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Justice and Journalism During Transitions

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Abstract

Since the collapse of the Somali state in the early 1990s, the country has been one of the most dangerous places in the world for journalists. Many have been killed with impunity and the majority of those that have been killed where the perpetrator is known have been connected to political groups, including a range of actors such as government forces, parastatals including the Islamist group, Al Shabaab, and businessmen. The lines between such authorities is often blurred. While the targeting and assassination of journalists is certainly one key aspect of potential transitional justice process, it is not the only one. This article explores the variety of ways that journalists contribute and participate in violence and how transitional justice processes must grapple with these nuances and complexities. Drawing on examples from other countries, including South Africa and the former Yugoslavia, the article reflects on the different ways that media intersects with transitional justice processes and what might need to be considered in Somalia.

Somalia's government in Mogadishu has been in a state of transition for more than two decades. Since the government of Siad Barre collapsed in 1991, there have been numerous 'transitioning' governments and 'transition' plans. For example, as part of a national reconciliation conference (one of many) convened by UN Special Envoy Lansana Kouyate of Guinea, warring factions agreed to establish the Transitional National Council (TNC) that was briefly in power. A Transitional National Government (TNG) eventually followed, to be succeeded by the 2004 Transitional Federal Charter of the Somali Republic that put in place the Transitional Federal Parliament and Transitional Federal Government that were in power until 2012. Most recently there has been the Somalia Transition Plan of 2018 that

focuses on security. 'Transitioning' entities frequently accompany efforts at 'reconciliation', which often takes the form of elaborate, but brief, conferences hosted or sponsored by international actors, but it does not always include 'justice'. From the 1993 Conference on National Reconciliation to the 2000 Somali National Peace Conference in Djibouti, followed by the 2001 National Commission for Reconciliation and Property Settlement, and the 2002 Somali Reconciliation Conference, there have been more than a dozen reconciliation conferences. In this context, it is difficult to discuss the role of journalism in political transitions in Somalia. What period constitutes the transition? And transitioning from what to what? (1).

By critically reflecting on the intersection between media and transitional justice in other countries, including South Africa and the former Yugoslavia, and drawing on the author's experience of conducting empirical research in the Somali territories, this article takes on the challenging task of attempting to look forward and asks what relevance transitional justice may have for Somalia's media sector, and what role Somalia's media might have in such a process. This includes, potentially, both as an outsider observing and covering a transitional justice initiative as well as participating in a case (including as a victim or perpetrator of violence). Broader discussion is had on the role of media and conflict and how this role evolves in the transition from conflict to peace. The article proceeds with the full realization that Somalia cannot be considered 'post conflict'; conflict continues unabated. Notably for the Somali territories, which are almost entirely Muslim, transitional justice, as commonly defined, is often rooted in Christian terminology and ideas of truth-telling, and it increasingly seen by international actors, such as the United Nations or European Union, involved in peacemaking initiatives as being a central aspect of moving towards peace, and political transitions that are grounded in western concepts of justice

and reconciliation. It is typically used as a mechanism for addressing large scale human rights abuses in primarily legal (but also non-legal) ways.

Media is an often an overlooked factor in transitional justice processes (2). Little has been written about the role of media, and communications more generally, as it tends to be an afterthought; transitional justice actors might consider how they can publicize their efforts but it seldom appears to be coherently and strategically integrated into policies and practices (Price and Stremlau, 2012). While some transitional justice processes have had a strong media component, often ad hoc or by accident, it is not always consistent or positive. Before turning to the situation in Somalia, this article will critically examine the role of media in South Africa and the former Yugoslavia. Both cases had some of the most notable transitional justice processes in recent times, and in both countries, media had a central, albeit significantly different, role.

Media and Transitional Justice in Comparative Perspective

In South Africa's widely celebrated Truth and Reconciliation Commission, the media was seen as being a critical conduit for translating and explaining the hearings to South Africans, and in their own languages. The South African Broadcasting Corporation prioritized giving airtime to the stories of victims and offered a wide range of programming. Such initiatives helped to extend the reach and elevate the status of Commission, particularly as coverage was largely positive (Verdoolaege, 2005). Some of the politics and challenges faced by the media in covering the Commission, and the testimonies of the victims, were captured eloquently in Antje Krog's novel, *Country of My Skull*. Krog, herself a journalist with the

