

***Somali Injustice: Al-Shabaab and the Conscription of Child Soldiers***

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## Introduction

Somalia, a country nearly forgotten by the international community, has been ravaged by conflict, poverty, natural disaster, and insurgency for the past 50 years. After militant governments were overwhelmed by insurgent groups, Somali civilians were forced to flee the country as refugees. Those left behind were subject to war crimes and crimes against humanity (as recognized by the International Criminal Court) by the elite groups in power. One such group was al-Shabaab, an Islamic insurgent group aligned with al-Qaeda, whose greatest crime was, and continues to be, the conscription of child soldiers. Without intervention by international governmental and non-governmental organizations, Somalia will continue to suffer from the volatility and instability of insurgency and justice will not be reached.

## Recent History

Since the Republic of Somalia's independence in 1960, the nation-state has been ravaged by militant governments and civil war. Throughout the early 1960s, Somalia had border disputes with both Ethiopia and Kenya that erupted into hostilities until 1967. Abdi Rashid Ali Shermarke, democratically elected president from 1967-1969, was assassinated and replaced by Muhammad Siad Barre during a coup (BBC). In the late 1970s, Siad Barre invaded the Somali-inhabited territories of Ethiopia through the military aid and advising of both the Soviet Union and Cuba, since Somalia was considered a Socialist state. In 1981, opposition to Siad Barre's regime began to emerge after he replaced political members of the Isaaq and Mijertyn clans with members from his own clan, the Marehan. Throughout the next decade, Siad Barre began utilizing more militaristic and oppressive measures to keep Somali civilians in check; one such technique was the Red Beret Reign of Terror beginning in 1986. The Red Berets, Barre's

personal elite Marehan militia, unleashed a crusade of terror and militant intimidation on the rebellious citizens of Somalia that carried through 1991 (History of Somalia).

After a two-decade regime, Siad Barre fled Mogadishu, thus causing an explosion of clan militias, insurgent groups, and bandit groups to emerge; this once again caused terrorization of Somali civilians. Throughout the 1990s, a civil war ravaged Somalia between the different militant groups such as the Isaaq Somali National Movement (SNM) and the Somali National Alliance (SNA). The Somali civil war was complicated by the secession of four regions: Somaliland in 1991, Puntland declaring “temporary” independence in 1998, Jubaland in 1998, and Southwestern Somalia, which was led by the Rahanweyn Resistance Army (RRA), in 1999. United Nations Peacekeeping forces along with the US military entered Somalia in the mid-1990s in an attempt to curb the violence in Mogadishu. After both forces failed their missions and experienced casualties, the US pulled out in 1994 and the UN pulled out in 1996.

At the beginning of the new millennium, many Somalis began fleeing as refugees to neighboring nation-states such as Kenya in avoidance of the conflict. In 2006, extreme Islamist groups, along with other insurgents, began pushing their way into the volatile region. After warlords caused mass chaos within Mogadishu with hundreds of civilians killed, the Islamists militarily seized the capitol city. After just one short year of rule, in 2007, the Islamist regime in Mogadishu was ended when joint Ethiopian and Somali militaries intervened. During this time, hundreds of civilians continued to be killed due to conflict in the capital, while over 320,000 refugees were forced to flee to Kenya. In the late 2000s, a resurgence of piracy threatened food availability and resources, while Ethiopian, Somali, and insurgent forces were charged with war crimes by Human Rights Watch. Droughts and other natural disasters also contributed to the low availability of foodstuffs at the time; the lack of resources only further fueled the conflict. From

2007 through 2010, violence continued, especially in Mogadishu. Although Ethiopian forces pulled out the rest of its troops in 2009, this was followed by a reentrance of Islamist militia into the capitol city; hostilities flared up yet again. Piracy, governmental instability since 1991, and insurgent militias have continued to decimate the Somali landscape today.

### The Conflict Over Resources

In Somalia, natural resources are hugely underexploited, especially petroleum and natural gases. Along with petroleum and natural gases, Somalia has reserves of iron ore, tin, gypsum, bauxite, uranium, copper, and salt (US Department of State). The lack of governmental stability, paired with oppressive control by militant elites, makes mining and collection of raw materials nearly impossible for the average citizen. Because of Somalia's under-utilized natural resources, the nation brings in only \$300 million yearly through exports of livestock, bananas, hides, fish, charcoal, and scrap metal. These exports facilitate the creation of an average GDP per capita of \$600 a year; poverty is rampant in Somalia among the majority of its citizens due mainly to constant civil war and conflict for the past four decades.

