http://www.bbc.co.uk/news/world-africa-12657466 (last visited May 31, 2011).
76 Hussein Mould, *AMISOM Gains Ground in Bloody Battles*, SOMALIA REPORT, May 14, 2011, available at http://www.somaliareport.com/index.php/post/754/Elders_Arrested_For_Not_Giving_up_Sons?PHPSESSID=3045c3b408ed852b7dcdca5b048d2368 (last visited May 31).
77 Hussein Mould, AMISOM Gains Ground in Bloody Battles, SOMALIA REPORT, May 14, 2011, available at http://www.somaliareport.com/index.php/post/754/Elders_Arrested_For_Not_Giving_up_Sons?PHPSESSID=3045c3b408ed852b7dcdca5b048d2368 (last visited May 31).
78 Mike Pflanz, *Al-Shabaab rebels withdraw from Somali Capital*, TELEGRAPH, August 6, 2011, available at http://www.telegraph.co.uk/news/worldnews/africaandindianocean/somalia/8685953/Al-Shabaab-rebels-withdraw-from-Somali-capital.html (last visited August 9, 2011).
79 BBC News, *Meeting Somalia's al-Shabab*, BBC NEWS ONLINE, July 3, 2009, available at http://news.bbc.co.uk/1/hi/world/africa/8133127.stm (last visited May 29, 2011).
80 Mohamed Ahmed, *Somalia's al Shabaab militia leaving Mogadishu*, REUTERS, August 6, 2011, available at http://af.reuters.com/article/topNews/idAFJOE77500320110806 (last visited August 9, 2011).
81 Jeffrey Gettleman, Mark Mazzetti, and Eric Schmitt, *U.S. Relies on Contractors in Somalia Conflict*, NEW YORK TIMES, August 10, 2011, available at http://www.nytimes.com/2011/08/11/world/africa/11somalia.html?_r=2&nl=todaysheadlines&emc=tha2 (last visited August 11, 2011).
82 HRW, *You Don't Know Who to Blame*, at 10.
83 BBC News, *MI5 Head Warns of Serious Risk of UK Terrorist Attack*, BBC NEWS ONLINE, Sep. 17, 2010, available at http://www.bbc.co.uk/news/uk-11335412 (last visited May 29, 2011).
84 Stephanie McCrummen, *Rebels Threaten Somali Government*, WASHINGTON POST, May 18, 2009, available at http://www.washingtonpost.com/wp-dyn/content/article/2009/05/17/AR2009051701296.html (last

visited May 29, 2011).
85 Times Topics, *Al Shabab*, NEW YORK TIMES, updated July 13, 2010, available at http://topics.nytimes.com/top/reference/timestopics/organizations/s/al-shabab/index.html?scp=4&sq=somalia&st=cse (last visited May 30, 2011).
86 International Crisis Group, *Somalia: To Move Beyond the Failed State*, INTERNATIONAL CRISIS GROUP, Dec. 23, 2008, at 12, available at http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/somalia/Somalia%20To%20Move%20Beyond%20the%20Failed%20State.ashx (last visited May 31, 2011).
87 *Ibid*., at 20.
88 Dirie, see *footnote 79*.
89 See Office of the United Nations Resident & Humanitarian Coordinator for Somalia, *UN Declares famine in Somalia,* July 20, 2011, available at http://documents.wfp.org/stellent/groups/public/documents/communications/wfp238182.pdf (last viewed August 18, 2011), and *Famine thresholds surpassed in three new areas of southern Somalia*, FAMINE EARLY WARNING SYSTEMS NETWORK, available at http://reliefweb.int/sites/reliefweb.int/files/resources/FSNAU_FEWSNET_020811press%20release_030811_final.pdf (last visited August 18, 2011).
90 HRW, *You Don't Know Who to Blame*, at 1.
91 *Ibid*., at 4.
92 *Ibid*., at 1.
93 *Global Peace Index 2011*, INSTITUTE FOR ECONOMICS AND PEACE. available at http://www.visionofhumanity.org/wp-content/uploads/2011/05/2011-GPI-Results-Report-Final.pdf (last visited Jul. 27, 2011).
