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The Limits of Punishment

Transitional Justice and Violent Extremism

SOMALIA CASE STUDY



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The Hard, Hot,
Dusty Road
to Accountability,
Reconciliation,
and Peace in Somalia

*Amnesties, Defectors Programs,
Traditional Justice, Informal Reconciliation Mechanisms,
and Punitive Responses to Al Shabaab*

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COVER IMAGE

SOMALIA. Ogaden. © Ferdinando Scianna/ Magnum Photos.

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Introduction

The poster case of state failure, Somalia has been battered by undulating phases of a civil war playing out among the country's many fractious clans, larger entities aspiring to statehood, warlords, and Islamist groups since 1991. Somalia has experienced multiple iterations of jihadist groups gaining control over large territories amidst state collapse, as well as extensive international efforts to stabilise and build state institutions. The country is thus an illuminating case-study of how militants administer territories and deliver governance, and how anti-insurgency and stabilisation efforts react to the militants' rule and populations who lived under it. It is also a rich laboratory for examining both state-led punitive policies toward jihadist militants and populations associated with them, and for non-punitive approaches. This report focuses on military, punitive, and non-punitive approaches to the potent jihadist militant group Harakat al-Shabaab al-Mujahideen, commonly referred to as al Shabaab.

The government of Somalia and the international community have principally relied on defeating al Shabaab militarily and there are no immediate prospects for negotiations with the group. However, the Somali government has also repeatedly, in an ad hoc manner and without any policy specification or clear legal consequence, declared temporary amnesties for al Shabaab defectors. Similarly, it has struck ad hoc political deals with splinter groups and, with international support, maintains a disarmament, demobilisation, and reintegration (DDR)-like program for low-level al Shabaab defectors. The government has not yet undertaken any similar DDR-like efforts toward the myriad of clan and warlord militias that exist in Somalia. Efforts at reintegration of former combatants from al Shabaab and beyond, and at clan and community reconciliation, also take place through non-governmental programs and traditional justice mechanisms.

Two sets of Somali government-led non-punitive processes have been undertaken: 1) ad hoc political deals with so-called high-value defectors, who, in exchange for defecting along with their followers, receive protection and red-carpet treatment from the Somali government and face no accountability or scrutiny for their past behaviour; and 2) DDR-like rehabilitation programs for al Shabaab defectors who, according to Somali intelligence officials' assessments pose a low-risk of returning to violent terrorism, proselytising or providing logistical support for al Shabaab. Defectors who are assessed as high-risk as well as high-risk detainees are sent to military courts, which are widely perceived not to adhere to international human rights standards, and often issued the death penalty.

The reception and screening phases of detention and defection processes are non-transparent. Civilians who lived under al Shabaab rule and were forced to work for the group in performing non-violent tasks, such as cooking and washing or paying, risk getting caught up in the screening process, and judged as low-risk defectors at best. Despite the development of draft standard operating procedures for screening, the risk of arbitrariness in determining who is low-risk and who is high-risk persists. Thus, even civilians who were only tangentially associated with al Shabaab risk being deemed high-risk and then facing the death penalty. Yet Somalis, particularly those who experienced al Shabaab's terrorist attacks, often applaud such extremely punitive measures.

The government-led effort that has received the most support from the international community is the program for low-risk defectors. It has registered the greatest improvements and progress in its operations over time, for example in terms of separating children from adults and improving exit procedures. But major challenges persist, including the role and presence

of Somali intelligence services at the rehabilitation facilities; little harmonisation across the centres; lack of any rehabilitation facilities for female defectors, detainees, and women who lived under al Shabaab rule and then came to be perceived as al Shabaab associates; the under-development of reinsertion and rehabilitation programming for receiving communities and the communities' reconciliation with former al Shabaab associates and among rival, subordinate and dominant clans; and the lack of job opportunities for former al Shabaab combatants and associates amidst overall extensive unemployment.

Beyond the challenges of the low-risk defector programs, several large problems loom over the amnesty declarations and government-led programs: the lack of a legal framework and the absence of certainty for potential defectors regarding what fate they can expect if they risk their lives to escape from al Shabaab; high corruption and lack of adherence to international human rights laws by Somali government institutions; the lack of a parallel effort to disarm and transform clan and warlord militias; persisting clan conflict and discrimination; and the country's prevalent politics of exclusion and marginalisation. These problems also permeate traditional justice mechanisms that are informally used to reintegrate al Shabaab defectors. In addition, their biased treatment of women and discrimination against minority clans perpetuates grievances. Yet efforts at trauma healing, forgiveness, and reconciliation among former combatants, local communities, and clans have been led by Somali non-governmental organisations (NGOs) for several years.

This report explores the balance and tensions between the need for forgiveness and healing and the desire for accountability and justice. While al Shabaab often provides the order that some communities prefer over chaos, clan discrimination, or rule of pro-government warlords, there is also significant resentment among Somali communities against al Shabaab brutality and crimes. Perceptions that high-value al Shabaab defectors receive a red-carpet treatment from the Somali government and that low-level defectors receive support such as literary, numeracy, and vocational training, in addition to religious de-radicalisation, augment the resentments. There is also a deep belief among many Somali civil society representatives that the root cause of Somalia's multifaceted problems is the profound and pervasive impunity of the powerful. They fear that non-punitive approaches, such as the high-value and even the low-risk defectors programs, only exacerbate this sense of impunity.

Clearly, non-punitive approaches directed at former low-risk al Shabaab combatants, clans aligned with al Shabaab because of prior discrimination, and populations who lived under al Shabaab rule, are badly needed. They are needed in order to prevent new injustices, achieve sustainable peace, and avoid endless cycles of violence, discrimination and counter-revenge. However, emphasising accountability, including in creative ways beyond imprisonment, as an essential part of non-punitive approaches, as well as in just punitive approaches is equally essential for a comprehensive peace.

This report proceeds as follows: The Context Section discusses the Somali military, political context, developments in recent years, the quality of governance by formal state institutions and al Shabaab, and societal attitudes toward those associated with the group. The next section reviews the design and programmatic content of current approaches to leniency, amnesty, and accountability – of government-led processes, traditional justice mechanisms, and informal reconciliation processes led by Somali NGOs. It describes the existing policy framework, the lack of an adequate legal framework, and the role of the amnesty and defectors program in the government's overall strategy toward al Shabaab. It then details the leniency policies toward high-value, high-risk, and low-risk defectors and evaluates their accomplishments and challenges, such as regarding women. Finally, the section details and assesses traditional justice and clan reconciliation mechanisms, such as *xeer*, as well as Somali NGO-led reconciliation processes.

The following section provides an overall assessment of current approaches in Somalia to amnesty, defectors programs, and high-value defector co-optation deals. It highlights, *inter alia*: the lack of transparency and consistency regarding the reception of defectors and the high-value co-optation deals, as well as screening challenges; the lack of legal certainty for defectors; and reintegration challenges. The section also emphasises the need to integrate into programmatic treatment for low-risk defectors the motivations of those who join al Shabaab or become associated with it, while recognising the role of grievances, exclusion, social and economic marginalisation, and corruption. It also raises the issue of foreign fighters among al Shabaab, a topic currently off the radar screen of existing government processes. The report concludes by offering a detailed set of policy recommendations.

In addition to reviewing existing background literature and reports on Somalia's amnesties, defectors programs, DDR-like efforts, traditional and transitional justice approaches, and security and political developments, this report is based on my field trip to Mogadishu, Somalia and Nairobi, Kenya in December 2017. I had previously conducted similar research on DDR-like processes in Somalia in March 2015, at the time visiting the facilities for defectors in Baidoa and Kismayo. During this December 2017 fieldwork, I interviewed 36 interlocutors, including officials from various branches of the UN Mission Assistance Mission to Somalia (UNSOM), United Nations Political Office for Somalia (UNPOS), officers of the African Union Mission in Somalia (AMISOM) and their international support partners, officials of the UK Embassy in Somalia, Somali government and intelligence officials and military officers, international DDR contractors, Somali DDR contractors, representatives of Somali NGOs and international NGOs operating in Mogadishu, representatives of the Somali business community, and Somali journalists and researchers.

1. The Context

Since 1991, after the collapse of the Siad Barre dictatorship, Somalia has been caught up in undulating phases of a civil war played out among various clans, larger entities aspiring to statehood, warlords, and Islamist groups amidst a profound meltdown of state institutions, including the national military and police forces. Despite extensive and repeated international efforts over three decades to stabilise the country and rebuild national state institutions capable of delivering order and public services, oftentimes the most effective stabilising actors have been Islamist groups.¹ Mogadishu-based national governments sponsored by various and often competing actors of the international community have for the most part proved unstable, prone to incessant political and clan squabbles, and unable to deliver even a modicum of acceptable governance while facing potent military opponents.² Conversely, while Islamist groups repeatedly succeeded in projecting their power throughout much larger parts of Somalia's territory, their hardline rule and version of sharia, as well as their often anti-Western and provocative regional agendas, repeatedly generated international pushback, including direct and indirect military interventions.

Conflict Overview

Al Shabaab has since the early 2000s sought to overthrow the government of Somalia, and between 2009 and 2011 it succeeded in its objective. The group represents merely the latest, though among the most radical, incarnations of such groups in Somalia. Declaring allegiance to al Qaeda and participating in terrorism abroad, al Shabaab espouses a doctrinaire version of sharia that is often considered extreme even by Somali standards.³ However, like its other Islamist predecessors, al Shahaab has also succeeded in providing order through brutality after years of civil war and foreign interventions.

Al Shabaab's rule emphasised backward aspects of sharia, with beheadings, stoning, amputations, and repression against women being both prevalent and visible. However, despite its enormous brutality, deep administrative deficiencies and the lack of a modern state that could deliver socio-economic progress in the world's poorest country, al Shabaab's rule also allowed city-level administrations to function. Its brutal but predictable rule was often better for business and basic economic functioning than constant contestation among rival clans and warlords.⁴ The group also took credit for the 2009-10 bumper crop of food, the best in seven years in desperately poor Somalia, before the onset of the 2010 drought. And although often drawing on Hawiye membership, it managed to portray itself as having a pan-clan identity. Al Shabaab nonetheless committed many governance mistakes; most crucially, it hampered the access of international humanitarian groups to Somalia during the 2010 drought and famine. The resulting deaths of over a quarter million people during the 2010-12 famine sapped much of al Shabaab's legitimacy.

However, al Shabaab is not the only militant actor in Somalia. More than 60 warring parties are present in the country, from clan and warlord militias to various other militant groups, such as the Sufi al Sunna and the Islamic State, a splinter group from al Shabaab located primarily in Puntland.⁵

Military Response to Al Shabaab

In 2012, a combination of African Union Mission in Somalia (AMISOM) forces from Ethiopia, Kenya, Uganda, Burundi, and Djibouti, clan militias, and the vestiges of Somali national forces (SNF), including the Somali National Army (SNA) and Somali National Police – supported by the United States, United Kingdom, European Union, Qatar, United Arab Emirates, Turkey, and private contractors – began wresting control of Somalia from al Shabaab, but the group remains deeply entrenched.