Of the 13% arable land in Somalia, only 2% is actually cultivated, which means the vast majority of arable land is largely unutilized to better the nation-state. Since Somalia has so little available land and is prone to natural disasters such as drought and floods (Somalia Natural Disaster Profile), the land that is available can be a source of conflict and civil war (Webersik). Land as a source of conflict stems from the fact that land is where the resources are located; land is where all of Somalia's natural resources, natural reserves of petroleum, gas, water, and wealth, come from. Along with these under-utilized reserves and natural disasters comes the "distribution of strategic resources to political elites and clan leaders" (Webersik).

Corruption is rampant in Somali political society, and therefore the distribution of wealth and resources is severely skewed towards power-holders in the country. Even without a centralized government, Somalia's crops and trade markets are controlled by the military and a select number of influential leaders. This limited control of resources is the foundation of conflict, especially in resource hotbeds such as Mogadishu, Lower Shabelle, and Bay. Warlords and militia leaders profit from the civil war since trade cannot be restricted without an authoritative government. Those who hold power increase their profit margins through aid contracts as well, i.e. airports charging humanitarian flight fees, security fees for foreign companies, and humanitarian aid being diverted towards the "acquisition of arms and ammunition" (Webersik). Clans and sub-clans also contribute to the instability in Somalia along with the absence of government. To survive, people must affiliate themselves with a clan to receive resources and aid instead of a centralized government equally distributing goods amongst the people. However, conflict today seems to be within the clans themselves instead of between the different clans. Sub-clans break off from one another and begin smaller civil wars in order to gain power over the whole. A domino effect thusly follows through smaller sub-clan wars which contribute to instability and conflict in between different clans, ultimately leading to the Somali civil war seen today. However, the powerful leaders of the Somali people profit from instability and conflict in the region and continue to push the conflict forward through prolonged civil war and skirmishes throughout the major cities.

Although the Somali people could make use of their natural resource reserves and textile industries, what seems to be the most inviting resource is power. Somalia's civil war, like many civil wars, created a power vacuum in which militias, warlords, and Islamist insurgents filled the space where a centralized government used to stand. One of the main sources of conflict in

Somalia, especially in Mogadishu, is the quest for power in the region—with power comes wealth and control over industries and the people that run them. Without a centralized government, which Somalia has been lacking for nearly four decades, any individual with money or personal ties can start a militia in an attempt to gain power and control.

### Al-Shabaab's Insurgency

One of the most intriguing times of Somalia's complex and violent history is the entrance of militant groups such as al-Shabaab (*"The People"*) Islamist rebels. In 2009, al-Shabaab was accused by Somali President Sheikh Sharif Ahmed of using child soldiers as well as the use of torture, flogging, executions, and forced amputations. Al-Shabaab is mainly located in the southern port of Kismayu and executes a strict form of Shari'a in much of southern Somalia. In just seven weeks in 2009, violence in Mogadishu by Islamist insurgents and government forces killed over 250 civilians and caused a supposed 160,000 to flee the country. Al-Shabaab is still very prevalent in Somalia and in 2010 claimed to be aligned with al-Qaeda's global militant campaign to use jihad to introduce the strict Shari'a throughout the country.

Al-Shabaab and other Islamist militant groups are driven to violence by the strict form of Shari'a as well as al-Qaeda's global militant campaign (BBC News). The violence that is committed by al-Shabaab is due to the fundamental and conservative teachings of al-Qaeda and other extremist organizations. In an attempt to gain power and a stronghold in Somalia, political extremists use Islam as an instrument to control the people of the region. For example, an article published January 8<sup>th</sup>, 2011, explains how unrelated men and women are forbidden from walking together, speaking to one another, or shaking hands (Yahoo! News). The people of southern Somalia are controlled with severely restricted freedoms in order to maintain a faux-stability in

the region. Al-Shabaab is currently executing its campaign for a “jihad of the horn of Africa” and occupies nearly half of Somalia, including Mogadishu (BBC News).