SABC, offers unique insight into the politics and challenges of covering transitional justice initiatives. The book as a whole reflects the complexities and emotional costs for individual journalists attempting to capture the nuances and depth of testimonies, including the context of what is left unsaid. But Krog is most pointed about the media's role when she discusses it directly, for example in her chapter 'None more parted than us' that describes one of the workshops organized for journalists covering the Truth Commission. Such workshops, common in conflict and post-conflict situations around the world from Sierra Leone to Nepal, the Balkans, and Syria (3), are often sponsored by international NGOs or transitional justice advocacy groups and typically focus on training manuals or how to cover proceedings (see, for example, Institute of War and Peace Reporting, 2013, produced for its media development project in Syria). They tend to have a standard approach drawing on a select pool of media trainers deploying a set of tools or standards despite various contexts or differences in transitional justice processes. This was not necessarily the case in South Africa, as the Truth Commission was very much a South African designed and led process (in comparison with other countries where transitional justice may have more international support and funding). Krog described her experience at the workshop which raised important but sweeping questions:

Various topics are discussed: Why should the Commission be reported? How will emotional exhaustion be prevented? How can viewers, listeners and readers be involved? Should Truth Commission stories be confined to a special page? Won't people just skip over this section? How can we see to it that the past becomes front-page news? No newspaper has the means to employ a full-time journalist to cover the Commission --- will television be able to broadcast the hearings daily so that

people can follow them from their offices?

What is the role of radio with its access to all the language groups and impoverished communities? What about language? Do all eleven official languages have the words needed to cover the Commission? (Krog, 2007: 21–22)

Krog's efforts to capture the discussions between the journalists are particularly notable and provide insight into the challenges of effectively covering any transitional justice process when media were themselves actors in the conflict, even if not always overtly so.

By late afternoon [of the workshop] we are discussing how you keep your own past out of your reporting. The journalist from the *Sowetan* [the largest paper targeting the Black community] stands up: 'My newspaper's position is that it has actually always done TRC-type stories and will not make any special effort now to cover the Commission.'

Willem Pretorius of *Beeld* [an Afrikaans newspaper] is on his feet. 'In the army I was sent to cut off Radio Freedom's [the clandestine radio of Nelson Mandela's African National Congress] cables and take them off the air. What does that make me? Can I ... or can I not report on the Truth Commission?'

It is suddenly very quiet. After a day of journalistic clichés, we've struck an artery. ...

Someone struggles up behind me. It's veteran journalist Hennie Serfontein, holding the microphone, beard and hands shaking so much I'm afraid he is having a heart attack. He stutters and gasps, 'Everyone here is putting their past on the table, but you ... your ... getting on-board!' he shouts.... Hennie is on a roll, taking on the English press: dates, incidents, how information was changed by specific editors, how headlines were manipulated to suit the politics of the Nationalist rulers. He has

the date, he has the names of the white English-speaking editors and businessmen who went to see PW Botha with a blank cheque and said: 'Demand of us what you will, but protect our interests.' (Krog, 2007: 22)

When journalism around transitional justice calls for normative ideals such as 'neutrality' or 'unbiased' Krog reminds us just how naïve such an approach might really be. All journalists, particularly those in conflict situations, have had some role in the conflict. Even doing nothing is actually doing something and silence on atrocities or violence can be damning. Those that were supposed to be opposed to apartheid (such as much of the more outspoken English press) still pursued their interests as Krog suggests. South Africa's mainstream media, however, was largely supportive of the TRC. This differs from some other countries where the media explicitly sought to undermine the process and continue to inflame tensions and violence. In some contexts, despite being supposedly 'post conflict' or 'transitioning' hate speech and calls to action have persisted.

The case of Serbia is one such example. Similar to the role of radio during the Rwandan genocide, the media in Serbia has become an often-cited example of how media can encourage violence and have a central role in war. Mark Thompson's book, *Forging War*, dissects and details the depth of involvement in the conflict and serves as a broader benchmark for understanding the potential of media in mobilizing both military and ordinary people for violence (Thompson, 1999). In Serbia, radio had an oversized role in promoting nationalist objectives and encouraging genocide. Media propaganda, and particularly Serbian propaganda, were seen as directly leading to the 'unleash[ing of] violence against the Croat population and other non-Serbs' (4). False information, including the re-writing of historical events and immediate allegations of threats of attacks by Croats

on Serbia were commonly made by Serbian government media.

When it came to the peacekeeping, or the peacemaking process, the centrality and contentious role of media continued. Media often attempted to undermine the peace process and delegitimize international peacekeepers. At the same time, the former Yugoslavia is instructive because the concept of 'information intervention' during peacemaking efforts really came into its own. In the aftermath of the genocide in Rwanda, and the role of Radio Mille Collines in the mobilization of violence, some started asking why the international anti-incitement laws, including the Genocide Convention and the International Covenant on Civil and Political Rights did not empower international actors to jam or silence radio that was, even at the time, so apparently instrumental in the conflict. Reflecting a broader reluctance to act, the US government argued that intervening in the media space would both violate telecommunications law and the sovereignty of Rwanda. Similarly US Military actors suggested that it would be both 'ineffective and expensive' and may even contravene 'international legal conventions' (as quoted in Thompson and Price, 2003: 186). When it came to the former Yugoslavia a few years later this debate intensified. For example, in 2000, the UN Representative to Kosovo, Bernard Kouchner, suspended *Dita*, an Albanian language newspaper for inciting violence. This move was criticized by local and international media as being a heavy-handed approach to regulation that violated international principles of press freedom. The UN, however, developed a set of regulations that were enforced by newly established boards comprised of international and national members including the Media Appeals Board and the Media Hearings Board that had the capacity to enforce 'large fines, suspension or termination of licence, [or] outright closure' of media that were regarded as threatening or inciting violence (Thompson and Price, 2003: 193).