94 *Ibid.*, at 19.
95 US Department of State, *Country Reports on Human Rights Practices: Somalia*, February 23, 2001, available at http://www.state.gov/g/drl/rls/hrrpt/2000/af/780.htm (last visited August 9, 2011).
96 Human Rights Watch, *Somalia Faces the Future: Human Rights in a Fragmented Society*, HUMAN RIGHTS WATCH, Apr. 1995, available at http://www.hrw.org/legacy/reports/1995/somalia/ (last visited August 9, 2011).
97 See for instance, Marc Lacey, *Somali Islamists Declare Victory; Warlords on Run*, NEW YORK TIMES, Jun 6, 2006, available at http://query.nytimes.com/gst/fullpage.html?res=9402E0DA1431F935A35755C0A9609C8B63&pagewanted=all (last visited August 9, 2011).
98 Amnesty International, *Routinely Targeted*, at 25.
99 See BBC News, *Profile Somalia's Islamic Courts*, BBC NEWS ONLNE, Jun. 6, 2006,http://news.bbc.co.uk/1/hi/5051588.stm (last visited August 9, 2011).
100 US Department of State, 2007 *Country Report on Human Rights Practices: Somalia*.
101 Amnesty International, *Routinely Targeted*, at 12-14.
102 *Ibid.*, at 2 and 39.
103 See Elman civilian casualty data discussed below at note 115 and 116 The organisation noted a steep decline in civilian casualties following the Ethiopian withdrawal from Somalia.
104 Human Rights Watch, *Harsh War, Harsh Peace: Abuses by Al Shabaab, the Transitional Federal Government and AMISOM in Somalia*, HUMAN RIGHTS WATCH, http://www.hrw.org/sites/default/files/reports/somalia0410webwcover_0.pdf (last visited Aug. 30, 2011).
105 Somalia Humanitarian Overview Vol.3 Issue 10 – October 2010, UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, at 3, available at http://ochaonline.un.org/somalia/SituationReports/ArchivedSituationReports/tabid/2880/language/en-US/Default.aspx (last visited July 28, 2011).
106 Various interviews, Nairobi and Mogadishu (May-July 2011).
107 United Nations Security Council*, Report of the Secretary General on Somalia*, April 28, 2011, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/304/12/PDF/N1130412.pdf?OpenElement (last visited August 9, 2011).
108 Human Rights Watch, *You Don't Know Who to Blame*, at 16.
The report noted, however, that AMISOM to date has not acknowledged responsibility for indiscriminate fire at Bakara market prior to this policy being introduced, emphasizing incidents such as one on 19 May 2011 when mortar rounds striking Bakara market killed 15 and injured 80 people.
109 Interviews 2a, 3a, 4a, 5a and 7a with various UN/ NGO officials, Nairobi (Jun 2011).
110 Interview 17a, Mogadishu (Jun 2011).

111 Figures available at http://www.elmanpeace.org/ (last visited 17 Jun 2011). Elman reported significantly higher civilian casualty numbers in 2007 and 2008, with 8636 and 7574 deaths respectively.
112 Human Rights Watch Report, *You Don't Know Who to Blame: War Crimes in Somalia*, Aug 2011, at 1, available at http://www.hrw.org/reports/2011/08/14/you-don-t-know-who-blame (last visited Aug. 30, 2011).
113 Somalia Health Cluster Bulletin 49, July 2011. Available at http://www.who.int/hac/crises/som/sitreps/somalia_health_cluster_bulletin_july2011.pdf (last visited August 26, 2011); see also interview #23a, Mogadishu (Jun 2011).
114 See the regular reports on Protection of Civilians in Armed Conflict published by the United Nations Assistance Mission in Afghanistan (UNAMA) on a bi-annual basis. The 2010 annual report is available at http://unama.unmissions.org/Portals/UNAMA/human%20rights/March%20PoC%20Annual%20Report%20Final.pdf (last visited 9 August 2011) and the 2011 mid-year report at http://unama.unmissions.org/Portals/UNAMA/Documents/2011%20Midyear%20POC.pdf (last visited 9 August 2011).