Between 2012 and 2015, AMISOM's 22,000 soldiers⁶ – SNF, and clan militias, supported by the aforementioned international actors – have progressively pushed al Shabaab into smaller parts of the country. But since 2015, these efforts have stalled and both AMISOM and the Somalia national forces have struggled to hold cleared territories.⁷ Somali national forces remain notoriously undertrained and underequipped as well as corrupt, and continue to lack both offensive and holding capacity.⁸ Al Shabaab still controls tracts of rural central, southern, and western Somalia and major roads throughout the country. It regularly takes over major towns, particularly as some AMISOM forces, such as those from Ethiopia, have started to withdraw. To the extent that new offensive operations against al Shabaab are mounted by ground forces, they are mostly conducted by clan militias and local warlords and their forces. These operations sometimes receive assistance from the local or state police forces known as darawish (these are mostly more institutionalised militias). AMISOM, like the SNA, relies on and uses clan militias, though these actors subscribe to no international standards of conduct, face no accountability for human rights violations, and engage in land and theft, extortion of local communities, clan discrimination and often use child soldiers.⁹ Although numbering in the tens of thousands,¹⁰ there is currently no defectors program or any other demobilisation program for militias. Eventually, some militia forces may be integrated into regular police or military forces, but many will not because of their high numbers, involvement in human rights violations, and lack of training. Human rights violations are also perpetrated by the Somali military, police, and intelligence services as well as AMISOM, again without any accountability mechanisms in place.¹¹

The AMISOM military mission is set to end in 2020. However, the absence of shared planning significantly hampers an effective transition to SNA control, should the SNA rapidly develop its capacity. The unannounced withdrawals of several Ethiopian military contingents in Somalia left behind significant power vacuums, which in turn were rapidly filled by al Shabaab. This has left local civilian populations vulnerable to al Shabaab retaliation.

Al Shabaab's current strength is estimated to be between 2,000 and 3,000 active combatants, though in 2017 it seemed to engage in intensified recruitment among Somalia's many unemployed young men. The group has also increasingly resorted to forcible abductions of children.¹² And while the frequency and number of security-related incidents fluctuated during 2017, the severity of attacks, from bloody terrorist incidents in Mogadishu to the takeover of towns, increased.

But these numbers belie al Shabaab's actual power. Although it is strongest in the lower parts of Somalia, such as the lower Juba and lower Shabelle areas, it is not geographically confined. It also retains operational military capacity in the northern sub-federal states of Puntland and Somaliland. South of Puntland some form of its presence is widespread. Al Shabaab also regularly conducts bomb attacks and assassinations in Mogadishu, as well as terrorist attacks abroad. Even major towns firmly held by anti-al Shabaab forces, such as Kismayo, where Ahmed Madobe's militias and the Kenyan Defence Forces rule, can be surrounded by territories held by al Shabaab.

Anti-al Shabaab actors, including AMISOM and the Somali national forces, thus rely on US air strikes and assistance from a US special operations ground presence to limit al Shabaab's often successful attacks against their installations. Yet, the intensified US air campaign has suffered the same limitations as AMISOM offensives: in the absence of holding military forces on the ground, the airstrikes merely disperse al Shabaab to other areas, including to Mogadishu.

The political context in Somalia remains as fraught and fractured as the military battlefield. Although sub-federal state formation has been under way in Somalia since 2015 – a positive development – the process is tense with inter-state and state-federal government rivalries over territories, control of armed forces, resource-sharing, and power-delegation. Clan discriminations and rivalries continue to prevail and debilitate governance, producing hung governments that are unable to generate laws and policy at the federal level and are fraught with incessant political infighting and discrimination against minorities at the sub-federal level.¹³ The legal formalisation of four out of Somalia's existing six states is yet to take place. Some emerging state-level authorities and other powerbrokers in the state formation process also question whether Mogadishu should remain the country's capital. Recent efforts have been made to create pan-clan political parties as a result of new electoral legislation, change the rules of impeachment to limit this frequent tool of political and financial extortion, and strengthen the capacity of the federal government to provide revenues to sub-federal entities. Such efforts are a beacon of hope that the political and clan infighting could diminish in the future.

However, many human-development assessments still consider Somalia to be the poorest, least developed, and most unstable and corrupt country in the world. It is also critically dependent on foreign aid. Thus, it is not surprising that the capacities of the federal and sub-federal governments remain very limited and are often constrained to the national or state capital. Formal taxing capacity also remains constrained.

The Politics, Governance, and Persistence of Al Shabaab

In the context of persisting clan and political infighting, al Shabaab finds a constant lease on life. It continues to adroitly insert itself into clan rivalries. The rapacious and predatory abuse of power by official ruling entities, including land theft, enables it to obtain local support or at least acceptance. It tends to offer its protection to minority clans against dominant clans, mitigating clan conflict, while also appearing to be pan-clan. In fact, after al Shabaab is displaced from an area, there is often a noticeable rise in clan conflict, and associated land and resource theft often explodes. Though containing significant numbers of Hawiyes, the membership itself is pan-clan.¹⁴

As an entity, al Shabaab is not isolated from Somalia's people or its powerbrokers. Some al Shabaab members tend to go in and out of the movement and they sometimes interact with their home communities. However, the extent of such fluidity depends on specific areas and the role of the individual within al Shabaab. Within a family, there may well be members in al Shabaab as well as in the state forces, often in communication with each other. Crucially, both political powerbrokers and powerful businessmen often rely on al Shabaab to maintain the security, exclusivity, and hegemony of their economic interests in particular areas, in exchange for paying al Shabaab zakat. Many powerful economic actors, engaged in exclusionary monopolistic deals and violence against rivals, thus see little benefit from an end to fighting in Somalia.

Moreover, al Shabaab is significantly better able to provide security for the movements of vehicles and individuals on the roads it controls than are other actors. Militias, police and SNA units often charge varying, multiple, and high fees along their segments of the road; and

cargo and people are still subject to ambushes, robberies, and rapes. In contrast, checkpoints manned by al Shabaab charge one uniform fee, whereby entering vehicles receive a receipt and people and cargo are allowed to proceed safely.¹⁵

Al Shabaab also outcompetes other actors in Somalia in its capacity to deliver justice and dispute resolution. It retains a reputation for delivering swift, effective, and, crucially, non-corrupt and fair rulings to disputes based on sharia. Thus, even people from government-held territories, and by some anecdotal accounts occasionally even policemen, go to al Shabaab for dispute resolution.¹⁶ In contrast, the formal judiciary is perceived as overwhelmingly corrupt, dominated by certain clans, and operating on the basis of outdated 1960s statutes, thus delivering dispute outcomes based on bribes and clan standing.¹⁷

The other main alternative for dispute resolution – and for the reintegration of al Shabaab members and of those who lived under al Shabaab rule – is traditional justice, such as *xeer*. *Xeer* is a form of justice to which most Somalis have exposure. But traditional justice mechanisms are neither uniform, nor static: they vary across time and territory. Furthermore, they are primarily focused on reconciliation among families and clans and deliver little accountability for individuals, thus perpetuating impunity.¹⁸ To address rape, for example, the perpetrator's family or clan will pay a fine to the victim's family, which may or may not share it with the actual victim and may even ostracise the victim. Moreover, *xeer* is not a neutral concept, it is a form of power which elders exercise to maintain control of their communities and discriminate against others.

With some simplification, al Shabaab recruitment messaging for international audiences (including the Somali diaspora) tends to centre on a sense of belonging, global jihad, and the protection of Somalia against infidel invaders. By contrast, recruitment messaging toward local youth tends to emphasise injustice and power abuse issues. It often exposes very specific local misgovernance, corruption, and grievances, such as: the usurpation of public resources private gain; the corruption of Somali courts and politics; and the view that the Somali elite-centric system is perpetuates economic, political, and social injustice.¹⁹ Some two-thirds of members join al Shabaab for economic reasons due to a lack of legitimate economic opportunities, or as a result of grievances against clan discrimination or abuses and corruption of local authorities.²⁰ Of course, recruitment is a complex process that also varies according to the place, the individual, and the needs of al Shabaab at a particular time. Forcible recruitment and clan-negotiated recruitment also play an important role.

However, al Shabaab also overreaches in the brutality and the tightness of control it imposes. Beyond brutal sharia punishment, such as stoning or cutting of limbs, which are hardly readily acceptable to most Somalis, the group also overreaches in other exercises of its power. For example, most Somalis, even in Mogadishu, have to pay *zakat* to al Shabaab or else risk punishment, such as in the forms of forced displacement or even death. Thus, many people, including those in Mogadishu and not only those who lived under direct al Shabaab rule, could in theory be held liable for financing a terrorist group if the government chose to prosecute them. Moreover, since 2016, these taxes dramatically increased, causing significant economic hardship.²¹

Views toward Individuals Associated with Al Shabaab

Perceptions toward individuals associated with al Shabaab vary enormously, ranging from acceptance to extreme ostracisation.²² Views are often based on whether a community, clan or family's experience with al Shabaab has predominantly been marked by brutality or the delivery of justice and protection services. The broader standing of a clan within Somalia's

power distribution also determines preferences between highly punitive or lenient approaches to individuals accused of al Shabaab association. Many local communities indicate they are afraid of ex-al Shabaab members returning to their areas. In some cases, the return of ex-al Shabaab members or people associated with the group produced initial euphoria that quickly gave way to pent-up resentments. UN officials dealing with DDR processes in Somalia and with providing services to al Shabaab defectors, for example, reported clan elders telling them: “Al Shabaab are our sons; but don’t leave us alone to deal with them.”²³

Pro-government forces and local militias have in many instances perpetrated acts of retribution against communities or clans that previously associated with al Shabaab or were ruled by al Shabaab. Such retribution has included extrajudicial killings as well as forced displacement. Displacement causes individuals to lose clan protection, which makes them further vulnerable to pro-government forces and local militias. Women who worked for al Shabaab or who were labelled al Shabaab “wives” have faced acute challenges in returning to their communities with their children. They are often seen by families and communities as disgraced; they cannot be married off again; and sometimes they are accused of being al Shabaab spies (since the group has in fact used women for such purposes). In some cases, they are expelled from the community.²⁴ Women who come from minority clans and/or are displaced face the highest risk of marginalisation.

Representatives of women’s NGOs in Mogadishu tend to support punitive approaches toward al Shabaab members and associates. In interviews, some representatives insisted on the need for lengthy prison terms, even in cases in which al Shabaab soldiers had grown up under the group’s rule and had only been exposed to the group’s ideology and portrayal of others as enemies. Neither did they support leniency for al Shabaab members who had been forcibly abducted by the group, even in the cases of children or women.²⁵ Women representatives expressed fierce opposition to broad amnesties that did not include prison terms for the gravest violations, let alone truth telling or apology requirements. Women’s NGOs in general want to see beneficiaries of defectors programs subjected to some forms of accountability. This is not surprising, as women are deeply vulnerable to abuse and mistreatment within and beyond the dynamics of the conflict. Overall, women continue to be highly subjugated in Somalia both in traditional clan structures and in their formal political role. The formal role of women in politics continues to be contested, with women still significantly under-represented in government positions. Although under Somalia’s provisional constitution, thirty percent of the seats were reserved for women, Somali elders objected to that quota until the last minute.

Demands among women’s NGOs for accountability and their opposition to broad amnesties, resonate to an extent with a wider sentiment among Somali civil society and human rights activists that the root cause of Somalia’s problems is pervasive impunity of powerbrokers – politicians, businessmen, or militant actors. Many Somali civil society members interviewed for this report expressed deep scepticism and outright opposition to amnesty or alternative justice processes that seem to perpetuate the lack of individual accountability. This includes clan justice – *xeer* – which is seen as helping to resolve disputes, but also exacerbating individual impunity since individual crimes are settled through payments by families and clans, with no punishment necessarily assigned to the perpetrator. These civil society representatives call for the need to enforce human rights, demand the punishment of those individuals who commit crimes, and urge the international community to press for accountability from the Somali government.