The region also witnessed the seizure of radio transmitters by international forces. The Dayton Accords (1995), which brought a formal end to the war in Bosnia and a peace settlement, focused primarily on the military solution. With the UN peacekeepers and UN aid convoys being persistently targeted and subjected to attacks by Bosnian Serbs, the focus was ending the violence rather than supporting or addressing other aspects of governance and civil society. Media continued to reflect the unresolved aspects of the violence and broadcasts by Serb Radio and Television (SRT) were 'rabidly nationalist' while the same could be said for the Croatian Radio and Television as way for the parties to maintain control over their territories (Price, 2000: 76). The parties focused their energies on an information war, repairing damaged transmitters and establishing new ones in more remote regions. They were, as Monroe Price argues, 'clearly intent on continuing to spread their wartime doctrines during the peace brought about the Accords' (Price, 2000: 76). New regulations attempted to stem misinformation and incendiary programming from undermining the peace processes and compel television to provide access and equal amount of advertising to all political parties ahead of the elections (as outlined by the OSCE's Media Experts Commission).

While no journalists or media organizations from the former Yugoslavia were brought before the International Criminal Tribunal for the Former Yugoslavia (ICTY), there were some efforts to put on trial some of the media that were seen to be inciting violence. Serbia's Special War Crimes Prosecutor's Office did initiate an inquiry into cases involving the role of media encouraging the massacre of 200 Croats in 1991 and 25 Bosniaks in 1992 by Serbian paramilitary groups specifically in retaliation for a false television report by a Serbian journalist that alleged to have seen the bodies of 40 Serb children (Institute for War and Peace Reporting, 2010).

More recently, however, the International Criminal Court has famously heard cases involving journalists during violence. Joshua arap Sang, for example, was indicted for crimes against humanity for his role in the 2007–08 post-election violence in Kenya. Sang had a popular breakfast show on the vernacular radio station Kass FM and was charged with having used his prominence and programme to encourage violence in the Rift Valley region. He was eventually cleared of the charges, alongside Deputy President William Ruto, but many Kenyans continue to cite vernacular radio programmes such as his, as having had a major role in violence.

Journalists have also received legal summonses by some of the courts set up during transitional justice processes for their role as witnesses of human rights violations or, in some cases, for contempt of court. The role of journalists as witnesses and providing evidence has been controversial. The ICTY, for example, summoned the former *Washington Post* journalist, Jonathan C Randal, to testify about an article he published that included an interview with Radoslav Brdjanin, a former Bosnian Serb housing administrator that was quoted as supporting the removal of non-Serbs as part of a broader effort to create an 'ethnically clean space' and to 'defend our frontiers at any cost' (as quoted in Fairlie, 2004: 805). Randal was subpoenaed by the UN body but the *Washington Post* strongly challenged this by arguing that journalists working in conflict zones should not be obligated to give testimony in war crimes tribunals. Doing so, they argued, could threaten their ability to carry out their work and endanger their lives (Simons and Barringer, 2002). The paper argued that journalists should be exempted in a way similar to other actors such as Red Cross workers or lawyers. The concern was that compelling Mr Randal to appear could threaten freedom of expression and make it extremely challenging for them to work in contested situations where they need to have the trust of informants and not have the

lingering threat the journalist may later be used as a witness against them (Simons and Barringer, 2002). While this particular case involved a foreign correspondent, similar pressures to testify are faced by national journalists.

Together these examples highlight the variety of ways media has historically had a role in transitional justice processes. This in no way limits the way Somali actors might think about the range of options but it highlights the (unavoidable) complexities that may arise when journalists are inevitably involved. International actors have often sought to try to shape the role of media through subsidizing and supporting certain voices (typically existing media outlets that are seen favourable to whatever the international agenda might be) and effectively raise their authority and influence in support of the transitional justice process. Such interventions have been described by Jamie Metzle as 'information interventions' in conflict or post-conflict situations, along with the other tools mentioned above, or alternatively such interventions could be categorized under the broader umbrella of media development (Metzl, 1997). From Serbia to Rwanda, and Sudan to Somalia, international donors (particularly western ones that are promoting a democratization agenda) have supported media development NGOs or given grants directly to local media outlets to encourage a certain type of reporting (typically as close to a watchdog version as possible). Aid, or training, is often provided for journalists to cover transitional justice initiatives by NGOs such as the Institute for War and Peace Reporting, Fondation Hirondelle or transitional justice focused NGOs such as the International Center for Transitional Justice. This type of media assistance has been tried in the Somali context for decades, although it has not typically been tied to the various peace processes of peace initiatives. Some exceptions to this include Radio Bar Kulan that was established by the United Nations and African Union Mission in Somalia with the express purpose of supporting the African Union

troops. And while the radio programming was intended to be general and along the lines of what one might expect from a public service broadcaster, it was established with the underlying goal of supporting the various peace initiatives and democratization agenda international organizations and donor countries were advocating.