Like al-Qaeda, al-Shabaab seems to be driven by the idea of a global *jihad*—one in which military campaigns and extremist activity feature prominently. Al-Shabaab uses violence, amputations, child soldiers, human shields, executions, and suppression of freedoms to facilitate the spread of their extremist, political-religious ideals. The extreme Islamists’ campaigns in Somalia can be traced back to simple financial gain and the need for power. The more land and people al-Shabaab controls, the more access to resources and profitable industries become available to them. With the rise of Islamist control throughout the region comes continued clashes with clan leaders, war lords, and militias. Al-Shabaab has simply become yet another clan in Somalia that uses fundamental religious principles to gain followers (or forcefully create submissive subjects) instead of ethnic ties and familial connections.

### Conscription of Child Soldiers

#### Rome Statute

As instability and conflict continue to grow in Somalia, the International Criminal Court is particularly concerned with the human rights abuses occurring throughout the country. Although the Transitional Federal Government (TFG) and other armed forces have recruited children for conflict, al-Shabaab is believed to do it in a “more deliberate and systematic manner” (Albin-Lackey). In the areas controlled by al-Shabaab, the recruitment of children and the fear it comes with are a daily occurrence. It is believed that 20% of government troops, such as the TFG’s forces, are children, along with 80% of rebel forces (Williams). Al-Shabaab, one of the most feared and powerful Somali rebel groups, has forcefully and deliberately enlisted

children into their armed forces. According to articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the International Criminal Court's Rome Statute, "conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities" is considered a war crime. Al-Shabaab's deliberate recruitment of children under the age of fifteen into armed conflict is in direct violation of the previously stated articles. Areas in southern Somalia such as the city of Kismayu and the capitol city of Mogadishu have been the sites of forced and coerced enlistment of children; threats against the child's family or the prospect of money (up to USD \$200 a month) are often used.

The non-governmental organization Human Rights Watch conducted interviews with Somali citizens directly impacted by the recruitment of child soldiers (Albin-Lackey). One young man who was interviewed was living in Kismayu, the port-city in southern Somalia, when his fifteen-year old brother was recruited by al-Shabaab. During combat, his brother was shot in the hand and ultimately deserted al-Shabaab's armed forces. Al-Shabaab looked for the young man's brother by interrogating his uncle. Al-Shabaab asked their uncle for either the boy or his AK-47 (which the boy sold after deserting al-Shabaab); since the uncle could produce neither, he was shot and killed by his interrogators.

A mother interviewed said al-Shabaab forcefully conscripted her 12-year old son and 14-year old nephew after school one day in Mogadishu. Her son and nephew did not return from school that day and she later received a letter from her son saying, "Mom, I am in Kismayu. I was taken by al-Shabaab to be recruited to fight. Please pray for my release." When the mother attempted to look for her son, she received letters from al-Shabaab threatening her life if she continued the search. Many parents in Mogadishu and southern Somalia have confined their sons



to the home or farm in order to protect them from recruitment – most of these young men are between the ages of 13 and 20 (Albin-Lackey).

Although both articles 8(2)(b)(xxvi) and 8(2)(e)(vii) in the International Criminal Court's Rome Statute mention the war crime of conscripting child soldiers, it is article 8(2)(e)(vii) that considers the conscription of child soldiers a war crime "applicable in armed conflicts not of an international character." Al-Shabaab's enlistment of children into its armed forces can also be considered an international act since al-Shabaab was an invading force, but for the purpose of prosecuting a specific perpetrator, the war crime will be treated as a non-international war crime. Al-Shabaab, although a foreign actor, confines recruitment to Somalia and Somali civilians and chiefly targets children fifteen-years and younger (Albin-Lackey). These children are both conscripted and used in armed conflict. Although no specific statistics can be found, it is believed that many of the children enlisted are either injured or killed in combat. The Somali Transitional Federal Government also recruits child soldiers; however, it does so in a more indiscriminate manner, simply recruiting anyone who will join its military (Albin-Lackey). Al-Shabaab deliberately recruits or forcefully enlists children under the age of fifteen into its armed forces, as demonstrated by the fact that a predicted 80% of their armed forces are internationally considered children (Williams).