This desire for punitive custodial punishments, not merely restorative justice and reconciliation, is also embedded in long-standing practices in Somalia, such as informally sending those who deviate from social norms to prison. For example, communities and families bribe judges

to sentence their young family members to prison for socially misbehaving for a few weeks or months at a time or directly bribe prison officials for temporarily accepting them there as punishment. This informal practice is meant to contribute to “rehabilitation.”²⁶

2. Overview of Current Approaches to Amnesty, Leniency and Accountability

Despite significant challenges faced by counterinsurgency and counterterrorism efforts in Somalia, the overall objective of the Somali government and the international community remains to destroy and weaken as much as possible of al Shabaab's military capacity on the battlefield. Currently, no formal process of negotiation with al Shabaab exists and the formal position of the international community, such as the United Nations as well as individual countries, is that it does not negotiate with al Shabaab.²⁷ Some European and Middle Eastern countries involved in Somalia are more willing to explore such a conflict-ending mechanism; others, such as the United States, are concerned that the group would not adhere to any negotiated deal and instead use negotiation to strengthen itself militarily, particularly on the cusp of AMISOM's departure.²⁸

Moreover, it is not clear that peace negotiations with al Shabaab are an attainable prospect at this stage. President Mohamed's early post-inauguration announcement that he was open to a dialogue with al Shabaab generated some enthusiasm within Somalia; however, it was rapidly eclipsed by al Shabaab's terrorist attacks, including in Mogadishu.²⁹ Certainly, the group itself has not responded positively to any overtures for negotiations, because it believes that with AMISOM's planned departure, time is on its side. Initial efforts several years ago, including those by the Gulf countries to initiate some negotiations with al Shabaab and its precursor, the Islamic Courts Union (ICU), rapidly collapsed due to disagreements and a lack of interest among international actors, Somali authorities, and the militant groups themselves.

Despite the lack of consensus and the challenges inherent in, the formal peace negotiation process with al Shabaab, both the international community and Somalis have, informally, become more open to acknowledging that it may not be possible to fully defeat al Shabaab on the battlefield. Somalia has thus in recent years experimented with a range of leniency measures aimed at inducing defections from the group. These include ad hoc presidential declarations of amnesty for those who turn themselves in, and a range of processes for handling al Shabaab defectors, detainees, and others associated with the group.

These processes include: Somali government deals with high-value al Shabaab defectors; formal justice processes for high-risk detainees and defectors; DDR-like processes for those assessed to be low-risk defectors or detainees; and traditional clan-based justice mechanisms (xeer). The Somali government expects the high-value defectors to deliver the greatest security and intelligence rewards, either by actively fighting al Shabaab or inducing further large-scale defections by members of their clans or network. The Somali government makes deals with high-value defectors on an ad hoc basis and the recipients of such deals, including top-level al Shabaab commanders, can expect to be granted nearly complete impunity and awards of economic and political privileges. High-risk defectors and detainees, by contrast, will face judicial prosecution and frequently receive the death penalty. Low-risk defectors who go through the DDR-like processes experience the most formalised demobilisation, de-radicalisation, and reinsertion programs and have the highest chance of successfully reintegrating into Somali society. All processes are analysed in detail below.

Defectors programs are still primarily seen as a mechanism to complement and strengthen counterterrorism and counterinsurgency efforts, not as a predominant goal in itself.³⁰ That is, they are meant to entice the less committed members of al Shabaab to leave in order to

weaken the group militarily. International and Somali security actors in Mogadishu also see these measures as crucial to obtaining sources of intelligence for further military operations to disrupt al Shabaab.³¹ However, there is also increasing recognition among Somali government officials and international partners that rehabilitation and reintegration are important goals in of themselves, though such objectives remain contested.

Some Somali government officials, such as Abdirahman Osman, the former Minister of Information and later the mayor of Mogadishu, reverse the end of the conflict equation. These individuals see military pressure as a means toward encouraging defections and eventually coming to negotiations: “Those [defectors] who have been rehabilitated can be ambassadors back to their communities. . . . We know military pressure helps, but it is not the end game.”³² Similarly, when former al Shabaab intelligence chief Zakariya Ismail Ahmed Hersi surrendered on December 27, 2014, the highest profile case during that period, and received amnesty, the Somali counter-terrorism advisor Hussein Sheikh Ali stated: “We cannot kill every member or put every member in prison. the plan is to offer them a chance to leave – to give them an exit route where they can change their mind. So we must persuade them that they must come to a normal life. We’re talking about senior levels – a very few at the decision-making level.”³³

Because of a lack of transparency of the surrender process, particularly as to who and how many combatants and those living under al Shabaab control hand themselves in to either Somali authorities or AMISOM forces, no exact number of those who have surrendered can be ascertained. According to Somali government officials, some 2,000 al Shabaab combatants and people associated with al Shabaab have gone through various iterations of the program for low-risk defectors since 2012.³⁴ This number, however, does not include those recruited to become informants or even members of Somali intelligence services immediately upon surrender or those deemed high-risk and sent to detention and military courts.

The Lack of a Legal Framework for Amnesties, Defections and Prosecutions

Somalia’s legal system remains outdated and underdeveloped. Many existing laws dating back to Somalia’s 1962 penal code are woefully out of synch with Somalia’s existing realities as well as international legal statutes. That makes complying with international human rights standards, including under the auspices of an amnesty program, difficult. For example, the prevailing 1962 penal code does not fully define the crime of rape, as there is no notion that sex should be consensual. Instead, the existing law only goes so far as to prohibit the use of violence in sex.³⁵ Further, the process of updating and redrafting Somalia’s new constitution remains incomplete.

As with other crucial pieces of legislation, such as concerning counterterrorism or anti-corruption, there is a major legal gap surrounding the efforts related to amnesty and defectors. Despite multiple entreaties from the international donor community, Somalia has not clarified the laws surrounding the use of amnesty declarations and defectors programs.

An amnesty law, the drafting of which first began in June 2016, remains unfinished due to political disagreements that have to do far more with clan rivalries and infighting than any substance of the law. Some Somali political and security analysts claim that the government prefers to keep the terms of presidentially-declared amnesties (discussed below) loose and undefined, though the lack of details creates multiple legal and other operational challenges.³⁶ Major legal questions also remain as to whether the president of Somalia does in fact have the right to grant amnesty to militants and terrorists. While the constitution does give the president the possibility to pardon, some Somali legal experts argue that such a pardon only pertains to

those sentenced under criminal law, for example a custodial sentence.³⁷ They argue that the Somali constitution only gives the power of amnesty to a truth and reconciliation commission, but no such entity has ever been formed in Somalia.

Further, Somalia has not yet passed a terrorism law, the goal of which is to enable civilian courts, instead of military courts, to try terrorism suspects such as al Shabaab members. With respect to prosecutions, in the absence of a terrorism law, the legal basis on which military courts sentence alleged members of al Shabaab is not always clear. Mostly, military courts resort to the 1960s criminal code, but even then it is not always clear why and how they issue the death penalty. Since the 1960s code predates al Shabaab, membership in the group is not legally criminalised.

The low-risk defectors program is embedded in the Somali national security architecture, which was the result of an agreement between the Somali government and international donors. However, it has yet to be approved by parliament. Overall, no legal statutes govern the defectors program. The absence of a legal framework raises questions of legality, legitimacy, and sustainability.

Moreover, other peace processes are taking place in Somalia outside of the formal legal frameworks, such as a recent peace deal with Ahlu *Sunna* Waljama'a, a paramilitary group consisting of moderate Sufis opposed to al Shabaab and other radical Sunni militant actors. Like the high-value al Shabaab defector efforts, these are political deals arranged on an ad hoc basis and mostly do not entail any accountability mechanisms for former militants. Nor do they entail much clarity as to the current or future legal status of combatants covered by the deals, including in terms of accountability for the crimes they have committed.

The Use of Amnesties and Military Pressure to Induce Defections

The concept of amnesty is not new in Somalia. In the absence of an amnesty law, ad hoc presidential declarations have become the main vehicle for amnesty. Somalia's former president Abdullahi Yusuf Ahmed repeatedly granted amnesties for the ICU in the early 2000s. This practice was continued by subsequent presidents, who at various times have also granted amnesties to al Shabaab. However, these declarations have been characterised by a lack of specificity and credibility and most have been time-bound to a few weeks at a time, generating little traction among the militants whose economic needs and broader grievances were not clearly addressed. The relative success of some of these amnesties in producing defections appears to have had more to do with the acute military pressure on al Shabaab at the times the declarations were made, than with any particular features of the amnesty design.

Amnesty declarations have often been made for political consumption around major holidays, such as Ramadan, when clemency is popular, with little planning or details. Further, they have been followed by repeated government declarations of war on al Shabaab, particularly in response to major terrorist attacks perpetrated by the group. This confuses the Somali public about the seriousness of the military counterinsurgency effort and leniency measures, the specific parameters of the leniency measures, and the overall strategy against al Shabaab.³⁸ These amnesty announcements also suffer from the lack of political will to systematically design and implement them; as a result, they have been sabotaged by entities from within Somalia's security and political institutions.³⁹

In 2011, President Sharif Sheikh Ahmad (himself previously a commander-in-chief of the ICU) announced a broad amnesty for any al Shabaab members who would renounce violence and turn themselves in.⁴⁰ Although the offer referred to al Shabaab fighters in Mogadishu,

due to mounting military pressure on the group in 2011, this amnesty declaration successfully brought out 200 people from Johar. This group of 200 was comprised of militia members of a subordinate clan that had joined al Shabaab for protection. However, they could not return to their home community, which was still under al Shabaab rule, for fear of retaliation by the group. The government did not simply let the militiamen go; they were kept in a detention centre and ended up working for the Somali national security forces. At times, they felt coerced into collaboration with the military in order to get out of detention.⁴¹ Their fate stimulated conversation between international actors and the government of Somalia about the development of a defectors program, through which those who seek to disengage from the battlefield, whether in response to military pressure or periodic amnesty declarations, would be processed.

In September 2014, at a time when AMISOM and Somali national forces enjoyed the military upper-hand militarily as al Shabaab was steadily losing territory and exhibiting vulnerabilities, then-President Hassan Sheikh Mohamud announced a 45-day amnesty window for al Shabaab members to turn themselves in.⁴² That amnesty appears to have been prompted by the government's sense of momentum, as it came just after a US air strike that killed the leader of al Shabaab, Ahmed Abdi Godane. Because of the coincident high military pressure on al Shabaab, this amnesty declaration proved relatively successful, with the Ministry of National Security reporting that some 30 combatants a day turned themselves in during the window.⁴³ Others who sought protection from government forces and AMISOM under the amnesty declaration were people who lived under al Shabaab rule and were perceived by Somali government officials and the wider public to have been supporting al Shabaab. These include women who lived under al Shabaab rule and were forced to cook and clean for the group, and men who sold their goods to al Shabaab.⁴⁴ Since then, reportedly "hundreds" of alleged al Shabaab affiliates have turned themselves in to the authorities.