The Role of Media in Somalia's Continuing Conflict

When considering the potential role of media in a transitional justice process in Somalia it is important to contextualize the very particular development and evolution of media in an extreme context of protracted conflict. As the next section on the relevance of possible transitional justice approaches in Somalia will elaborate, determining the scope and start of any initiative is perhaps one of the most significant challenges. The same is the case for considering the scope of media which has had such an embedded, central and lengthy place in politics and conflict. Even taking as a potential starting point the collapse of the state in 1991, and the events that have proceeded from then, there have been enormous ebbs and flows of authorities and media.

Somalia has enjoyed a breadth and depth of media culture, from the use of poetry in both war and peacemaking, to a growing range of print media, particularly in the context of Somaliland where the press was initiated and, for many years, sustained by former guerrilla fighters (Stremlau, 2012, 2013a, 2013b). This section will, however, focus on radio, which has arguably been the most instrumentalized medium for violence. And the emphasis will be on South Central Somalia where the transitional justice processes will be concentrated.

In recent years, Somalia has repeatedly been cited as among the most dangerous places

in the world for journalists with more than 65 journalists killed since 1991(10). Many have been murdered with impunity and the majority of those that have been killed where the perpetrator is known have been connected to political groups (Cook, 2017) including a range of actors such as government forces, parastatals such as Al Shabaab and businessmen. The lines between such authorities are often blurred. Although the targeting and assassination of journalists is certainly one key aspect of potential transitional justice process, it is not the only one. While all eras, or periods, have involved similar brutality and involvement of the media in violence, they are also notable for the issues that they pose for transitional justice initiatives. Just as the above case of South Africa, and Antje Krog's experience with journalists covering apartheid described, and the case of the former Yugoslavia, journalists in Somalia have had a wide variety of roles in violence, both implicitly --- sometimes by association or complicity with abusive and wayward regimes or warlords, or more overtly with clear intentions of using media to perpetuate war.

The military and revolutionary government of Siad Barre (1969–91) had a strong influence on shaping journalism as a profession. Media were almost entirely government controlled. While the regime did not allow for freedom of expression and the existence of private and independent media, some stations emerged that broadcast from across the border in Ethiopia or, later, from the rebel-held areas of Somaliland. During this period, Radio Mogadishu became the primary Somali radio station legally broadcasting in the country and some have credited it with having an important role in the process of state-building and the fostering of a national identity. Under Siad Barre, it was an important tool for spreading and promoting the government's official ideology and agenda. As the Director of Radio Mogadishu described:

It was the period [under Siad Barre] when Radio Mogadishu was strongest. It was the centre of power in the country. It played an important role in awareness-raising programmes in areas of agriculture, health, social issues. It was the only radio working in Mogadishu, except the BBC ... But Radio Mogadishu was the main source of information for the Somali people. It was the vehicle through which the Revolutionary Government managed to achieve its objectives of spreading its ideology throughout the country, including its political and strategic interests. For example, Radio Mogadishu took an important role in making propaganda for Somalia's war against Ethiopia. That is the stage in which the radio was strongest.

(Director, Radio Mogadishu, interview)

The generation of journalists employed in national media outlets under the military regime had the opportunity to be trained in media, communication and journalism following a rather traditional education pattern --- colleges, university --- in Somalia or abroad (often in the Soviet Union).

These journalists almost inevitably pursued professional careers within government-owned media in a context where freedom of expression was absent and the government had direct control over the media. While many fled the country after the dissolution of the Barre government and the during the civil war, some remained to launch other media outlets or join existing ones. Today the majority of these journalists are retired or working outside Somalia. Some are employed within international media outlets, such as the BBC or VoA, Al Jazeera, or other international organizations such as the UN, NGOs and media outlets associated with humanitarian or peacekeeping operations.

A second phase of the media's historical trajectory in Somalia can be tied to the collapse of the Siad Barre regime in 1991 and the fighting that came with the dissolution of the state.