#### Elements of Crimes

According to the International Criminal Court's legal text, *Elements of Crimes*, the war crime of conscripting or enlisting children under the age of fifteen into armed forces is split into five elements. The current leader of al-Shabaab (who will be referred to as "Leader") should be held responsible for the violation of these five elements. The first element of said war crime is listed as follows: "The perpetrator conscripted or enlisted one or more persons into an armed

force or group or used one or more persons to participate actively in hostilities.” There are countless eye-witness accounts that al-Shabaab, an armed group, has enlisted one or more persons into their forces. Al-Shabaab has participated in much of the conflict in Mogadishu and southern Somalia and uses its coercive recruitment tactics to build its armed forces (Albin-Lackey). One example is the aforementioned letter to the woman from her 12-year-old son who was forcefully enlisted into al-Shabaab. The letter and the mother’s story are physical and oral proof that a person, whether or not a child is irrelevant for this element, was conscripted by al-Shabaab. Therefore, the Leader has violated this element by conscripting or enlisting one or more persons into al-Shabaab’s armed forces as well as using them actively in hostilities in Mogadishu and southern Somalia.

The second element under the *Elements of Crimes* text is as follows: “Such a person or persons were under the age of fifteen years.” There have been many reports of children under the age of fifteen being enlisted into al-Shabaab’s armed forces and, more so, evidential proof—for example, the aforementioned letter and mother’s oral account, which describe, in detail, the act being committed along with the letter saying “I was taken by al-Shabaab to be recruited to fight.” This letter demonstrates how al-Shabaab members not only forcefully recruited a person into their armed forces, but that said person was only 12 years of age. Therefore, the Leader has violated this element through conscripting persons under the age of fifteen years into armed conflict.

The third element listed under *Elements of Crimes* is as follows: “The perpetrator knew or should have known that such person or persons were under the age of fifteen years.” First off, it is understood that much of the recruitment occurs outside of schools or parts of the city where children seem to spend most of their time (Albin-Lackey). The conscription or enlistment of

children outside of their schools demonstrates how al-Shabaab recruiters not only knew (or should have known) that those persons were under the age of fifteen, but that those children were targeted. Another fact is that most of the children under the age of fifteen are either pubescent or pre-pubescent. Al-Shabaab recruiters either know or should be able to tell whether a child or person is pubescent or not. Therefore, the Leader either knew or should have known that such a person or persons were under the age of fifteen years when the conscription took place.

The fourth element as listed under the *Elements of Crimes* legal text is as follows: “The conduct took place in the context of and was associated with an armed conflict not of an international character.” Al-Shabaab is one of the main perpetrators and instigators of violence in the power vacuum that is currently occurring in Somalia. Al-Shabaab uses violence and armed conflict in order to destabilize the TFG and to continue the absence of any leading governmental figure in power. Children are enlisted into al-Shabaab for the sole purpose of participating in armed combat in the capitol city of Mogadishu as well as many other regions in southern Somalia. One such child is the brother of a young man interviewed who, at the age of fifteen, was recruited, shot in the hand during conflict, and ultimately deserted al-Shabaab (Albin-Lackey). Therefore, the Leader conscripted children under the age of fifteen in the context of and was associated with an armed conflict taking place solely in Somali territories, thusly violating the fourth element.

The fifth and final element of the child soldier war crime is listed as follows: “The perpetrator was aware of factual circumstances that established the existence of an armed conflict.” This means that the al-Shabaab leaders and recruiters understood that armed conflict was occurring at the time of recruitment. Al-Shabaab is one of the major players in the Somali conflict occurring in Mogadishu and most of Somalia and, therefore, understands the

circumstances in which enlistment took place. Al-Shabaab conscripts and coercively recruits children into their armed forces in order to fuel the combat occurring in Somalia. Children are used to build al-Shabaab's armed forces which both allow more control over southern Somalia and the continuance of armed combat throughout the region. Therefore, the Leader violated the fifth element of the conscription of child soldiers by being aware of factual circumstances that established the existence of violence and conflict in the region.