Other amnesty offers followed in January and September 2015.⁴⁵ The January 2015 announcement ostensibly specified some conditions of the amnesty – though these were, in fact, only objectives – including: "Recognition of previous crimes, Rejection of violence and rejecting al Shabaab, Embracing a peaceful resolution of conflict, [and] A commitment to play an active part in re-joining a community and contributing to its welfare."⁴⁶ That amnesty offer also outlined some disqualifying conditions, as President Hassan Sheikh Mohamud added in the declaration: "There are also some crimes which will not be subject to amnesty, and which will be subject to prosecution; crimes such as murder and rape. But even those who have committed such crimes could join the peace process after they have served their sentences."⁴⁷ Nonetheless, this disqualification of some crimes has been repeatedly violated for so-called high-value al Shabaab commanders who defect, as is discussed further below. Such broad amnesties for al Shabaab commanders have been the most controversial ones among Somali politicians, civil society, and academics.

Over time, presidential announcements of amnesty have come to emphasise that defectors will be treated well and benefit from educational and employment opportunities. Such was the spring 2017 amnesty declaration by President Mohamed Abdullahi Farmajo.⁴⁸ The impact of such promises on stimulating defections beyond the effect of military pressure is unclear. However, presidential declarations of amnesty may serve as a communications tool, signalling the possibility of leniency for defectors.

Finally, it is important to note that responding to an amnesty window does not appear to be the only avenue toward entering a defection program. For instance, although the spring 2017 60-day amnesty deadline has expired, defectors continue to leave the battlefield and areas of al Shabaab control and are handed over for processing through the Defectors Rehabilitation Program for low-risk defectors.

High-Value, High-Risk and Low-Risk Defectors

Those who defect are sorted into two programs: one for high-value defectors who individually negotiate their leniency terms with the Somalia government, a form of co-optation deal; and one for low-value individuals that further sorts them into high-risk defectors who face military courts where there is a high chance they will be issued the death penalty; and low-risk defectors who go to DDR-like facilities. This section will first assess the co-optation deals with high-value defectors; next, it will analyse screening processes for low-value defectors; and finally, it will assess the treatment of high-risk and low-risk defectors.

High-Value Defectors

Although incidents of high-value defections had occurred earlier, the high-value defectors program was constructed as a policy in 2015 by Somalia's national security advisor and the director general of the National Intelligence and Security Agency (NISA).⁴⁹ The goals of the policy are to fragment and weaken the group, and ostensibly to facilitate long-term negotiations, though no elements of the latter have been specified.⁵⁰

The government of Somalia has not established any formal or systematic way of assessing who qualifies as a "high-value defector." The common understanding is that these are al Shabaab commanders, or sometimes clan leaders and powerful warlords who aligned themselves with the group, who have the capacity to encourage many of those loyal to them to also leave al Shabaab, if they choose to make a deal with the government. There is no definition of what constitutes "many followers": in recent deals, the number has been in the tens.⁵¹ Beyond the immediate number of fighters that concurrently defect with the leader, such high-value defectors are expected to encourage further splintering within and defections from al Shabaab. They do this by inducing other members of their clan to also abandon the group or by motivating other Shabaab leaders and their followers to leave the insurgency through the example of how well they are treated.⁵² These defectors are also expected to provide valuable tactical intelligence for military strikes or strategic intelligence, such as on factions within the group or on its logistical chains, e.g., how explosives are smuggled into major cities for terrorist attacks.

Potential high-value defectors negotiate their co-optation deals with the government prior to defection on an individual basis. They thus have some degree of certainty before leaving al Shabaab that they can expect full impunity at least within Somalia at least if and when they defect, as evidenced by past practice with such high-value defectors. However, since the terms of the deal are kept secret from both the Somali society and international actors, it is difficult to ascertain what explicit, if any, guarantees against future prosecution they are given. Since the deals are secret and not codified by law, there is the possibility that future Somali governments or legislation may vacate them. Moreover, should any such defectors be listed under international terrorism sanctions, the bargain struck with the Somali government actors might not be respected by international actors. Despite the lack of such legal and political certainty, some twenty individuals designated as high-value have taken advantage of such deals and switched their allegiance from al Shabaab to the government. They may be motivated by the prospect of accessing immediate medical care, securing formal political power in the formation of sub-federal states, or escaping from al Shabaab retaliation if they had fallen out with the group. Since they oftentimes retain military capacity in the form of militias, they can reengage in fighting later if the deal collapses, is no longer advantageous, or another government reneges on the deal.

The deals are negotiated on an individual and ad hoc basis between the defecting commanders the president and prime minister of Somalia, and perhaps some influential clan leaders and politicians. There is no legal framework that dictates the way in which international donors

or partners, beyond international intelligence agencies, can be involved in the process. The terms of the deals are not announced publicly, nor are they shared with the Somali parliament. Further, they have not been accompanied by any truth-telling mechanisms, such as a demand that beneficiaries publicly or privately disclose what crimes they have committed.⁵³ In some cases, deals have been struck with former al Shabaab commanders who had previously been sentenced to death by execution by Somalia's military courts. However, since Somalia's military courts tend to sentence most al Shabaab fighters to death simply on the basis of the 1960s criminal code – in processes that are utterly opaque and not public – the sentence itself is not indicative of the acts that these individuals had committed.⁵⁴

Mostly, it appears that the high-value commanders who have been able to strike such deals with the Somali government can enjoy the government's protection, a life of entitlement in Mogadishu or other major Somali cities, and formal or informal robust participation in Somalia's political and economic life.

Somali civil society representatives, human rights activists, and at least some businessmen indicate a substantial discomfort with such deals. They believe that the deals perpetuate Somalia's fundamental problem of elites, warlords, and powerbrokers having no accountability to the citizenry. This impunity in turn fosters fractious paralysing politicking, poor governance, and fuels conflicts and significant human rights abuses. The critics also point out that such advantageous terms perversely encourage warlords and powerbrokers to merely re-invent their political affiliations and re-label their ideological orientation, while perpetuating their pernicious behaviour – which may involve discrimination against particular clans or other marginalised groups, exploitative and exclusionary economic policies, or human rights abuses.⁵⁵

The most prominent recent case of such “flipping” of a high-value al Shabaab commander took place in August 2017, when Mukhtar Robow, a former spokesman of al Shabaab and the group's deputy leader, defected. According to some, he did so because of his need to treat a serious illness. Although he has long been on the US capture-or-kill list,⁵⁶ since the deal, Robow has been leading a prominent political life in Mogadishu. In addition to receiving armed protection from the Somali government, he has been able to keep his personal militia of between sixty and three hundred fighters.⁵⁷ Like Robow, these fighters have not been subject to any judicial or other accountability processes – nor have they been required to disclose their actions while affiliated with al Shabaab. Robow's defection thus caused widespread consternation in Somalia. A Somali lawmaker, for example, argued: “It's as if bin Laden was suddenly named a minister or security chief. It's not a good thing when we give such credit to those who have killed innocent people.”⁵⁸

The government of Somalia presumably expects that Robow will either fight al Shabaab or use his importance in the Rahaweyn clan to persuade other Rahaweyn al Shabaab fighters to disarm. Somali and international political analysts in Mogadishu are concerned, however, that Robow's militia will remain accountable only to him and could potentially grow as a result of further defections. They also fear that Robow could potentially use an enlarged militia to destabilise the Southwest State, including its capital Baidoa, where he has large political standing and which is dominated by the Rahaweyn clan.

Moreover, some political analysts point out that Robow was never affiliated with al Shabaab for a long period of time and had actually split off from the group a long time ago. In fact, al Shabaab has sought to assassinate him since the time of his defection. It was only due to his ability to maintain his personal militia that he had avoided execution at the hands of al Shabaab. Given his lack of credibility with the militants (despite his clan affinity), the analysts question whether he can in fact deliver on the government's expectation to induce other al Shabaab defections. They also question whether he can in fact provide valuable and actionable intelligence.⁵⁹

Another example of a high-value defection that of Ahmed Madobe. Through close cooperation in anti-al-Shabaab operations with Kenyan Defence Forces operating in Kismayo and southern Somalia and US counterterrorism operations, he has actively fought al Shabaab in Juba State. In 2015, he arranged to be elected the president of Juba State, and prior to that in 2013, of the Jubaland region. Although he seems to have moderated his governance of the Juba State over the past three years, there were multiple early reports of his militia stealing land and other valuable resources from marginalised clans in southern Juba, thus pushing them into alliances with al Shabaab.⁶⁰ The Juba Intelligence and Security Agency (JISA) still reports solely to President Madobe and there is no visibility as to its operations, including its handling of high-risk and low-risk al Shabaab defectors, as explained below. Yet the Agency continues to be accused of human rights violations, harassment, and extortion.⁶¹

Red-carpet treatment and non-transparent deals for high-value defectors are widely resented by many Somalis for perpetuating impunity. As civil society leaders have warned, “There is a lot of anger festering against the crimes these so-called high-value defectors committed. Yet they are not even compelled to admit to them.”⁶² Somali analysts have suggested that amnesty should not apply to high-level al Shabaab leaders: “These are high-level terrorists who have ordered or overseen the killing, torture and maiming of hundreds of thousands of Somali citizens. Immunity for those who commit grave atrocities would not only contradict international law, it would essentially amount to state sanction of war crimes.”⁶³ Nonetheless, such deals continue to be struck.

The impact of these deals on the battlefield have varied: Madobe has fought al Shabaab aggressively, though he also generates recruitment for al Shabaab because of clan discrimination and resource theft. As of the writing of this report, Robow has yet to deliver other defections. Critics also point out that the deals have failed to penetrate al Shabaab’s core, with many high-value defectors being individuals who had already fallen out of favour with Shabaab’s inner circle.⁶⁴

The Screening of High-Risk and Low-Risk Defectors

The process for handling low-risk and high-risk defectors and detainees falls under the National Program for the Handling and Treatment of Ex-Combatants and Youth at Risk, a component of which is the Defectors’ Rehabilitation Program for low-risk defectors. While there has been some nominal formalisation of the sorting criteria for distinguishing high- and low-risk defectors in recent years, the process is still handled exclusively by Somali federal and state intelligence authorities, or sometimes AMISOM. The sorting process lacks transparency, with most Somali and international actors, such as the United Nations, unclear on how many or which individuals are eligible for the program.

Somalia’s National Intelligence and Security Agency and subordinate state versions of it, such as Juba Intelligence and State Agency, decide, who is high-risk and who is low-risk through interrogation of captured or defecting al Shabaab affiliates. Before 2017, the criteria for being considered low-risk versus high-risk lacked consistency and explicit definitions, which unsurprisingly often resulted in arbitrary decisions. Yet, the stakes were as high as they are now: low-risk defectors qualified for DDR-like programs, while high-risk ones were sent to trial.⁶⁵ Low-risk versus high-risk assessments were mostly based on the individual’s role in al Shabaab. Those who were believed to be amirs (i.e., commanders of some sort), who had engaged in the making of explosives, or who had killed someone were generally classified as high-risk. Those who had fundraised, preached jihad, or provided logistical support could be classified as either low-risk or high-risk.⁶⁶

However, thanks to extensive input from international partners, the Ministry of Internal Security has since drafted standard operating procedures (SOPs) to guide intelligence agen-

cies involved in the screening process, with the goal of reducing the arbitrary nature of such judgments. At the time of writing this report, the SOPs have remained in draft form since July 2017. While intelligence officials reported that the SOPs are already being used to make assessments in the field, there was no way to verify whether and how frequently they are actually implemented.⁶⁷ Thus, a lack of transparency regarding the screening of defectors persists.