115 Al-Shabaab has now almost withdrawn completely from Mogadishu, with AMISOM and the TFG increasingly taking over the abandoned areas and re-establishing control over the city.
116 *See* e.g. interviews 5a, 7a and 17a, Nairobi and Mogadishu (Jun 2011).
117 *Ibid.*
118 Human Rights Watch, *You Don't Know Who to Blame*, at 16.
119 Sarah Childress, *Civilian Casualties Dog Troops in Somalia: Market goers are Caught in Crossfire; U.S. Raises Concerns*, Wall Street Journal, Jul. 29, 2010, available athttp://online.wsj.com/article/SB10001424052748704895004575395111138942560.html
120 Human Rights Watch, *You Don't Know Who to Blame*, at 20.
121 *Ibid.*, at 18.
122 Interview #8b, Dadaab, Kenya (Jun 2011).
123 Interviews #6 and #7, Nairobi, Kenya (Jun 2011).
124 Technical is the term used by Somalis to describe the battle-wagons widely relied on by the various armed groups around the country. The vehicles are usually pick-up trucks with a machine gun or other heavy weapon bolted in the back. Reportedly, the term was coined when aid agencies, who were banned from using armed escorts but saw no other way of operating in the post-Barre anarchy, included the cost of militia escorts in their budgets as 'technical assistance.'
125 Interview #3b, Dadaab, Kenya (Jun 2011).
126 Interview #5b, Dadaab, Kenya (Jun 2011).
127 US Department of State Archive, *International Religious Freedom Report 2008*, available at http://2001-2009.state.gov/g/drl/rls/irf/2008/108391.htm (last visited Aug. 30, 2011).
128 Human Rights Watch. *You Don't Know Who to Blame*, at 19.
129 Various interviews including #2a, #18a, #2b, and #9b, Kenya and Somalia (May – July 2011).
130 CIVIC mission to Mogadishu (Feb 2011), visit to OPD hospital. See also US Department of State, *2010 Human Rights Reports: Somalia*, available at http://www.state.gov/documents/organization/160144.pdf (last visited Aug. 30, 2011).
131 Interviews #2b, #9b, and #11b, Dadaab, Kenya (Jun 2011).
132 Interview #11b, Dadaab, Kenya (Jun 2011).
133 Human Rights Watch, *You Don't Know Who to Blame*, at 23.
134 Interview #10b, Dadaab, Kenya (Jun. 2011).
135 Interview#2b, Dadaab, Kenya, (Jun 2011).
136 Various interviews in Dadaab, Kenya (Jun 2011)Human Rights Watch, *You Don't Know Who to Blame*, at 32.
137 US Department of State, *2010 Human Rights Reports: Somalia*.
138 BBC News, *Timeline: Somalia*, BBC NEWS ONLINE, last updated Jul. 20, 2011, available at http://news.bbc.co.uk/1/hi/1072611.stm (last viewed August 30, 2011).
139 See for instance, Jeffrey Gettleman, *Veiled Bomber Kills 3 Somali Ministers*, NEW YORK TIMES, Dec. 3, 2009, available at http://www.nytimes.com/2009/12/04/world/africa/04somalia.html (last viewed Aug. 10, 2011), Xan Rice, *Suicide attacks kill dozens in Somalia*, Guardian, Oct. 29, 2008, available at http://www.guardian.co.uk/world/2008/oct/29/somalia-suicide-attacks (last visited Aug. 10, 2011) and BBC News, *Somali suicide attackers hit Mogadishu airport*, BBC NEWS ONLINE, Sep. 9, 2010, available at http://www.bbc.

co.uk/news/world-africa-11246394 (last visited Aug. 10, 2011).
140 Associated Press, *Somalia: Peacekeepers Attacked*, NEW YORK TIMES, May 30, 2011, available at http://www.nytimes.com/2011/05/31/world/africa/31briefs-Somalia.html (last visited Aug. 10, 2011).