Oral accounts and letters from children who have been recruited provide overwhelming evidence that al-Shabaab recruiters have enlisted or conscripted children under the age of fifteen into their armed forces (Albin-Lackey). The perpetrator must be reprimanded. Leadership of al-Shabaab has taken many different forms and has passed from one individual to the next, but the Leader should be prosecuted since he is the one currently in charge of al-Shabaab. The TFG is also at fault with regards to the conscription of children under the age of fifteen, but it is the systematic and efficient recruitment of children into al-Shabaab's armed forces that must be dealt with. Through interviews, eye-witness reports, and physical evidence, the International Criminal Court now has enough reason to, at least, release an arrest warrant for the current Somali Leader of al-Shabaab. Therefore, due to the violations of the five elements—the conscription of a person or persons under the age of fifteen, when the Leader knew or should have known said persons were under the age of fifteen, into al-Shabaab's armed forces for the use in armed combat in Mogadishu and southern Somalia when fully aware of the circumstances which established the existence of said conflict—the current Leader of al-Shabaab is guilty of the war crime of “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.”

## Analysis

A legal analysis of the criminal atrocities that have occurred, and are continuing to occur, in Somalia is necessary to bring justice and hope to the volatile region. Legal analysis, however, can only accomplish so much. Any conflict, war crime, or crime against humanity has had a profound effect on not only the victims but, also, on the world population as a whole. The very concept of a human being treating another in a manner that disregards their moral and human rights is atrocious and punishable for more than merely legal reasons. Legal analysis lacks emotion and passion that is crucial for human empathy and understanding. There are also different forms of justice that must be addressed when talking about any conflict or atrocity, whether it is retribution, restoration, or utilitarianism.

## The Importance of Empathy

Although a legal analysis of crimes and the use of international criminal law are important and necessary, they do not always explain or facilitate a solution for the crime at hand. Emotions are not an obstruction but an important element needed for full comprehension of any conflict or crime. In Somalia, crimes against humanity and war crimes are being committed by both the TFG and by insurgent groups. Torture, public execution and flogging, repression, and the conscription of child soldiers are daily occurrences. These atrocities decimate the Somali population and social landscape as a whole, and the very acts themselves indirectly affect the rest of us as fellow human beings. We should be emotional, passionate, and invested in the violence and terrorization that occurs in the Somali civilians' day-to-day lives. This is not to say, however, that we should allow our emotions to cloud our judgment or discourage us from bringing perpetrators to justice. The violence in Somalia is still occurring today without global

awareness because there is a lack of emotional investment. If people saw what was happening and heard about the fear and repression experienced daily by the Somali population, there would be a deep empathetic connection made and action would inevitably be taken. This emotional connection will not be made through international criminal law alone.

Law and justice are important in discovering the crime itself, the perpetrator, and the victim, but they fail to include the rest of humankind. With crimes as heinous as the war crimes and the ICC defined crimes against humanity, the rest of the world should be incorporated. The way to involve others is through empathy and sympathy, passionate writing and intense images that pull an emotional response from the reader or viewer. With awareness comes an emotional response, and with an emotional response comes action. Without awareness, caring, and action, these crimes will continue to occur unbeknownst to the rest of the world until it is simply too late to help. Emotional involvement by the masses is necessary in reaching true justice. Through recognition of the atrocities that took place, a need to help the victims directly affected by the issue, and an empathetic response to the violence by others, justice for humanity as a whole, in its most basic sense, can be reached.

#### The Importance of the Human Element

International law also fails to recognize the human element behind crimes. Human beings are psychologically, physically, and emotionally complex organisms, and with these complexities comes, at times, unpredictable and seemingly monstrous behavior. With genocide for example, many of the perpetrators responsible for the killing did so out of fear for their own lives or out of a simple mob-mentality. Admittedly, those killed or raped are always first to be considered victims, but at times, we fail to recognize the angst, guilt and horror experienced by

the perpetrators themselves. Many individuals who fight, kill, or torture are those simply fighting for survival as they must kill or be killed.

In Somalia, the majority of rebel forces and much of the TFG's military are children under the age of fifteen. What makes the conscription of child soldiers so heinous is not just the fact that children are put into combat, but the amount of psychological and physical damage combat can have on a child's delicate development process. There seems to be a complexity to humanity that is ignored in international law. No other species on earth performs the kind of atrocious acts seen in the ICC's Rome Statute. Human intelligence, although a major strength, is a weakness that causes us to illogically reason with, blindly follow, and viciously lead one another into inhumane action. If we can understand the human element, a greater form of justice could, one day, be reached.