The SOPs⁶⁸ are an important step forward from the previous highly arbitrary judgements and non-standardised categories, particularly as they also clearly state the rights of those being screened, including access to medical care and family visits. They further establish a 72-hour time limit for the assessment. After that, defectors are either sent to rehabilitation facilities or to prisons and detention, depending on their risk evaluation.

A written record of their entry into the screening process and their evaluation is supposed to be kept. But in practice, such a systematic record of entry available for Somali and international oversight does not exist. The international community has little oversight as to what happens outside of Mogadishu.

Other significant problems remain with the draft SOPs. The stated goal of the assessment is to evaluate “the likelihood that disengaged al Shabaab combatants will engage in any of the following activities:”⁶⁹ direct participation in violent extremist activity; training and/or recruitment of civilians; the provision of operational, organisational, or logistical support to al Shabaab; and the radicalisation of civilians. In other words, the goal is to assess whether the individuals will conduct such activities in the future. Yet, the assessment questions are heavily based on past behaviour and activities with al Shabaab. The SOPs assess 19 risk factors through: four questions about the individual’s personal history; three about motivations and context; five about previous engagement with al Shabaab; three about training and capacity, such as education; and four about the individual’s current attitudes, including religious fervour and views on democracy. Other information gained during the interviews is included in the overall judgements.

Beyond debating the validity of some of these questions (e.g. the individual’s support for or rejection of democracy) as predictors of violent behaviour, a bigger problem concerns the aggregation of the answers. Answers are given numerical values from 0 to 2. For example, if an individual was arrested for violence prior to joining al Shabaab, he or she is assigned a 2. If not, a zero. Yet, both risk factors, such as rejection of democracy, and mitigating factors, such as support for democracy, are weighted in the same direction. Thus, an individual who professes support for democracy, which is considered to mitigate against his or her future violent behaviour, is given a 2, instead of a 0 or a -2. The outcome is that both mitigating and risk factors point in the same, instead of the opposite, direction. Moreover, there is no specification in the assessment instrument of how to interpret the numbers and what the cut-offs for low risk or high risk are. Instead, the SOPs state that screeners should not consider their judgments beholden to the number. The problems of usability and the risk of arbitrariness thus loom large.

The lack of predictability in screening processes poses a crucial challenge for low-level al Shabaab affiliates considering defection: unlike high-value individuals who negotiate their deals with the government prior to defection, low-level individuals considering defection can have little certainty about the personal consequences of their decision. The lack of clarity regarding eligibility for amnesty and the non-transparency of screening processes means that potential defectors must risk their lives twice: first to escape al Shabaab; and second by taking on the risk that they may be screened as high-risk.

The opacity regarding who hands him or herself in to Somali authorities or AMISOM, who seeks their protection, and whom they detain remains a significant challenge. There is still no systematic database available to international or Somali oversight bodies indicating the

reception that will be given to those seeking protection, to defectors, and to detainees. Many women may simply be released immediately. Men may be pressured to become informants or join the intelligence service during the screening process, without ever receiving a high-risk or low-risk label.⁷⁰ The Somali public and the international community mostly see those assessed as high-risk only when they are executed in public after a military court finds them guilty.

High-Risk Defectors

Prior to the establishment of the defectors' rehabilitation centres, many, if not most, al Shabaab detainees were sentenced to death by military courts and executed in public.⁷¹ Under the existing system, only high-risk defectors and many captured individuals are sent to military courts where they face a high likelihood of being sentenced to death and executed. The courts and laws are widely seen as not providing basic rights to the accused, although these are enshrined in international human rights law and the Somali Provisional Constitution.⁷² No rehabilitation centres are available for high-risk defectors.

In general, most Somali intelligence and government officials maintain that they do not have the capacity to process, house and feed large numbers of high-risk defectors and detainees in facilities, particularly for prolonged periods – which is what would be required if they were to sentence these individuals to long-term prison sentences instead of execution.⁷³ While complaining that the international community predominantly supports facilities and processes for low-risk defectors, a top Somali intelligence official further argued that high-risk defectors need to be sentenced to death or else they will radicalise other detainees and facilitate escapes. He offered an example of al Shabaab holding a court within the central prison in Mogadishu and executing a prisoner as an example of such subversion.⁷⁴ International advisors confirmed that the Mogadishu prison is indeed not safe, and access to it remains risky for both international consultants and Somali officials.⁷⁵ The quality of Somali prisons is indeed by and large very poor.

Government officials also maintain that regular civilian courts do not have the capacity to prosecute al Shabaab detainees and high-risk defectors because of a lack of laws on terrorism, a lack of secure facilities, and because civilian judges are afraid of al Shabaab retaliation.

Clearly, the Somali military, law enforcement, and justice apparatus also lacks the capacity to collect evidence and mount effective prosecutions that would conform to international standards. As with the screening process, evidence and decisions are based mostly on interrogation, which may involve substantial coercion, and on information from informants and others “who know” the individual.⁷⁶ As with the overall screening of those who defected or were captured, there is little visibility as to who is sent to military courts. Thus, whether some high-risk individuals are held in detention for a long time without trial or after trial, or whether they are released through bribery or informal means, is not apparent. Nevertheless, corruption is widely suspected.⁷⁷

One exception to the overwhelming tendency of the military courts to sentence to death those they try for links to al Shabaab occurred in Baidoa. There, the court sentenced a number of al Shabaab members to prison. The international community has since supported the Baidoa prison by providing “de-radicalisation” training, religious re-education, and other rehabilitation services, as well as family engagement. The last element has been the most challenging, due to a loss of family ties, difficult security situation in parts of Somalia where prisoners' families reside, and discouragement by prison staff.⁷⁸ When the high-risk prisoners are about to be released, it is expected that the family will collect them at the prison and that they will be monitored for at least six months.⁷⁹

In response to the claims of the Somali government that it lacks the capacity to process high-risk al Shabaab defectors and detainees through civilian courts, the UN and other international partners have built a special secure court and prison complex in Mogadishu. This complex has 150 beds, as well as places for judges and prosecutors, and offers them a safe place to stay. This court is expected to try its first cases in early 2018.⁸⁰ The Somali government has endorsed the operations of the new facility, but securing the agreement from the Somali government to transfer cases from the military courts to this special court took three-and-a-half years. Yet to be resolved is how the issue of death penalty will be handled, as the UN does not support it.

Low-Risk Defectors

If defectors are lucky enough to be classified as low-risk, they can volunteer to be placed in one of three small-scale DDR-like⁸¹ facilities, or special facilities for children, all of which benefit from either UN or bilateral international financial and technical assistance.

These DDR-like facilities offer low-risk defectors an alternative to going to court. However, those who successfully complete the programs do not appear to receive explicit and legally-binding guarantees against future prosecution for past association with al Shabaab, particularly as no law governs the process. Rather, a discretionary decision is made to offer low-risk defectors the DDR-like program, with the implicit understanding that such defectors will not be prosecuted after completing the program for past association with al Shabaab.

Since in the judicial process, al Shabaab affiliates incur a very substantial risk of being sentenced to death, most low-risk defectors choose to go to the DDR-like centres. Thus, the full voluntariness of their choice can be questioned. Nonetheless, UN officials providing technical assistance to the low-risk defectors programs insist that UN redlines for engagement are: that the process is voluntary; that the centres are not misused as detention centres; and that children are separated from adults in the centres.⁸² All of these points constituted significant challenges through 2015,⁸³ and have since improved significantly.⁸⁴ In 2017, between 450 and 500 individuals were in the rehabilitation centres at any one time.⁸⁵

Three rehabilitation centres are currently in operation in Somalia: two in Baidoa and Kismayo, where the current implementing partner is an international organisation that for security reasons did not want its name disclosed; and another centre called Serendi in Mogadishu, where the implementing partner is a UK contractor (although the contractor has not requested that its name be withheld, for uniformity of treatment this report does not state it). The Serendi facility is funded by the governments of the United Kingdom and Denmark; the facilities in Kismayo and Baidoa by the government of Germany. The UN provides technical assistance to all of them. The Somali government is the owner of the national program and participates in the administration of the centres, with the goal of eventually fully administering the centres and their programming. A centre in Belet Wayne closed due to operational and funding challenges, as well as insecurity, though discussions are under way as to whether it should be re-opened.

All of these DDR-like facilities focus exclusively on ex-al Shabaab defectors, including ex-combatants and individuals who, while living under al Shabaab rule, provided services, such as cooking, cleaning or selling supplies, to the group. But they do not cover those associated with other armed groups. The rehabilitation process includes five pillars: outreach, reception, screening, rehabilitation, and reintegration.⁸⁶

The outreach program consists of radio broadcasts and social media campaigns, often featuring voices of low-risk individuals in the rehabilitation centres explaining how they are treated well. One such outreach effort is named “Be Among Your People,” and it emphasises the defectors’ eventual reintegration into society. Somali intelligence officers and international advisors

involved with the defectors program have also emphasised the effectiveness of personal radio or cell phone communications from former al Shabaab fighters who have gone through the low-risk defectors program to communicate the availability and benefits of such programs to others considering defection.

The reception at the front lines by Somali intelligence services, Somali military and police, AMISOM, and militias and screening by NISA remain opaque and problematic. However, the draft SOPs constitute a partial step forward, as discussed above.

The purpose of the rehabilitation process is to equip beneficiaries with the skills needed to socially, politically, and economically reintegrate back into Somali society. During the rehabilitation phase, in addition to receiving medical care, beneficiaries receive de-radicalisation and religious re-education aimed at eliminating radical beliefs, psychological treatment to address their trauma and grievances, (e.g. possible mistreatment from Somali authorities), and literacy education. During the rehabilitation phase, beneficiaries also interact with their family members through family visits or weekend leaves, a process that is supposed to help with their reintegration into society.

Recipients also receive vocational training, focused on building skills in construction, plumbing, mechanical repair, tailoring, barber services, agriculture and livestock husbandry – a selection typical of such vocational training in DDR and rehabilitation programs across the world. At times, more innovative training at the Baidoa facility also included driving lessons for possible jobs as taxi drivers. The fishery sector may provide another opportunity in Somalia. In all of these sectors, of course, Somalia's labour supply vastly surpasses demand for labour. Job placement for defectors remains a very difficult obstacle. Amidst Somalia's collapsed war-torn economy, persisting insecurity, grinding poverty regularly skirting famine, and a large youth bulge, jobs are scant for everyone. At times enterprises are also cautious to hire al Shabaab defectors, particularly if the group maintains a presence in the area and the community fears retaliation against defectors and associating with them.⁸⁷

Many defectors thus end up working for the security sector or join militias. In the short term, these may well be the most easily accessible jobs and such conversion may change the battlefield dynamics. However, in the medium term, such practices and outcomes perpetuate the militarisation of Somali society. The Somali economy and foreign aid can support a limited number of fighters in the SNA and police. Militias will eventually need to be dismantled, perhaps with some reintegrated into police forces, as currently planned. But many will not qualify, and their numbers exceed the planned total size of the police force. Salaries associated with formal and informal jobs in security services will dry up and Somalia will face the perpetual problems of armed men without resources extorting communities, engaging in predation, and being susceptible to violent clan rivalries and discrimination.

Reinsertion – and, in aspiration, reintegration – remains one the least developed and most challenging elements of the effort, with more programming hoped for in the future. Upon exit from the program, many low-risk defectors end up working in the security sector. However, monitoring beneficiaries after exit, which is crucial for assessing the program's effectiveness, is a challenge due to insecurity. A large presence of Somali intelligence and security services in reinsertion communities can draw the attention of al Shabaab and undermine the security of both defectors and receiving communities. Some beneficiaries refused to participate even in phone calls.