141 Bill Roggio, *Shabaab suicide bomber kills Somali interior minister*, LONG WAR JOURNAL, Jul. 10, 2011, available at http://www.longwarjournal.org/archives/2011/06/shabaab_suicide_bomb_1.php (last visited Aug. 10, 2011).
142 There is no agreed number of deaths and several sources indicate significantly higher casualty figures than the relatively conservative estimate cited here (see e.g. *Mogadishu Truck Bomb Kills Dozens*, THE GUARDIAN, Oct 4, 2011, available at http://www.guardian.co.uk/world/2011/oct/04/mogadishu-bomb-leaves-dozens-dead (last visited: Oct. 31, 2011) citing at least 65 deaths).
143 Mohammed Ibrahim and Jeffrey Gettleman, *Truck Bomb kills dozens in Somalia's capital*, NEW YORK TIMES, Oct. 4, 2011, available at http://www.nytimes.com/2011/10/05/world/africa/truck-bomb-kills-dozens-in-somalias-capital.html?_r=1&ref=africa (last visited Oct. 6, 2011).
144 BBC News, *Huge Somalia suicide car bomb kills dozens in capital*, available at http://www.bbc.co.uk/news/world-africa-15166107 (last visited Oct. 6, 2011).
145 AMISOM Press release, *AMISOM Condemns Suicide Attack on Mogadishu Seaport*, Jun. 9, 2011.
146 CIVIC War Victims Monitor, 9 Jun 2011, available at http://warvictims.wordpress.com/2011/06/09/somalia-suicide-bombers-strike-mogadishu-port-four-killed/ (last visited Sep. 12, 2011).
147 Interview 25a, Mogadishu, Somalia (Jun 2011).
148 See, for instance, Geneva International Centre for Humanitarian Demining, Improvised Explosive Devices – A Growing Threat to humanitarian Demining Operations?, Sep. 20, 2010, available at http://www.gichd.org/fileadmin/pdf/technology/Technology-Workshop-2010/R-7Sept2010-ThreatToHumanitarianOps-TechWS.pdf (last visited Sep. 12, 2011).
149 Observation of CIVIC personnel on missions in February and Jun 2011. See also interviews #10a and #16a, Mogadishu, Somalia (Jun 2011).
150 Interview 8a, Nairobi, Kenya (Jun 2011).
151 Adam J. Bihi, *Building from the Bottom: Basic Institutions of Local Governance* (Geneva: WSP/UNRISD, 2000); Ioan M. Lewis, *A Pastoral Democracy* (Oxford: Oxford University Press,1961).
152 The World Bank estimates that around 60% of Somalia's population is nomadic. *See* The World Bank, *Socio-Economic Survey Somalia 2002*, 2003, at xiii, available at http://siteresources.worldbank.org/SOMALIAEXTN/Resources/Socio2prelims.pdf (last visited Aug. 30, 2011).
153 Interview #37, Mogadishu (Jan 2006) and #12d, Mogadishu (Jun 2006).
154 Interview 24a, Mogadishu (Jun 2011).
155 Central Intelligence Agency, *CIA World Factbook*, available at https://www.cia.gov/library/publications/the-world-factbook/geos/so.html (last visited Aug. 30, 20011).
156 The largest minorities are Bantu, Benadiri, and Barawans. While generally well integrated into the daily life of Somali society they stand outside of the extended kinship system and the protection it provides. Their security situation is thus tenuous and often depends on an unstable "adopted" status within a big Somali clan. Especially in the initial chaos following the fall of Siad Barre's military regime in 1991 and the UN withdrawal in 1995, many of the minorities were victims of severe abuses and several massacres. While the general situation has improved since the basic security dilemma of minority groups remains the same and is tragically illustrated by occasional incidents. For instance, one member of a minority group recalled a 1996 militia massacre of around 50 members of his tribe, which he only survived by hiding under the dead bodies. *See* Interview #43, Somalia (Jan. 2006). *See also* Menkhaus, *supra* note 16, at 22 text accompanying note 14.