### The Complexities of Justice

Justice, with regards to the Somali conflict or in general, is a complicated issue, and definitions of the 'just' vary across different theories. Three forms of justice may be used in an analysis of the conscription of child soldiers by al-Shabaab in Somalia: retribution, restoration, and utilitarianism. Justice with regards to child soldiers is difficult since more than just the children are victimized. Because they are dependents, their parents or guardians also suffer. The retributive form of justice states that those responsible for the crimes committed deserve punishment. Retribution in Somalia's case would mean those responsible for conscripting child soldiers, both the enlisters and the leaders giving the orders to do so, would be put in prison.

There are many issues with a retributive form of justice, however. Given the instability of Somalia's political landscape (i.e. the lack of a national government), the conscription of child soldiers by the Transitional Federal Government itself, and the lack of space and resources,

imprisonment of all those responsible would be impossible. Prisons would be overcrowded and a situation similar to what happened after the Rwandan genocide would occur: disease, death, and inhumane treatment of those imprisoned. Somalia also lacks any official judicial system to actually adjudicate claims against those responsible for the war crimes; therefore, Somalia would be forced to look outside its borders for justice.

Another way to deal with the perpetrators who have conscripted child soldiers would be restorative justice. Restorative justice would consist of rebuilding the families, towns, and cities directly impacted by the conscription and the violence that ensued. Child soldiers are usually brainwashed to be able to fight and kill in combat, so the first step in restorative justice would be to help these children return to a psychologically stable state. Child soldiers in Somalia have tortured and killed fellow Somalis in and out of combat, and this causes an intense trauma in their lives, as it does for adult soldiers and clan militiamen. The next step in the restorative process would be attempting to reintroduce the former child soldiers and the perpetrators back into society. Through discussion between the perpetrators and victims, psychotherapy, and international aid, restorative justice could be possible. The problem lies, however, within the Somali political landscape: instability is kept alive by clan warlords and insurgent groups. Because of Somalia's instability, this sort of large-scale psychological healing would be nearly impossible. There are simply not enough trained doctors, psychologists, or psychotherapists in Somalia to facilitate the healing process. As long as Somalia is in a state of constant conflict and volatility, international aid will not be distributed fairly, and outside doctors will be unable to help. If the Somali government remains nonexistent, businessmen and political leaders will profit and, therefore, find no need to aid in the stabilization of the Somali political system.



A final approach that could be used to reach justice is utilitarianism, the greater good. In a utilitarian form of justice, punishment or imprisonment would establish a solution that is best for the Somali society as a whole. Those imprisoned would eventually become functional, contributing members of society and ultimately facilitate the reconstruction of the Somali social landscape as a whole. While the perpetrators would potentially become contributing members of society, the rest of those affected, the victims, would feel reconciled by the criminals' punishment. Utilitarianism would have to be the means to the end of what is best for those directly impacted by the crime. Ideally, punishment of the perpetrators would bring some form of justice and peace to the region and facilitate the recreation of a functional society. Punishment of those responsible for the conscription of child soldiers would be the first step, but establishment of a stable government would have to follow, ultimately creating a well-founded economy and society. A utilitarian form of justice, however, like retribution and restoration, is impossible as long as Somalia is in the volatile state it is in today. There are simply not enough resources or space to manage the perpetrators or to care for the former child soldiers.

No matter what form of justice is pursued, a solution will continue to remain impossible in the currently unstable Somali state. Children are conscripted into rebel and government forces daily, while famine, malnourishment, repression, and poverty are rampant. As instability continues, those in power continue to profit. Somalia simply lacks any capability to justly try the perpetrators responsible for the conscription of child soldiers. Somalia also lacks the essential institutions and educated professionals to aid the former child soldiers and their families, ultimately helping them reach some semblance of normalcy. The Somali political, economic, and social infrastructures have been decimated by civil war, clan violence, militant leaders, and oppressive groups such as al-Shabaab. Somalia lacks any national government and, although the

TFG continues to attempt the achievement of stability, it is also responsible for many of the crimes committed and the frailty of the Somali state.