Indeed, the issue of security looms large in multiple ways over the programs. Paramount among them is the physical security of the rehabilitation centres and of the released defectors and their families from al Shabaab attacks. Such attacks sometimes occur very close to areas of return.

Attacks on the rehabilitated can also come from Somali security operatives, private militias, and rival clans in communities to which they return. The Somali government has no way of providing or guaranteeing security to the individuals as it does not control much of its territory. And although the program is meant to rehabilitate those posing a low-risk, security concerns for the community receiving them after they complete the program is also a crucial issue.

Compared to the state of the low-risk defector program in March 2015 when the author conducted a prior assessment, several elements have crucially improved. Among the most improved factors since 2015 is the predictability of exit from the three rehabilitation facilities for low-risk defectors. Until then, defectors were held at the Serendi facility for many years without any clear prospect for release. Even at the Baidoa facility, NISA officials often decided on the terms of release, at times making joining Somali intelligence or security service a condition for release.⁸⁸ In the cases of Serendi and Kismayo, and to some extent Baidoa during the 2012-15 period, the DDR-like facilities overlapped with detention. This was also due to the decision of Somali and AMISOM to handing over to those facilities persons rounded up on the battlefield and during clearing sweeps, even if they had merely lived under al Shabaab control. Now, the exit from the Baidoa and Kismayo facilities after three months is straightforward. It is also far more predictable and clear in Serendi, although there the length of mandated stay varies and exit is based on the approval of a committee, detailed below. The quality of service and rehabilitation deliveries also improved across the three facilities.

Some Somali analysts question whether the term defector, including its Somali translation, is appropriate, since Somali culture strongly disapproves of “defecting,” and “surrendering” is equally socially problematic.⁸⁹ And the stigma of the label “defector” may inappropriately penalise individuals who are better described as victims of the group. For instance, what about a cook who is running away from a village that had been under al Shabaab control? Should such a person be considered a defector or merely a victim seeking protection from the arriving AMISOM or Somali forces? He may well be deserving of rehabilitation aid, but should he be saddled with the label and stigma of “defector”? Accordingly, there is an effort underway to improve the Somali terms used for the program.

Comparing the Centres for Low-Risk Defectors

The programming design and content of the rehabilitation and reinsertion phases varies significantly across the centres. For all five phases of the low-risk defectors program, the UN has identified the harmonisation of the programming and the development of standard operating procedures as key priorities. Ongoing efforts to harmonise exit procedures and the service delivered across the facilities are important for the sake of fairness and equality of treatment that low-risk defectors receive.

The most important differences between the Baidoa and Kismayo facilities, on the one hand, and the Serendi facility, on the other, are: the length of the rehabilitation program; freedom to go in and out of the facility; the presence of NISA officials in the facility; the exit process; and emphasis on reintegration.

At Baidoa and Kismayo, the total length of stay from entry to exit is three months. While the implementing partner would prefer a longer program, a lengthier stay could not accommodate even the current flow of defectors. With emphasis on voluntariness, beneficiaries have a greater capacity to go in and out of the centre.

The Baidoa and Kismayo centres also limit the ability of NISA and other Somali security officials to have free access to the centre and to the defectors there. They do this to prevent problems they had faced in the past regarding the association of the defectors program with the use of defectors for intelligence provision, sometimes through coercion.⁹⁰ NISA officials, nevertheless,

are pushing for greater securitisation of the Baidoa and Kismayo centres, including unlimited access to them. They hail their continued access to the Serendi camp – even after the 2015 improvements – as the right model and stress that their screening process does not guarantee the weeding out of al Shabaab infiltrators. NISA argues that in order to ensure infiltrators cannot jeopardise the security of the centres, the defectors, and local communities, they need to be able to interrogate and monitor beneficiaries.⁹¹

Reinsertion and full re-integration of beneficiaries to their communities is a key emphasis of the Baidoa and Kismayo centres and an outstanding challenge, with more programming planned in the future.⁹² At various times, the international implementing partner has partnered with Soyden, a Somali NGO, to conduct community-based reconciliation activities with defectors. These include truth-telling, victims' narratives, and defectors asking for forgiveness of the community.⁹³ Soyden operates such community reconciliation programs in other areas and beyond the formal defectors program, as detailed below.

The Serendi camp for defectors started was founded in 2012 as an initiative of former Danish special operations forces officers and several Somali intelligence officials and entrepreneurs, with funding from the Danish government.⁹⁴ An ad hoc program in its initial years, it soon became mired with accusations of: multi-year detention of child and adult defectors; use of defectors, including children, for intelligence purposes; housing children together with adults; and not providing children with access to their families.

In 2015, the Serendi camp facility, with funding from the government of the United Kingdom, was taken over by a UK contractor as the implementing partner. Multiple UN officials and other interlocutors reported significant improvements of conditions and programming at the facility, including strong compliance with international human rights, humanitarian and refugee laws. All minors were transferred to UNICEF and its implementing partners and to Somali NGOs in 2015.⁹⁵ The stay is longer than at Baidoa and Kismayo, but does not exceed 12 months. If, after 12 months, an individual does not have a family and community to go to, or the area to which he would return is insecure, he can apply for a longer stay at the facility.⁹⁶ The standardisation and predictability of exit has been assessed by a representative of the UK contractor to be a great success and improvement.⁹⁷ With several hundred people released, the certainty of exit is a definite improvement over the pre-2015 practice of keeping individuals there for many years.

During an initial period of about two months, the beneficiary is not allowed to leave the centre. After this period, he can apply for weekend leave. Somali intelligence officials have easy access to the facility and claim to monitor beneficiaries during such weekend leaves,⁹⁸ though the robustness of such monitoring is questionable.⁹⁹

Exit is tailored toward release after six months, since the education package is designed around a six-month program. However, beneficiaries can submit an exit application at any time, with an expected minimum stay of between three and four months. A social worker at the facility works with the individual to prepare for the exit interview and certification of the exit board permitting his release. The exit board consists of NISA intelligence officials, officials of the Defectors' Rehabilitation Program, and Serendi Centre Management representatives. The approval of exit is based on several conditions, including medical approval and NISA certification that the reinsertion area is safe. While no application has yet been rejected, release can be delayed if these conditions are not met, or due to slow progress toward rehabilitation goals, particularly religious re-education.¹⁰⁰

Reinsertion and rehabilitation are a relatively new phase of focus for the UK implementing partner, as most of the funding has so far focused on the rehabilitation phase. Thus, the community programming conducted by the international implementing partner in Baidoa and

Kismayo – such as cultural and sports events or projects for youth at risk¹⁰¹ – has not yet been made part of the release package for beneficiaries in Serendi.¹⁰²

Rehabilitation of Children Associated with Al Shabaab

Like other militant actors in Somalia and even Somali intelligence and security forces, al Shabaab recruits many under eighteen, often forcibly. Moreover, many children who become associated with al Shabaab are born and live all their lives in al Shabaab controlled areas. They do not have any concept of life outside of al Shabaab control and may truly believe that they are defending their communities from dangerous infidels and apostates; or they may simply be obeying orders so as to survive physically and economically.¹⁰³

One of the great improvements of the defectors process as compared to the 2015 process has been the removal of children from Serendi and other Somali detention and prison facilities, and the establishment of separate rehabilitation facilities for them. Rehabilitation facilities for minors associated with al Shabaab, funded by UNICEF, have been established and administered by two Somali NGOs.¹⁰⁴ At the rehabilitation facilities, the Somali implementing partners provide medical and psychosocial support, as well as literacy, life skills, and vocational training (e.g. repairing cell phones, masonry or electrical work). Children are released to their families after a stay in the facility, if security conditions allow. Since many children come from al Shabaab controlled areas where their extended families still reside, a large number are not able to return home.

However, difficulties with the transfer of minors associated with militancy persist. First, UNICEF tends to become mostly aware of minors associated with al Shabaab once they are captured or once they defect. Persisting insecurity and difficulty of access impede the detection of minors associated with militias; nor are there sufficient enforcement mechanisms in place to ensure that such minors are handed over to UNICEF.

After years of unwillingness to comply with international laws and standards related to minors in conflict, according to UN officials, the Somali government now cooperates far more extensively with the UN on issues regarding under-aged combatants and al Shabaab associates, and recognises its international obligations.¹⁰⁵

However, difficulties still arise, including with sub-federal state authorities who do not want to comply with international regulations. In March 2016 in Puntland, for example, 96 children accused of participating in an al Shabaab terrorist attack were arrested and placed in adult prisons. It took many months for the UN to negotiate the transfer of most of them to UNICEF.¹⁰⁶ The perception of communities of the cities of Bosaso and Garowe, where al Shabaab attacks had taken place, as well as of some Puntland government officials, was that the children were dangerous terrorists, not victims without consent. There was significant pressure on the Puntland government to execute them. After months of negotiations, the UN was able to secure the handover of those under fifteen to UNICEF and its funded facilities in Mogadishu. However, as a Puntland law defined only those under fifteen as children, those over fifteen remain in prison in Puntland and have been sentenced to very heavy penalties of imprisonment for 20 years and in some cases the death penalty. UNICEF remains engaged with the Puntland authorities in trying to get the sentences dropped, and to get the government of Puntland to pass a juvenile criminal law.¹⁰⁷ The dispute over who is a child and a minor is merely one example of the many significant disjunctions between Somalia's laws and its international treaty obligations.

The UN continues to deal with Somali national and state authorities on the development of standard operating procedures for the screening and reception of children, including age determination and more, and for their handover to UNICEF.

Rehabilitation of Women Associated with Al Shabaab

As of the end of 2017, no rehabilitation facility exists for low-risk women defectors. Earlier, a women's section of the Baidoa rehabilitation centre closed due to: security concerns; community rejection of the facility due to rumours that it housed high-risk female al Shabaab agents; and lack of funding.¹⁰⁸ Discussions were under way about reopening a facility for women in 2018.¹⁰⁹ Currently, if NISA or AMISOM deem women who defected or who were captured to be low risk, they are released to their communities, if they are nearby, but with little transparency. Alternatively, they are released to areas where they were encountered or to which they were transferred by the security forces. Some may be able to return to their communities, while others may become internally displaced, making them highly vulnerable to persecution, physical violence, and economic hardship.¹¹⁰

Several instances of community retaliation against women considered to be “al Shabaab wives” have been recorded in various parts of Somalia, including in Kismayo and Baidoa. In those cases, local authorities and some community members wanted to expel from the area women accused of being associated with al Shabaab, and their children. Local authorities and communities often fear them, seeing them as al Shabaab spies, and do not want to associate with them. They may exhibit little empathy, even if the women had been forcibly married to al Shabaab fighters or had simply found themselves under al Shabaab control. There have in fact been instances of al Shabaab using both women and children as spies, much like the Somali intelligence services who use children for “finger-pointing” (the Somali expression for using informants to denounce al Shabaab associates). Women who bear children for members of the group are granted more freedom of movement and communications, such as easier access to cell phones. In some cases, these women – particularly wives of al Shabaab commanders – are even granted more informal influence than they would enjoy within traditional clan structures. Reports of such privileges further fuel community suspicions.¹¹¹

Women, particularly those from minority clans or who are internally displaced, currently suffer the greatest vulnerability and marginalisation. This is due to a lack of rehabilitation programs available to them, and their low standing in the clan hierarchy. The absence of rehabilitation facilities for low-level female al Shabaab defectors, associates, and victims is a major gap in existing programs. Moreover, in formal courts, women often do not obtain fair hearings and judgments, since corruption in the judicial system often privileges those who can pay greater bribes – rarely something a woman can do – or have greater political or clan influence. In the social sphere, women are highly vulnerable to community ostracism, retaliation, and expulsion, which can have severe implications for their safety and security and that of their children. This gap in formal government- and donor-supported programs is all the more acute given that traditional clan-based justice mechanisms such as *xeer* pose risks of marginalisation and mistreatment of women.