The rise and proliferation of private radio stations, often associated with business leaders or certain political factions, has been a defining feature of Somalia's political and social landscape since the early 1990s. Radio has exacerbated and provoked violence and at times promoted peace and valuable information on security-related issues. This growth can be attributed to the lack of government regulation, the ubiquitous availability of cheap radios and the usefulness of radio in serving the interests of warlords, aspiring politicians or businessmen. Over the past decade, many radio stations have sprung up; some have survived for years, others only months. They have often been started with the financial assistance and expertise of Somalis from the diaspora. Most stations have been opened in Mogadishu but they have also appeared in regional capitals such as Kismayo, Galkayo and Baidoa.

The growth and role of radio reflects the dynamics of the conflict. For example, during periods when the international community has been deeply involved in the conflict, such as the early 1990s and the present, international organizations and governments, including the UN and the US, have established radio stations that sought to support their interventions. During the UN and US intervention in the early 1990s *Radio Rajo*, later known as *Radio Maanta*, attempted a media campaign to support the military efforts. In addition, *Radio Mogadishu*, with its relatively powerful medium wave transmitter, was bombed after the warlord Mohamed Farrah Aideed's Somali National Alliance, which claimed Presidential power, used it to incite violence towards UN forces (BBC Monitoring Africa, 2007: 2). These internationally backed information interventions were frequently criticized as unsuccessful by Somalis who argued that their prevailing approach for demonizing a group and labelling it an enemy, rather than operating with the nuances perceived by many Somalis (for more sympathetic assessments see: Borchini and Borstelmann, 1994; Efird and Sahlin, 1994) (5).

After the international community pulled away from Somalia in the mid-1990s, small stations run by warlords proliferated. Many had weak signals and primarily reflected the interests of limited communities or neighbourhoods, with their influence and role shifting as the conflict evolved. Indicative of the ubiquity of access to radio broadcasters during this period, after the UN bombed the 'official' *Radio Mogadishu*, Aideed quickly returned on air with another station, also called *Radio Mogadishu, Voice of the Masses of the Somali Republic*. Several other stations owned by warlords were also broadcasting under the name 'Radio Mogadishu' including Aideed's main rival, Ali Mahdi Mohamed, who started *Radio Mogadishu*, and Osman Ali Ato, who launched *Radio Mogadishu, Somali Pacification* (Hyden et al., 2017: 88).

While some smaller 'civil society' or community radio stations existed during this period, these were the exception. Warlord radios continued to proliferate until power consolidated in the mid-2000s around groups such as the Islamic Courts Union (ICU). A new phase within the radio sector was instigated by the emergence of more commercial and professionally run stations. With strong financial backing and expertise from the diaspora, as well as an agenda to provide consumer-oriented news and entertainment, stations such as *Horn Afrik* and *Radio Shabelle* consolidated their leading position in Somalia's radio market and started to transform the media environment.

The establishment of Horn Afrik in Mogadishu in December 1999 was one of the most important media developments during the civil war. Three businessman and journalists from the Somali diaspora in Canada founded it: Ali Himan Sharmake, Hassan Mohammed and Ahmed Abdisalam, who later held different positions in the TFG. Due to the capacity and vision of its founders, *Horn Afrik* rapidly gained the status of the most popular radio station in Somalia. From the perspective of journalists, *Horn Afrik* was in terms of working

environment and public visibility. Besides providing news and information, the station engaged the audience in debate and dialogue about the current political situation through call-in programmes.

The station continued to function, and during some periods, thrive, despite the hostile environment in which it operated. Its premises were targeted and destroyed several times, during shelling by Ethiopian troops in 2007 and recently by Al-Shabaab which also destroyed the archives. Al-Shabaab killed two of the founders, Hassan Mohammed, who was shot and later died in Nairobi, and Ali Sharmake, as well as senior journalists such as Mahad Ahmed Elmi. As a consequence of the continued attacks, *Horn Afrik* was forced to close down.

Given its prominent role, *Horn Afrik* became an 'incubator' for Somali media where a generation of journalists developed technical skills as well as professional relationships. Several of these journalists, also by virtue of their experience at *Horn Afrik*, have subsequently been employed by international broadcasters such as *Bar-Kulan*. Many have fled to Kenya, North America or Europe while just a few continue in Somalia for private broadcasters.

With the growing influence of Al-Shabaab, which eventually seized power in 2008, the period of commercial growth and increasingly institutionalized radio stations came to a close. All political actors, including both Al-Shabaab and government forces, have been accused of targeting journalists (Amnesty International, 2010). Following a series of assassinations and consistent intimidation, most radio stations were either left with a skeleton staff or were taken over by Al-Shabaab. While *Horn Afrik* is no longer on air, *Radio Shabelle* continues along with a variety of stations including Radio Mogadishu and many smaller private radios, including some affiliated with Al Shabaab. Numbers and typologies of radio stations in contemporary Somalia are rapidly evolving, partially due to the

involvement and contribution of several international, national and local actors (see: Einashe and Stremlau 2019).