#### Prosecution of the Followers

International criminal law is the fairest way to try the perpetrators responsible for the conscription of child soldiers in Somalia. Because Somalia lacks a single governmental system (including any judicial structure), a tribunal or the International Criminal Court would be best to try the leaders of the war crimes committed. The current Leader of al-Shabaab should be tried, but past rebel force leaders and certain government officials should be tried, as well. The conscription of persons under the age of fifteen into military forces is not the only war crime committed in Somalia on a day-to-day basis; torture, public execution and flogging, indiscriminate killing of civilians and utterly heinous treatment of Somali citizens are prevalent in most areas of Somalia. Since the ICC only tries principal individuals who were behind the crimes committed, there should be an IGO or tribunal created to try those who actually committed the act. Al-Shabaab, for example, has the leaders who are in charge of Kismayu and southern Somalia and then those who conscript the child soldiers and torture and execute civilians and oppress Somali citizens through a strict form of Shari'a.

In every mass violent act, war crime, genocide, or crime against humanity, there are the leaders in charge, such as Adolf Hitler or Muammar Gadhafi, and then there are those who perform the act itself, such as the Waffen-SS or the Libyan military. Trying the leaders who were the masterminds behind the international crimes is the first step in reaching true justice, but those who carried out the acts are also responsible and must be tried and punished, as well. In Somalia's case, with regards to the conscription of child soldiers, the Leader of al-Shabaab would be tried and punished by the ICC, followed by the punishment or imprisonment of those

who actually forcefully enlisted and conscripted the persons under the age of fifteen. The only way those responsible for carrying out the al-Shabaab Leader's orders would be brought to justice would be through the creation and enforcement of a stable government and domestic judicial system. Ideally, these uncorrupt trials would facilitate the rebuilding of a new Somali society and people.

### Restoration

The previously mentioned form of justice, restoration, is the most likely, if any, to bring justice, peace, and security to the region. If the violence and crimes ever end in Somalia, a governmental system stronger than the TFG would have to be put in place, and areas like Puntland and Somaliland would not only declare independence but also have their sovereignty recognized by the international community. Although it would take some time to rebuild the Somali political, economic, and societal landscapes, through support and aid from the international community and a stronger, more stable domestic government, it could be possible. Al-Shabaab and other insurgent forces, bandit and pirate gangs, and the clan warlords would all have to be dealt with by either the ICC or domestic courts. Once the rebel forces are out of the way, the TFG (or a new attempt at a Transitional Federal Government) would be given room to thrive and grow. When a nation-state has an established government, economic stability, quality control over the state's resources, an overall societal strength follows. The only way for Somalia to rebuild itself is for it to follow this same pattern and establish a stable government. With help from the international community, the establishment of a single, domestic, Somali government could be possible and ultimately the restoration of the state as a whole.

## Conclusion

Since Somalia's independence in 1960, the country has been decimated by civil war, militant governments, insurgent groups, and poverty. Starting in 1991 after Siad Barre's regime, repression, conflict, violence, and human rights violations ravage Somalia's political, economic and social landscapes and continue to occur today. Al-Shabaab, an Islamist insurgent group, has tortured, publically executed, and flogged Somali civilians and conscripted child soldiers. The Leader of al-Shabaab has violated all five elements of the war crime, "conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities." The Leader should, therefore, be held responsible, tried, and punished for his actions. To bring justice to the Somali territories, a restorative stance must be taken and through imprisonment of the perpetrators, counseling and aid for the victims, and the support from the international community, restoration is possible.

Somalia has been ignored by global powerhouses such as the US and the UN for the past five decades and has been in a nearly constant state of volatility and instability. The only way for a sense of security and justice to be reached in Somalia is for the international community to get involved on a larger scale. Only through more humanitarian aid, military facilitation, or simple political consulting will Somalia be able to stabilize and grow into an established, well-founded nation-state. Appalling international crimes have been committed in Somalia for the past 50 years, and only through international support, aid, and enforcement will some semblance of justice finally be reached.