At the same time, women in Somalia are not merely marginalised, vulnerable victims. They are also important vectors of reconciliation. As mothers, they can influence their sons' vulnerability to al Shabaab recruitment. They can also facilitate defections, as sons seeking to leave al Shabaab often contact their mothers and ask them to pave the way toward community reintegration by reaching out to clan elders. Sons may also ask their mothers to contact NISA to obtain guarantees they will not be sent to military courts and killed. Sons may also reach out to male relatives to arrange negotiations with clan elders to accept them back, even if they do not go through the formal defectors programs.¹¹²

Traditional Justice Mechanisms, Such as Xeer, and Reconciliation

In addition to the above formal processes, traditional justice and reintegration processes through customary justice xeer councils also take place independently of the formal processes, or sometimes as part of the reinsertion/reintegration phase of the formal low-risk defectors program, such as in the Baidoa centre programming.

Customary justice xeer councils are administered by male judges of clans and rely on the oral tradition of understood norms and dispute resolution. It is unclear how many al Shabaab defectors and associates go through these informal traditional justice processes as a way to leave the battlefield and reintegrate into their communities without ever interacting with formal Somali authorities. The details of the process are also unclear, but it is reasonable to assume these processes vary substantially. On the surface, xeer seems to allow for significant reconciliation options, at least for males associated with al Shabaab. And that has indeed sometimes been the case. A key concept of the xeer system assumes the collective responsibility of the clan for crimes committed by an individual clan member. These crimes can be repaid collectively through the use of blood money or diya as collective repayment for crimes.¹¹³ Thus, two families or two clans can be reconciled after one committed crimes against the other, or after warring, through payments of compensation. Many have suggested linking xeer councils with existing defectors and DDR-like programs.¹¹⁴

But the customary xeer system comes with several difficulties for men accused of association with al Shabaab. Wealthier and more powerful clans often discriminate against other clans and sub-clans, and are the dominant or in some cases the only clans represented in the councils. The verdicts of the xeer councils cannot be appealed or challenged. In matters of reconciliation and more broadly, clan elders seek to and often do hold community lives in their hands. They can strongly influence or outright determine how a clan aligns itself in conflict, how the community votes, who can stay in the community, and who is thrown out, and what kinds of compensation or punishment are meted out.

Furthermore, if no compensation is agreed upon or if one party deems the compensation inadequate, the family or clan is permitted, and in fact required by honour, to retaliate. Retaliation may not necessarily target the actual perpetrator, but rather any member of his clan or family. Such cycles of revenge and counter-revenge have repeatedly taken place in Somalia since 1991, including vis-à-vis those associated with al Shabaab.¹¹⁵ Moreover, by not emphasising individual responsibility and instead privileging community-based compensation or revenge, the system downgrades individual culpability and accountability, thus failing to create deterrence against individual human rights abuses and other crimes.

Further, like the formal processes, the issue of women and children formerly associated with al Shabaab entails special challenges. The xeer system under-privileges women, who are not allowed to even directly address the male elders and must act through male representatives.¹¹⁶ If the woman comes from a subordinate minority clan, such as the Bantu, or is displaced and does not have clan protection, she is unlikely to receive any justice or to be able to (re)integrate into the local community. Such women can easily end up without any protection and resources. Moreover, being judged by a traditional council can create double jeopardy for women since a Somali woman has a dual clan status based on both her husband's and her father's clan membership.¹¹⁷ Thus she can face discrimination as a woman and as a member of a minority clan, even only by marriage. Since many minority clans ally with al Shabaab precisely because of their subjugated status, women who have a connection to those clans are highly vulnerable.

Somali NGO Reconciliation and Peace-Building Efforts

Somali NGOs play an important role in facilitating the formal program for low-level defectors as well as informal defection, and, more fundamentally, community reconciliation that enables acceptance and effectiveness of amnesty and defectors programs. The NGO Soyden, for example, has at various times been hired by implementing partners at Baidoa to facilitate the reinsertion of low-level defectors into their communities.

To that effect and beyond, Soyden organises various community reconciliation and reintegration programs by engaging elders, women's groups, and business representatives to mediate conflict and reconciliation with clans, such as over resources or grievances, and to accept back defectors. Programming for the latter includes trauma healing exercises, such as through drama, paintings, lectures, and the production of pictorial books in which victims draw their traumas.¹¹⁸ The NGO also provides training for clan elders, to encourage trauma healing and forgiveness. Among its flagship programs is one called Peace Tree, a voluntary 12-week program designed to teach empathy and forgiveness. Attendees are taught how forgiveness helps them break the cycle of violence, including by learning about emotional control and brain functioning.

By Soyden's count, some form of Soyden programming has been delivered to 3,900 individuals in 35 districts during the past seven years. Soyden self-assesses that its programs are highly effective, and those assessments are shared by some international consultants and representatives of implementing partners involved in defectors programs in Mogadishu.¹¹⁹ No independent evaluation could be conducted for this study. Nonetheless, the NGO also acknowledges multiple challenges, such as funding shortfalls, security concerns, and the need for involvement of local authorities not tainted by criminal behaviour. In the context of mediation between al Shabaab returnees and local communities.

3. Overall Assessment of the Current Approaches to Amnesty, Defectors Programs, and Co-optation Deals

Amnesty and defectors programs in Somalia play an important role in reducing the intensity of conflict and paving the way for eventual peace and reconciliation. Over the past decade, they have experienced important improvements, the most significant coming after 2012 and again after 2015 as a result of international community involvement. Its funding, technical expertise, and, crucially, insistence on compliance with international human rights standards and humanitarian laws have produced significant improvements in Somali policy design and implementation.

Still, major challenges remain that require joint Somali-international policy attention and persistence. The inability to meet optimal standards amidst persisting multifaceted violent conflict, difficult politics, and extremely low government capacity should not preclude international assistance. And the absence of an adequate legal framework, preferable as that would be, does not mean that the defectors program and amnesty offers should be suspended until the requisite laws are enacted by the Somali parliament. Due to the fractious nature of Somali politics, passing such laws could take years.

Out of the three government-led programs – for high-value defectors, high-risk defectors, and low-risk defectors – the one with the greatest involvement of the international community, i.e., the low-risk defectors program – has registered the greatest improvements. By facilitating disengagement from the battlefield, enabling low-risk combatants and al Shabaab associates to avoid military courts, and facilitating rehabilitation, the program saved lives – of al Shabaab associates and within communities. By enabling defections, both the high-value and low-value individual defections also hold the promise of weakening al Shabaab militarily. Nevertheless these hoped-for effects have not been robust or decisive so far.

However, the need for improvement persists across all three categories, as well as the related amnesty announcements. Simply relying on traditional clan mechanisms is not sufficient, as these processes themselves are not adequate and create high risks of unequal treatment. There is a need for greater interaction between formal government-led processes, internationally sponsored and facilitated processes, and the Somali people and communities. In addition, these processes require greater clarity, specificity, and legal certainty of these processes.

The Lack of Clarity and Certainty for Defectors

The ad hoc nature of the amnesty declarations, with unclear eligibility standards or attached conditions, is problematic. The relationship between amnesty declarations and various defectors programs remains unclear, with some individuals still defecting outside amnesty windows. Further, Somalia has yet to link amnesty declarations and defectors programs to an overarching strategy for ending the conflict. Due to arbitrary screening practices, a potential defector who is not a commander cannot predict whether he will be classified as low-risk or high-risk. Even a victim who merely lived under al Shabaab rule and out of necessity, provided some services or paid zakat to the group, cannot be sure what will happen to him if he defects. Thus, a potential low-value defector must risk his life twice – first to escape al Shabaab, and second in case he is classified as high-risk and thus meets military justice, and very likely the death penalty. Defectors also face legal uncertainty, as there is no legal framework for the defectors programs and amnesty declarations, and those who undergo the former successfully do not

appear to receive explicit guarantees against future prosecution for their association with al Shabaab. That lack of legal certainty applies even to high-value defectors.

Impunity and Victims' Rights

Conversely, a major deficiency of the high-value defectors program is the absence of accountability for serious crimes. The absence of a truth-telling accountability requirement at a minimum perpetuates impunity and undermines victims' rights. And since many high-value defectors retain their armed militias, the risk persists that they will rejoin the conflict against the government and particular communities.

Exclusion, Marginalisation, and Broader Accountability

A more comprehensive recognition of the motivations of individuals joining al Shabaab is crucial for improving rehabilitation services for defectors (as well detainees and prisoners) and for creating a bedrock for reconciliation and conflict mitigation in Somalia. Many Somali intelligence and government officials tend to be singularly focused on radical ideology as the principal motivation.¹²⁰ Thus, with the support of donors, they seek to build rehabilitation processes primarily focused on religious re-education. That is convenient because hiring imams to deliver religious re-education is relatively easy. It enhances the officials' patronage networks, regardless of the imam's credibility with those undergoing re-education.

However, recruitment in Somalia is in fact driven by grievances of power abuse and perceived injustice. Thus, for example, if clan discrimination persists, those who joined al Shabaab because they belonged to a marginalised minority clan will be highly vulnerable to retaliation by the dominant clan after they leave the rehabilitation program. Even if religious re-education changed their views, the new discrimination will produce new grievances and resentments. Eventually, they may feel compelled to take up arms again, even if with a different, non-jihadist, group. The persistence of exclusion, marginalisation, and power abuse can thus undermine and eviscerate even well-designed amnesties and defectors programs.

Reinsertion of Defectors to Communities

Reinsertion processes for al Shabaab defectors and people who lived under al Shabaab rule also remain underdeveloped, under-resourced, and inadequate. Resentment is growing in communities about al Shabaab abuses and broader impunity. New resentments are being generated as a result of what some Somalis perceive as privileging al Shabaab defectors while neglecting the community. Some even speak of a moral hazard, with those who joined al Shabaab temporarily qualifying for rehabilitation services and vocational training.¹²¹ At other times, communities fear former al Shabaab members and associates. Clearly, there needs to be a significant expansion of healing and reconciliation processes within the community, such as those delivered by Somali NGOs. Clan elders can be important vectors of such reconciliation efforts, but they need training and oversight, particularly if there is a history of significant clan discrimination and rivalries in affected areas.

Material opportunities, such as in the form of public works delivery, job creation programs, and vocational training, need to be delivered to receiving communities to assuage resentments and perceptions of moral hazard. Such efforts will also help enable reinsertion and facilitate sustainable reconciliation. More donor programming should be devoted to this aspect of the amnesty and defector programs.

Yet, international donor funding can be significantly constrained by laws prohibiting the provision of material support to terrorists. Such laws may well serve to create a deterrent effect among segments of society in particular countries. But in a conflict or post-conflict setting, they can become a straight-jacket disabling conflict mitigation and programming to prevent the re-emergence of violent extremism. There is a great need among members of the international community, including the United States, to develop funding flexibility and certification mechanisms to support rehabilitation programs for defectors and detainees, as well as among communities receiving former combatants and their associations.