In sum, the Somali media, and radio in particular, has been both the prosecutor of violence, particularly during the period when radio was closely instrumentalized by warlords, and journalists have been the victims. In some cases, individuals, or outlets, have been both victims and perpetrators simultaneously, or during different periods, making the dispensation of justice particularly complex. Who exactly journalists are, how they think about their work, and what their role or mission is during extenuating circumstances of violence also challenges a rethinking of normative views of journalism. In some cases, journalists have been explicit about the need to ‘continue the struggle through other means’ (Yusuf Gabobe, editor of Haatuf, interview). The political economy of the media, including how journalists get paid for their work, the financial sustainability of media outlets, and the incentives provided for certain coverage, or taking part in particular training (typically by western NGOs), have all been instrumental in shaping the specific role or approach taken by journalists at various times (Stremlau et al., 2015).

The Relevance of Transitional Justice in the Somali Context

As this article turns to what a transitional justice process might mean in the Somali context, it is important to highlight that while transitional justice has been debated in Somalia, and there is a long history of local processes of mediation that might fit under a broad umbrella of ‘transitional justice’, this section is forward looking and thus must proceed cautiously.⁶

The 2012 Somali constitution sets out the call for reconciliation and outlines the

establishment of a formal Truth Commission:

1. There shall be established the Truth and Reconciliation Commission to foster national healing, reconciliation and unity and to ensure that matters relating to impunity, revenge and other triggers of violence are addressed through a legal and state directed process.
2. The Truth and Reconciliation Commission shall be independent, impartial and representative and shall include: traditional elders and leaders, members of the Federal Parliament, respected members of civil society, judges and security personnel.
3. The mandate of the Truth and Reconciliation Commission shall include:
 - a. Bearing witness to, record and in some cases grant amnesty to the perpetrators of crimes relating to human rights violations, as well as reparation and rehabilitation;
 - b. Promoting forgiveness, reconciliation and national unity (7).

Perhaps not surprisingly given the input of South African legal experts for the drafting of Somalia's Constitution (Stremlau, 2016) there are echoes of South Africa's Promotion of National Unity and Reconciliation Act of 1995 (8). But unlike South Africa's 1995 Act, which sets out the scope of the Truth and Reconciliation Commission, including who is a victim, how the Commission will function and what the scope of the Commission will include, the Somali Constitution just offers intentions but no Act offering more details on process has been promulgated.

The many transition initiatives in Somalia have not always been associated with explicitly designed transitional justice efforts. One of the most significant challenges is determining

what periods, or eras, transitional justice processes would focus on. When could it reasonably start and what should it include? While grudges and grievances may be long-held the challenge of finding evidence to support any claim or case becomes increasingly difficult as time passes. Furthermore, like many protracted conflicts, the war in Somalia has very much been a war perpetrated and perpetuated by foreign powers and international actors. There have been, for example, strong allegations of widespread abuses by military personnel from the African Union Mission in Somalia (AMISOM) which has been deployed since 2007. With more than 22,000 troops in the country, despite significant intimidation on the part of state security forces not report alleged abuses, detailed cases of rape and sexual violence have been reported (Wilson and Hurvitz, 2014). There have also been reports of Ethiopian troops violating 'the laws of war' during their extensive intervention in Somalia. They have been accused of targeting civilians, impeding access to medical treatment, mutilating captured combatants and executing detainees (Human Rights Watch, 2007). Violence associated with the continued conflict in Somalia has also seeped beyond borders, a further challenge for any transitional justice initiative. The Somali government has colluded with the Kenyan government on the targeting of Somalis within Kenya for alleged ties and support to Al Shabaab. Since the Kenyan invasion of Somalia in 2011, thousands of ethnic Somalis have been rounded up, detained and persecuted by security forces in the name of anti-terrorism. Some of those that have been targeted have reported the use of torture, for example with an industrial cattle prod, in an effort to get them to divulge connections with Al Shabaab. Many of those taken by Kenyan forces have simply vanished (Allison, 2017).

How to set the confines of transitional justice both temporally and spatially, is complex. As Lidwien Kapteijns has argued, even in the brief period of 1991–92 when the state was

collapsing there were at least three different kinds of violence, including large-scale and clan-based violence by Siad Barre's government that targeted civilians; there was clan based communal violence and 'clan cleansing' that was outside of that initiated by state institutions; and civilians experienced further widespread human rights violations during the immediate period of the 'War of Militias' or the period dominated by warlords (Kapteijns and Abdulkadir, 2014: 134). Even if a transitional justice process were to take the dissolution of the state in 1991 as the starting point, as suggested during interviews with Mohamed Ibrahim Mo'alimu (Secretary General of the National Union of Somali Journalists) and Muse (a judge at the Senior Court of Appeal), the legacy of violence pre-1991 still affects significant aspects of reconciliation. One of the major grounds Somaliland has advocated for independence, for example, is because of the atrocities and mass violence perpetrated by the Barre regime against people in the north. Addressing delicate issues around state-building and the aspirations that the Federal Government of Somalia has for bringing Somaliland into the fold as part of its state, would have to consider these concerns at the root of calls for independence.