157 Interview #3, Mogadishu (Jan 2006).
158 Sheikhs, in Somali society, are highly respected learned men of religion. Their role is essentially "to mediate between men; and through the Prophet between man and God." *See* Lewis, *Understanding Somalia and Somaliland*, at 16.
159 Interview #29, Somalia (Jan 2006).
160 Lewis, *Understanding Somalia and Somaliland*, at 28.
161 Telephone interview #1d (Sep 2011). See also, subsection (c), below.
162 Interview #8, Mogadishu (Jan. 23, 2006).
163 Michael van Notten, *The Law of the Somalis: A Stable Foundation for Economic Development in the Horn of Africa* (Trenton: Red Sea Press, 2005), at 40.

164 Menkhaus, *Somalia: State Collapse And The Threat Of Terrorism*, at 32.
165 *Ibid.* at 32 (footnote 28).
166 See subsection (c), below.
167 The description of the administration of Xeer is based on the author's interviews with Somali elders (*see especially* Interview #8, *supra* note 161; Interview #9, Mogadishu (Jan. 23, 2006); Interview #13, #14 *and* #17, Mogadishu (Jan. 24, 2006); interview #45, Somalia (Jan. 26, 2006)) and with traditional law experts (*see especially* Interview #12, Mogadishu (Jan. 24, 2006); Interview #30, #31, #32 *and* #33, Mogadishu (Jan. 26, 2006)).
168 Elders are in some cases also referred to as "odays", "sultans", "ugas" or "mallachs". *See* interview #8, *supra* note 89.
169 Van Notten, *The Law of the Somalis*, at 64.
170 There is, however, much disagreement amongst Somali experts regarding the level of power still wielded by elders and the influence of the Xeer system in general. See, for instance, interviews #32 and #33, Mogadishu (Jan 2006), interview #18a, Mogadishu (Jun 2011), and interview #20, Nairobi (Jun 2011).
171 Interview #30, Mogadishu (Jan 2006).
172 Interview #13, Mogadishu (Jan 2006).
173 Interview #17, Mogadishu (Jan 2006).
174 Interview #13, Mogadishu (Jan 2006).
175 This tradition also explains the significant resistance with which many Somalis meet the use of extreme corporal punishments (*huddud*) by the Islamic courts and al-Shabaab.
176 Interview #13, *supra* note 104.
177 Lewis, *Traditional Conflict Management in Contemporary Somalia,* in *Traditional Cures for Modern Conflicts: African Conflict "Medicine"* 187, 191 (I. William Zartman, ed.; Boulder: Lynne Rienner, 2000).
178 See various interviews, further discussed in Chapter 4, below.
179 Van Notten, *The Law of the Somalis,* at 70-71
180 Interview #30, Mogadishu (Jan 2006).
181 Interview #23a, Mogadishu (Jun 2011).
182 Van Notten, *supra* note 91 at 69.
183 Interview #19, Somalia (Jan 2006).
184 *Ibid.*
185 Interviews in London (Jul 2011).
186 See, for instance, interview #17, Mogadishu (Jun 2011).
187 Kenneth Menkhaus, Traditional Conflict Management in Contemporary Somalia*,* at 191.
188 Interview #47, *supra* note 124.
189 Interview #25a, Mogadishu (Jun 2011).
190 Interview #48, Somalia (Jan. 2006).
191 Interview #29a, UAE (Aug 2011).
192 Interview #16, Somalia (Jan 2006).
193 Interview #29a, UAE (Aug 2011).
194 US Department of State, *Background Note: Somalia*.
195 Much more than many other overwhelmingly Islamic cities in the Middle East or Asia, Somali towns like Mogadishu or Kismayo grind to an almost complete halt at the time of the five daily prayers.
196 Interview #29, Mogadishu (Jan 2006).
197 A mildly narcotic plant widely chewed in Somalia.
198 International Crisis Group, *Somalia's Islamists*, International Crisis Group, Dec. 2005, available at http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/somalia/Somalias%20Islamists.pdf (last visited Aug. 30, 2011), at 20 n.150.