Militias

Because of financial constraints on the size of a Somali police and military forces as well as their lack of qualifications, it will not be possible to absorb many existing clan militia members into formal services, as currently planned. That is especially so given that any clan member who is given a weapon (which most Somali men have anyway), or who answers the call of clan elders, can be considered a member of the clan militia. Moreover, many lack the basic education to be retrained as police officers, are inexperienced in dealing with civilians, and may have committed significant human rights abuses, which precludes them from entering Somalia's police forces.

Foreign Fighters

Currently, foreign fighters are mostly off the radar in defectors programs and detention and demobilisation processes. Yet, prior to 2015, there were instances in which foreign fighters, including minors from Kenya, found themselves in Serendi and other detention facilities.

A considerable number of al Shabaab members likely originate from Kenya. They are not merely Somali Kenyans, but, as a result of Kenya's draconian policies and measures, especially after al Shabaab's attack on Nairobi's Westgate Mall attack in 2013, Kenyan Muslims in general.¹²² Of course, Muslims in Kenya join for complex reasons, including many unrelated to the draconian policies of the Kenyan government, a crucial driver as that is.¹²³ Other foreign fighters in Somalia may come from Tanzania or Europe. Currently, there are no clear processes and opportunities for them to surrender and be repatriated, nor are there established protocols and international agreements, or even regional discussion fora and platforms as to how to return them to their home countries.

4. Conclusions and Policy Implications

Including leniency options for those who did not commit grave atrocities and for populations who lived under control of militant groups improves prospects for reconciliation, justice, and eventual peace. Particularly those who found themselves under militant control are often victims first of all, and sometimes above all. At other times, victims may become perpetrators but their offenses, such as collecting zakat for al Shabaab, may be minor. Treating such individuals or clans that aligned with al Shabaab because of their prior oppression and marginalisation with harsh punishments risks perpetuating cycles of violence and retaliation as well as injustice.

However, simply forgiving those who have committed crimes, especially serious ones, without any accountability risks perpetuating impunity. Thus, the design of the amnesty and defectors programs is crucial.

Somali society broadly needs to be given systematic opportunities to provide input into the formal government-led processes as well as into interactions of traditional mechanisms and formal processes. Somali communities report that their safety and the prospect of peace is enhanced by the existence of the DDR-like defectors programs and efforts at community and cross-community healing and reconciliation. But they also report fear and substantial ambivalence toward amnesty and leniency programs that do not guarantee accountability. They are deeply sceptical of political deals with prominent warlords. As a sixteen-year-old-boy, a minor from Puntland who had been sentenced to death for allegedly participating in an al Shabaab attack, told a UN delegation visiting the prison, “I have a concern. We were dragged off to the war by al Shabaab and now you see us as criminals and want to kill us. How come Sharif Sheikh Ahmed, former leader of ICU, became president?”¹²⁴

Until now, the government-led processes, including repeated declarations of amnesty for al Shabaab, have been ad hoc and always top-down, without policy and legal specificity and without a government capacity to fully enforce them.

A broad endorsement of the basic framework that balances accountability and reconciliation without tilting too extremely toward either amnesty or highly punitive measures will allow the government of Somalia to move away from its haphazard and constantly wavering approach. Particularly if a societal endorsement of the basic precepts is combined with an adequate legal framework for a conditional amnesty and defectors programs, the government of Somalia will be able to put in place a more consistent approach that is not so vulnerable to the vagaries of politics and politicking in Somalia. The goal should be to move toward an overarching strategy in which clearly-defined conditional amnesties can promote a transition away from conflict and toward reconciliation instead of factional politics surrounding clan and powerbroker competition. It can thus also become a model also for deeper and broader societal reconciliation.

Implementing such processes will take a long time and is likely to face many challenges, including the fractious nature of Somali politics and the constant parochial competition among clans and among powerbrokers. AMISOM’s planned departure and the prospect for conflict intensification further restricts the implementation of these processes. Nonetheless, putting in place reconciliation processes that address grievances of marginalised clans and groups can avert a greater intensification of conflict and prevent new cycles of violence.

To that effect, this report recommends that the following strategies and policy measures be adopted:

Organise Broad-Based Societal Conversations about Justice and Reconciliation: Such dialogues should focus on how to balance reconciliation with justice. They can explore the potential role of judicial and non-judicial accountability mechanisms, such as truth-telling and disclosure of crimes and acts. They should also consider which of these mechanisms would be most acceptable to Somali society while ensuring compliance with international law. The dialogues should also cover the recognition of victims' rights. They could include Somali government officials and clan elders, as well as women and civil society members from across Somalia, not merely Mogadishu. While security constraints will make outreach difficult, Somali civil society and business community can facilitate at least some outreach into areas dominated by al Shabaab. Minority clans need to be robustly represented. One event or one process is not sufficient. Instead, such a community dialogue should run for several weeks or months and include a variety of mechanisms, such as phone surveys, local community meetings organised by NGOs and reported to government and international interlocutors in Mogadishu, as well as discussion fora in the capital.

Develop a Legal Framework for Conditional Amnesty and Reconciliation Informed by the Above Dialogue and Move Away from Ad Hoc Declarations of Amnesty: Development of a legal framework for amnesty and defectors programs, as well as for prosecuting terrorism, needs to proceed and pick up speed. But both the legal and policy framework need to be informed by societal dialogue. The international community should continue to work diligently with Somali authorities to ensure compliance with international laws and standards. Traditional justice mechanisms, too, should be open to societal and government oversight. A legal framework for amnesty should lead to lesser reliance on ad hoc and unclear presidential declarations of amnesty. Meanwhile, however, existing defectors program and reconciliation processes should not be halted and held hostage to the absence of the laws and policy frameworks, even as their development, detailed clarification and specification, legal ratification, and the establishment of legal certainty are necessary. Even without legal certainty and specific policies, the current suboptimal processes save lives.

Expand International Legal Tools for Supporting Conditional Amnesties, Transitional Justice, and Defectors Programs: To avoid funding shortfalls for defectors programs, international donors need to review laws on terrorism. New flexibility, additions, and amendments need to be developed to ensure that counter-terrorism laws (e.g. laws against providing material support to terrorists, do not inadvertently prevent crucial programming for rehabilitation of combatants and populations who lived under the militant's control, for peace-building and reconciliation, and for countering and preventing violent extremism. The international community must also work with national governments and provide legal guidance to ensure that counterterrorism laws do not perversely create new grievances by charging populations who lived under militant control with crimes of financing terrorism merely because they had to pay their oppressors taxes or provide other forms of support.

Expand Reinsertion, Reintegration, and Reconciliation Programming: Psychosocial therapy and healing processes should not be provided merely to defectors but also to receiving communities. Efforts by Somali NGOs provide lessons for such programming and show the value of truth-telling. With proper training and monitoring, clan elders and women should be mobilised as important vectors of rehabilitation, reconciliation, and peacebuilding.¹²⁵ Because of capacity problems and insecurity, such processes will need to be fairly simple. Vocational training and job creation efforts, too, need to be rolled out within receiving communities to mitigate resentment that those who took up arms receive rehabilitation education, training, and jobs, while those who resisted al Shabaab or were victims persist in dire conditions. Creating jobs in far flung communities may be extremely difficult, however some public works or agriculture programs are often feasible. Traditional development actors should become more systematically involved in the reinsertion processes.

Subject High-Value Defectors to Some Accountability: At a minimum, high-value defectors should be required to disclose their crimes. Better, some evaluation of their crimes should take place, with screening mechanisms for them developed as well.

Urgently Establish Rehabilitation and Detention Facilities and Programs for Female al Shabaab Defectors and Associates: In rehabilitation facilities for women, much will need to be gender-tailored. This includes, vocational training, managing access to children, and religious re-education. Beyond the rehabilitation programming, justice and political representation mechanisms for women in Somalia need to be strengthened.

Develop and Improve Transparency of Reception and Screening Processes of Defectors and Detainees: There should be a greater transparency regarding differentiation between a detainee, a defector, or a victim seeking protection. Somali intelligence, military, police forces, and AMISOM should be mandated to maintain databases of such reception auditable by relevant international and Somali oversight actors. Similarly, proper auditing of reception and screening processes is necessary. Somalia must move away from the practice in which those who come into contact with AMISOM and Somali authorities disappear into a black hole, only to emerge again with a death sentence by military court and a public execution. Improving the draft screening tool, including clarifying the aggregation of screening questions and their weighing, is also necessary.

Expand Civilian Courts and Rehabilitation Support for High-Risk Defectors and Detainees Awaiting Trial or Sentenced to Imprisonment: The special civilian court for high-risk defectors should promptly be made operational. Reliance on military courts and the death penalty should be reduced as much as possible, while strict adherence to human rights and legal standards, including in cases regarding high-risk defectors, need to be systematically promoted. In order to reduce the chance that prisons will foster recruitment to terrorism and crime, rehabilitation support for high-risk defectors and detainees needs to be expanded. The Baidoa prison pilot effort serves as an example.

Strengthen Post-Exit Monitoring of Low-risk Defectors and Released Prisoners: Such monitoring and sometimes further rehabilitation assistance or enforcement measures are crucial for preventing terrorism or crime recidivism. But such monitoring needs to be designed in ways that avoid putting receiving communities at risk.

Develop Disarmament, Demobilisation, Justice, Accountability, and Reconciliation Processes for Armed Actors Beyond Al Shabaab: Somalia will not achieve peace if it ignores the multiple armed actors other than al Shabaab, such as various militant groups, warlords and clan militias. The justice, accountability, and reconciliation policies and procedures developed for al Shabaab can serve as a model for those other actors. Having a consistent framework for all such armed actors would be desirable. Militias, anti-al Shabaab warlords, as well as Somali police and military forces will also eventually need to be subject to accountability for serious crimes. Their victims will also need to have their rights recognised.

Develop Defectors Programs for Foreign Fighters and Establish Repatriation Protocols: Regional processes involving Somalia, its neighbours, and other countries from which fighters come to Somalia should be urgently established. Starting such a dialogue with Kenya, perhaps under regional aegis, should be a priority. Such protocols for defection and repatriation need to comply with international human rights obligations and be as specific, transparent, and clear to foreign fighters as possible.

Move Away from a Militarisation of Somali Society and Address Underlying Root Causes of Conflict, Such as Corruption, Exclusion, and Clan Discrimination: Even if al Shabaab is defeated or one day makes a political deal with the government, Somalia will not achieve peace if griev-

ances and discrimination persist. Prioritising clan reconciliation is necessary in order to prevent former al Shabaab affiliates who are reinserted into communities from joining militias, as this is often their only way of having a livelihood. This is also necessary for the sake of a broader peace. Thus, it is crucial to empower marginalised clans, reliably protect them against dominant clans, and ensure their fair representation in political processes and government institutions. Some such reconciliation can take place at the local level. However, national- and state- level government officials need to stimulate and promote reconciliation, inclusion, and activity, rather than sabotage such empowerment for their clan and personal gain. The focus should also be on combatting and reducing the widespread corruption of Somali institutions and the usurpation of public resources by Somali powerbrokers – which al Shabaab adroitly exploits.

Expand Monitoring and Evaluation of all of these Processes: All amnesty, leniency, and accountability processes require monitoring, evaluation, and if necessary, redesign. Training Somali monitors and evaluators, particularly for areas that international partners find too insecure, is important so that Somali themselves can own, adapt, and improve such processes. And as a secondary benefit, this will also create jobs beyond the military sector.

Endnotes

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