## Appendix A

### Map of Somalia and the Locations of Major Conflict



## *Bibliography*

- Albin-Lackey, Chris, and Letta Tayler. *Somalia: Harsh War, Harsh Peace: Abuses by Al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*. New York, NY: Human Right Watch (HRW), 2010. Print.
- "BBC News - Somali Islamists Al-Shabaab 'join Al-Qaeda Fight'" *BBC News - Home*. Web. 15 Feb. 2011. <<http://news.bbc.co.uk/2/hi/8491329.stm>>.
- "BBC News - Timeline: Somalia." *BBC News - Home*. Web. 15 Feb. 2011. <[http://news.bbc.co.uk/2/hi/africa/country\\_profiles/1072611.stm](http://news.bbc.co.uk/2/hi/africa/country_profiles/1072611.stm)>.
- "Elements of Crimes." *International Criminal Court*. ICC. Web. 8 Mar. 2011. <[http://icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B68E5F9082543/0/Element\\_of\\_Crimes\\_English.pdf](http://icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B68E5F9082543/0/Element_of_Crimes_English.pdf)>.
- "HISTORY OF SOMALIA." *HistoryWorld - History and Timelines*. Web. 15 Feb. 2011. <<http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad20>>.
- "International Criminal Court." *Element of Crimes*. ICC. Web. 8 Mar. 2011. <[http://www.icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B-68E5F9082543/0/Element\\_of\\_Crimes\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B-68E5F9082543/0/Element_of_Crimes_English.pdf)>.
- "Rome Statute of the International Criminal Court." *International Criminal Court*. ICC. Web. 8 Mar. 2011. <[http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome\\_Statute\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf)>.
- "MAP Somalia. Map Somalia. Many Maps of Somalia." *All the Cities and Countries in the World. Many Information about Cities and Countries*. Web. 15 Feb. 2011. <<http://athaia.org/somalia-map.html>>.
- "Possible Violations by the United States in Supporting Somali Military." *Child Soldier Relief*. Child Soldier Relief, 22 June 2010. Web. 06 Mar. 2011. <<http://childsoldierrelief.org/category/countries/somalia/>>.
- "Somali Islamists Ban Men, Women from Shaking Hands - Yahoo! News." *The Top News Headlines on Current Events from Yahoo! News*. Web. 15 Feb. 2011. <[http://news.yahoo.com/s/ap/20110108/ap\\_on\\_re\\_af/af\\_somalia\\_handshake\\_ban](http://news.yahoo.com/s/ap/20110108/ap_on_re_af/af_somalia_handshake_ban)>.
- "Somalia Natural Disaster Profile." *Somalia Natural Disaster Profile*. The Earth Institute at Colombia University. Web. 6 Mar. 2011. <[http://www.ldeo.columbia.edu/chrr/research/profiles/pdfs/somalia\\_profile1.pdf](http://www.ldeo.columbia.edu/chrr/research/profiles/pdfs/somalia_profile1.pdf)>.
- "Somalia HUMAN RIGHTS - Flags, Maps, Economy, History, Climate, Natural Resources, Current Issues, International Agreements, Population, Social Statistics, Political System." *Photius Coutsoukis; Photius; Photios; Fotis Koutsoukis - Sustained by Working Capital in the World*. Web. 15 Feb. 2011.

<[http://www.photius.com/countries/somalia/national\\_security/somalia\\_national\\_security\\_human\\_rights.html](http://www.photius.com/countries/somalia/national_security/somalia_national_security_human_rights.html)>.

"Somali President Says Islamists Use Child Soldiers. « SomaliSwiss Community . Somalia Switzerland." *SomaliSwiss Community . Somalia Switzerland*. Web. 15 Feb. 2011. <<http://somaliswiss.wordpress.com/2009/06/28/somali-leader-says-islamists-use-child-soldiers/>>.

"Somalia." *U.S. Department of State*. Web. 15 Feb. 2011. <<http://www.state.gov/r/pa/ei/bgn/2863.htm>>.

Webersik, Christian. "Publications - Climate Change and Security." *Home - Climate Change and Security*. 11 Apr. 2008. Web. 16 Feb. 2011. <<http://webersik.com/publications/>>.

Williams, Christine. "Somalia « Child Soldier Relief." *Child Soldier Relief*. 22 June 2010. Web. 27 Mar. 2011. <<http://childsoldierrelief.org/category/countries/somalia/>>.