199 BBC News, *Somali Islamists Al-Shabab and Hizbul-Islam to 'Merge'*, BBC NEWS ONLINE, Dec. 20, 2010, available at http://www.bbc.co.uk/news/world-africa-12038556 (last visited May 31, 2011).
200 Human Rights Watch*, Harsh War, Harsh Peace*, at 14-15.
201 Interview #19, Mogadishu (Jan 2006).
202 *Hadith* is a formal tradition deriving from the Prophet.
203 Interview #26a, Mogadishu (Jun 2011).
204 Interview #29, Mogadishu (Jan 2006).

205 Interview in Somalia (Aug 2006).
206 Interview #7, Somalia, (Jan. 2006) (describing the trial of an accused but allegedly innocent female thief and consequent amputation of her hand).
207 For one such example *see* BBC News, *Somali boy executes dad's killer*, BBC News Online, May 2, 2006, *available at* http://news.bbc.co.uk/2/hi/africa/4967108.stm (last visited Aug. 30, 2011).(Reporting the Islamic court-ordered public execution of a convicted murderer by his victim's son).
208 See, for instance, interview #29a, UAE (Aug 2011).
209 Interview #26a, Mogadishu (Jun 2011).
210 Human Rights Watch*, Harsh War, Harsh Peace*, at 24.
211 US Department of State, *2009 Human Rights Reports: Somalia*, March 11, 2010, available at http://www.state.gov/g/drl/rls/hrrpt/2009/af/135976.htm (last visited May 31,2011).
212 Sahra Abdi, *Somali Women Say Islamists Becoming more Draconian*, REUTERS, Feb. 7, 2011, available at http://uk.reuters.com/article/2011/02/07/uk-somalia-conflict-idUKLNE71305Y20110207 (last visited May 31,2011).
213 Daily Mail, *Whipped for Wearing a 'Deceptive' Bra: Hardline Islamists in Somalia Publicly Flog Women in Sharia Crackdown*, MAIL ONLINE, Oct. 16, 2009, available at http://www.dailymail.co.uk/news/worldnews/article-1220864/Whipped-wearing-deceptive-bra-Hardline-Islamists-Somalia-publicly-flog-women-sharia-crackdown.html (last visited May 31, 2011).
214 Interview with BBC News, video available at http://www.bbc.co.uk/news/world-africa-11873508 (last visited May 29, 2011).
215 See generally: Abdullahi Ahmed An-Na'im, Shari'a and 'Basic Human Rights Concerns', in *Liberal Islam: A Sourcebook*, ed. Charles Kurzman (New York: Oxford University Press, 1998), at 222.
216 Amnesty International, *Somalia: Amputation punishments are 'torture' says Amnesty*, AMNESTY, Jun 25, 2009, available at http://www.amnesty.org.uk/news_details.asp?NewsID=18282 (last visited May 31, 2011).
217 UN News Service, *Somalia: UN human rights experts condemn recent execution of teenage girls*, Nov. 11, 2010, available at: http://www.unhcr.org/refworld/docid/4ce2479319.html (last visted May 31, 2011).
218 Amnesty International, *Somalia: Girl Stoned was a Child of 13*, AMNESTY, Oct. 31, 2008, available at http://www.amnesty.org/en/for-media/press-releases/somalia-girl-stoned-was-child-13-20081031 (last visited May 31, 2011).
219 Reuters, *Somalia: Compulsory Viewing of Amputations as Punishment*, NEW YORK TIMES, Oct. 9, 2009, available at http://www.nytimes.com/2009/10/10/world/africa/10briefs-Somaliabrf.html (last visited May 31, 2011).
220 Interviews #51 and #52, Somalia (Jan. 2006) and interview #31a, UAE (Aug 2011)..
221 Menkhaus, *supra* note 16, at 10.
222 *Ibid.* at 20.
223 Interview #6, Somalia (Jan 2006).
224 Ibid.
225 Interview #11, Somalia (Jan 2006).
226 Interview in Somalia (details withheld).
227 Based on interviews conducted in the UK, the US, and the United Arab Emirates (Apr.-Jul. 2011).
228 Based on interviews conducted in Dadaab refugee camp and in the Eastleigh neighbourhood of Nairobi, Kenya (Jun. 2011).