'Clan violence', does not, however, suggest that it was 'clans' that were responsible for the violence, but rather individuals perpetrated the violence in the name of the clan or under the banner of particular groups. The conflict in Somalia is foremost a state-society conflict as well as a political conflict among elites who have been instrumental in leveraging certain aspects of their clans (including militias and businesspersons). Over the years, clans have drawn upon traditional means of dispute resolution, including customary law (xeer), to address and compensate victims of violence. This has not necessarily been done in a comprehensive or consistent way, particularly when it comes to resolving violence against journalists. Xeer law is based on agreements between clans. These agreements are not

always equal: some clans are more powerful and some clans are in a stronger position to advocate for the members. And xeer law can operate in significantly different ways depending on the region. In some parts it is stronger (such as Somaliland) and in other regions (including Mogadishu) clan elders may be seen as corrupt and the legitimacy of xeer has been eroded (particularly in comparison with more peripheral regions). The challenge of enforcing xeer law, or decisions reached by elders in a mediation, is a significant issue affecting minority groups that are distinctly at a disadvantage and discriminated against. More powerful clans may refuse to comply with rulings. The Somali proverb *Ama buur ahaw ama buur ku tirso* (Either be a mountain or attach yourself to one) highlights this inequality between clans and suggests the importance of smaller clans aligning or entering into agreements with stronger clans for protection (Austrian Red Cross, 2009: 22).

Violence has clearly mutated and evolved substantially over the past 25 years making the challenge of unpacking the nature and scope of the crimes against humanity challenging, particularly in cases involving journalists. Existing interview and survey data, while not comprehensive (especially in capturing the views of Somalis across Somalia) nevertheless has suggested that many Somalis are very clear that they do wish 'justice' to occur for the events and atrocities that have occurred (Kaptein and Abdulkadir, 2014: 138; Abdullahi, 2014). There is far less consensus as to what this approach might look like and how legal it must be. And the challenge is that, despite common conceptions, truth commissions often act as vehicles for providing widespread amnesty. As Antje Krog described, much of the past can be obscured or legitimated, by such commissions, as in the case of South Africa where many of the powerful structures that were implicated, or complicit, in apartheid remained intact after the truth and reconciliation commission hearings. The scale and depth of the violations in South Africa made it difficult to address the apartheid system without the

wholesale dissolution of the state and economy which would have had significant implications for the future of the country.

Processes to encourage reconciliation and justice are not new to Somali communities and there has been some debate as to whether any formal transitional justice initiative should be grounded in western or state legal processes, or should be rooted in Islam, or grounded in customary law, the latter of which closely intersects with shari'a law (for a discussion on this see: Abdulkadir and Ackley 2014). Clan conferences, while largely rooted in negotiating power and setting up formal institutions for governance were central to the success and stability of Somaliland, which declared independence from Somalia in the early 1990s. In the Grand Conference of Reconciliation in Borama (1993), which lasted three months, a Council of Elders (*Guurti*) mediated and established a national charter that put into effect an interim parliament and supreme court, while embedding the role of unelected elders as statesmen, and adjudicators, in the government. Xeer law, has had an important role in providing justice and mediating disputes in the absence of a functioning judiciary. Xeer law has offered a form of transitional justice, and in subsequent peace conferences in Somaliland (including the Burco Conference), demonstrated its ability to serve as a basis for determining and allocating amnesty. Despite the intentions of the constitution which explicitly state that it should be a 'legal and state directed process' there are very real questions as to whether such a top down, formalized process is realistic and would be most effective in doing justice to the significant number of claims. What is more likely is a hybrid approach blending the strong tradition of xeer law, sharia law and the demands for more state-led justice.

Communicating 'Justice'

Violence has clearly mutated and evolved substantially over the past 25 years making the challenge of unpacking the nature and scope of the crimes against humanity, and the particular role of journalists, challenging. Existing data, while not comprehensive (particularly in capturing the views of Somalis in Somalia) nevertheless suggests that many Somalis are very clear that they do wish 'justice' to occur for the events and atrocities that have occurred (Kapteijns and Abdulkadir, 2014: 138). There is far less consensus as to what this approach might look like and how legal it must be. And the challenge is, as Antje Krog described, much of the past can be obscured or legitimated by such commissions. In the case of South Africa, many of the powerful structures (including the media and some institutions that supported apartheid propaganda) that were implicated, or complicit, in apartheid remained intact after the Truth and Reconciliation Commission hearings. The scale and depth of the violations in South Africa made it difficult to address the apartheid system without the wholesale dissolution of the state and economy which would have had significant implications for the future of the country.