229 Based on interviews conducted in Mogadishu and Southern Somalia (Jun. 2011 as well as Jan. and Aug 2006, and Oct. 2007).
230 While Somali refugees are generally promptly registered in refugee camps in neighboring states, in the large majority of cases it takes years for refugees to reach countries like the US or the UK. This means that even "recent" arrivals in such diaspora locations tend to have spent significant time outside Somalia.
231 Interviews in West London, Anaheim and San Diego.
232 Interview #9b, Dadaab, Kenya (Jun 2011).
233 Interview #2b, Dadaab, Kenya (Jun, 2011).
234 Interview#8b, Dadaab, Kenya (Jun 2011).
235 The level of importance attached to the material element of compensation was strongly illustrated by a meeting in Mogadishu observed by CIVIC in Jun 2011. Several AMISOM representatives met with the family of a child that had been killed in a traffic accident with an AMISOM vehicle. Despite the family's obvious

appreciation of the apologies and genuine regret expressed by AMISOM, their focus was very clearly on negotiating material compensation. See further section 5.B.a., below.
236 See e.g. interviews #1a and #19a, Nairobi (Jun 2011).
237 Interview #4b, Dadaab, Kenya (Jun 2011).
238 Interview in London (Jun 2011).
239 Interview 20a, Nairobi, Kenya (Jun 2011).
240 Some interviewees noted the traditional distinction made between men and women, according to which the payment is 100 camels for the killing of a man but only 50 for the killing of a woman. Amongst those that did, there was disagreement as to whether this distinction ought to be maintained in a modern system.
241 Interview, Dadaab Camp, Kenya, (Jun 16, 2011).
242 GDP per capita in 2008 is given as $298 by UNData, available at http://data.un.org/CountryProfile.aspx?crName=Somalia (last visited Jul. 2011). Average income per capita in 2009 is estimated at $600 by Douglas A. McIntyre, *Somali Pirates Are Getting Rich: A Look At The Profit Margins*, TIME, Apr. 15, 2009, available at http://www.time.com/time/business/article/0,8599,1891386,00.html (last visited Jul. 31, 2011).
243 See e.g. Interview in San Diego (Apr 2011).
244 See, e.g., Interviews #19a and #25a, Nairobi (Jun 2011).
245 Interviews in Dadaab, Kenya and Mogadishu (Jun 2011).
246 See section 2.B., above.
247 See e.g. interviews in Anaheim, US (May 2011), and interviews #1a-7a and # 19a-22a, Nairobi (June 2011).
248 Interview #22a, Nairobi (Jun 2011).
249 Interview #19a, Nairobi (June 2011).
250 Interview, London, (Jun 24, 2011).
251 Interview, London, (Jul 14, 2011).
252 Interview #8b, Dadaab, Kenya (Jun 2011).
253 Interview, London, (July 14, 2011)
254 Interview, London, (Jun 24, 2011).
255 Comparison of interviews conducted in Southern Somalia in 2003, 2005, 2006, 2007 and 2011. In earlier years, shari'a was widely and freely cited as the ideal basis of any dispute resolution mechanism and indeed wider social order. By 2007 and particularly 2011 such enthusiasm had notably declined. Most of those still supporting a shari'a-based system qualified their remarks by emphasizing the importance of 'proper' interpretation.
256 Human Rights Watch, *Harsh War, Harsh Peace*, at 39.
257 Sudarsan Raghavan, *Rising Somali civilian toll inflames anger at U.S.-backed African Union peacekeeping force as it battles Islamist militants*, WASHINGTON POST, July 18, 2010, available at http://www.washingtonpost.com/wp-dyn/content/article/2010/07/17/AR2010071702652.html (last visited Aug. 30, 2011).
258 CIVIC Worldwide, *Losing the people - The costs and consequences of civilian suffering in Afghanistan*, C CIVIC, Feb. 17, 2009, available at http://www.civicworldwide.org/healing-the-wounds/afghanistan/2010-report-addressing-civilian-harm (last visited Jun 19, 2011).
259 Bahati Ntama Jacques & Beth Tuckey, *Promoting International Support for Community-Based Justice Mechanisms in Post-Conflict Burundi and Uganda*, AFRICA FAITH AND JUSTICE NETWORK, Nov. 13, 2009, available at http://www.restorativejustice.org/RJOB/promoting-international-support-for-community-based-justice-mechanisms-in-post-conflict-burundi-and-uganda (last visited Aug. 30, 2011).
260 Also known as *Nyono Tonggweno ki Opobo* in Luo (stepping on the egg and Opobo branch).
261 Dennis Pain, *The Bending of Spears: Producing Consensus for Peace & Development in Northern Uganda* (London: International Alert, December 1997) 82.
262 Patrick Tom, *The Acholi Traditional Approach to Justice and the War in Northern Uganda*, CONFLICT RESOLUTION INFORMATION SOURCE, Aug., 2006, available at http://crinfo.beyondintractability.org/case_studies/acholi_traditional_approach.jsp?nid=6792 (last visited Aug. 30, 2011).
263 Barney Afako, B. (2002), *Reconciliation and Justice: 'Mato Oput' and the Amnesty Act*, ACCORD: AN INTERNATIONAL REVIEW OF PEACE INITIATIVES, available at http://www.c-r.org/our-work/accord/northern-uganda/reconciliation-justice.php (last visited Aug. 30, 2011).

264 Interview in San Diego, US (May 2011).
265 Agnes Nindorera, *Working Paper No. 102: Ubushingantahe as a Base for Political Transformation in Burundi*, Boston Consortium on Gender, Security and Human Rights, at 2, available at http://www.genderandsecurity.umb.edu/Agnes.pdf (last visited Aug. 30, 2011).
266 *Ubushingantahe* is, for instance, comparable to the concept of *Ubuntu* in South Africa, which is considered 'the values though which a human being shows that he or she is a true human being.'
267 Josh Perry, *You Cannot Compare Apples to Oranges: Ubushingantahe vs. Criminal Justice*, Africa Faith & Justice Network, Jun. 18, 2010, available at http://afjn.org/focus-campaigns/restorative-justice/147-commentary/837-you-cannot-compare-apples-to-oranges-ubushingantahe-vs-criminal-justice.html (last visited Aug. 30, 2011).
268 *Ibid*.
269 Nindorera, at 23
270 *Ibid*.
271 This section draws on interviews conducted with most of the senior AMISOM command in Mogadishu, including Force Commander, Contingent Commanders, Intelligence, Legal, CIMIC, Public Affairs, Military Police, and Medical. Interviews #9a–16a, Mogadishu (Jun 2011).
272 See Section 2.B., above.
273 Somalia Humanitarian Overview. Vol.3 Issue 11 – November 2010, United Nations Office for the Coordination of Humanitarian Affairs, at 3, available at http://ochaonline.un.org/somalia/SituationReports/ArchivedSituationReports/tabid/2880/language/en-US/Default.aspx (last visited Jul 28, 2011). See also interviews #14a and #15a, Mogadishu (Jun 2011)
274 Human Rights Watch, *You Don't Know Who to Blame*, at 17.
275 See Section 4.B.b., above.
276 CIVIC, *Somalia: AMISOM must Investigate Civilian Deaths, Provide Amends*, Oct 5, 2010, available at http://www.civicworldwide.org/media-center/press-releases/1/444-press-release-october-5-2010 (last visited Oct 6, 2011).
277 Op-ed article in Hiiraan online referencing AMISOM compensation but lack of accountability, available at http://www.hiiraan.com/op2/2009/nov/somalia_under_un_transitional_administration.aspx (last visited Aug. 30. 2011).
278 Interview #4b, Dadaab, Kenya (Jun 2011).
279 CIVIC notes again that such apologies and compensation would not necessarily be appropriate for intentional harm to civilians, which should ideally be handled through proper legal accountability mechanisms.