However, or whenever, the key actors in a transitional justice process decide to proceed with addressing the past, how the process is communicated will be central to how it is understood and how effective it might be. We have seen the importance of this in other transitional justice activities in South Africa and the former Yugoslavia, as described earlier. Doubtless there will be international NGOs, media trainers, and foreign public relations companies ready to assist in Somalia, in some cases with questionable efficacy or outcomes.

The experience with communications and media during the constitution-making process in Somalia suggests both just how important this is but also how easy it is to have an ineffective, and counterproductive campaign. In some cases, constitution-making has

provided opportunities for reconstruction and peacemaking, as was the case South Africa. But lawmaking and pressures for democratization, including elections, have also been associated with violence. Similar to constitution-making, transitional justice initiatives force grievances to be revisited and can accelerate political competition. The pressures to move quickly, partly because of the high costs of foreign assistance and time-limited projects, can lead to mixed results eroding the trust in transitions. Communications campaigns typically focus on the positive and the ambitious including what is to be achieved by peacemaking. Optimistic timelines and processes are outlined, and an ideal end-result is offered, leaving a crisis of expectations when such changes do not materialize. In the context of Somalia's 2012 provisional constitution, ambitious radio programmes were launched on the BBC Somali Service; the Somali government worked with international communications specialists to craft a narrative of inclusivity and progress; and regional and national consultations were organized as an effort to engage citizens, with questionable results. Critics have argued that the process has been top down, haphazard and, despite the lengthy time involved from the transitional charter to the present draft, too brief to shape a document that was already determined and decided prior to the consultation (Stremlau, 2016). These criticisms are very similar to ones that could be made about any transitional justice process and serve as a useful warning. A dynamic and well-resourced communications strategy will not be sufficient to cover strategic gaps or a flawed process.

Conclusion

The role of journalists in transitional justice processes is an often-overlooked aspect of war

to peace transitions. Warlords, insurgencies or government perpetrators of human rights are more typically integrated into transitional justice leaving journalists as onlookers. But in a situation such as Somalia, where media has been an integral component of the conflict, neglecting journalists, and overlooking both their suffering and persecution as well as their involvement in perpetrating abuses omits a significant factor of the violence and as a source of grievances.

Somalia may be in less charted territories. Any transitional justice process, when (and even if) it ever comes will be highly complex and deeply sensitive. While other countries may have experiences that can resonate, or provide some guidance, they cannot serve as templates or models. The experience of journalists involved in processes in South Africa and the former Yugoslavia, suggest some of the unanticipated ways media might intersect with transitional justice but it does not necessarily offer a guide. As Anje Krog described, even journalists that may have been ideologically opposed to the violence of the apartheid area, often found themselves complicit in the system and reliant on those in power for their interests to be protected. The variety and vagaries of how media might intersect with violence, and what is required to continue the perpetuation of violence, or abusive governments in power, is one of the great complexities with which any transitional justice process would have to engage.

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¹ With conflict continuing, and the central government struggling to gain authority and local recognition, the reality for many Somalis is that they live with ‘governance’ but often without ‘government’, apart from the notable exception of the Government of Somaliland in the north and the Government of Puntland.

² The International Centre for Transitional Justice has sought to highlight this gap in some of its work. See, for example, Hodzic R (2016) Transitional justice and media: A crucial but neglected relationship. Available at: <https://www.ictj.org/news/media-transitional-justice-relationship> (accessed 3 April 2019).

³ See, for example, the 'Training on human rights, transitional justice and the role of media' organized by Sancharika Samuha in partnership with the International Commission of Jurists in Nepal that focused on the ways that journalists could 'exert pressure on government to develop a legal mechanism to deliver transitional justice to the victims of the decade-long rebellion'. Available at:

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⁴ Communications Service of the International Criminal Tribunal for the former Yugoslavia (undated) Milan Babić (case information sheet). Available at: http://www.icty.org/x/cases/babic/cis/en/cis_babic_en.pdf (accessed 3 April 2019).

⁵ More recently the African Union (AU) and United Nations Mission in Somalia established the UN-funded radio, *Radio Bar-Kulan*. This station was established in 2010, several years after the arrival of AU troops to support the Transitional Federal Government and the ongoing constitution-making process. The international community has provided additional support for the Transitional Federal Government's *Radio Mogadishu*.

⁶ There is, however, an emerging literature on this field. The most notable contribution has been a special issue of journal *Northeast African Studies*, volume 13, no.2, 2014, edited by Fowsia Abdulkadir and Rahma Abdulkadir.

⁷ Constitution of Somalia, 2012. Available at: https://www.constituteproject.org/constitution/Somalia_2012?lang=en (accessed 3 April 2019).

⁸ Available at: <http://www.justice.gov.za/legislation/acts/1995-034.pdf> (accessed 3 April 2019).