

# Punishment on Stage

*-Application of Islamic Criminal Law by Harakat al-Shabaab al-Mujahideen-*

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## Executive summary

Harakat al-Shabaab al-Mujahideen, usually referred to as al-Shabaab (“the youth”), is mostly known as a Somali terrorist group. But since the end of 2008 it has functioned as a state power in large parts of Southern and Central Somalia. In this study I sketch out the structure and function of the legal system of the group. Over the last three years they have developed an administrative structure and a legal system which is unprecedented in the Somali conflict, which has lasted for more than 20 years. In order to establish law and order in their territories al-Shabaab has applied their own version of *sharī’a* and issued strict religiously inspired decrees. The present study is based on information acquired through interviews with Somali refugees in Nairobi who have direct experiences with al-Shabaab’s judicial practice. It reveals that al-Shabaab’s application of criminal law follows the inherent logic of classical Islamic legal doctrines on several points. However, the al-Shabaab courts tend to overlook many of the strict requirements regarding evidence and procedure which was outlined by the medieval Muslim scholars in order to humanize Islamic law. This is especially evident in cases of the so-called *ḥadd* (pl. *ḥudūd*) crimes, i.e. offences where the punishments (e.g. stoning, lashing and amputation) are described in the Qu’rān and the *ḥadīth*-literature. Therefore, the legal reality under al-Shabaab’s regime is far more brutal than under most other Islamic inspired regimes in the contemporary Muslim world.

Al-Shabaab’s practice of Islamic criminal law is not only a means to exercise control through fear but may also be seen as an effective way of filling the vacuum of insecurity and instability after twenty years of violence and absence of state institutions in its territories. In order to understand Al-Shabaab’s current practice of criminal law, I argue, one has to take into consideration the group’s Jihadi-Salafi affiliation. According to Salafi notions *sharī’a* is not only a means to an end, but an end in itself. As such *sharī’a*, i.e. God’s divine law, is the visual symbol of an Islamic state. Consequently, the application of Islamic criminal law, especially the *ḥudūd* punishments, provides al-Shabaab with religious and political legitimacy. The fact that corporal punishments and executions are frequently enforced in public is in many respects more important than whether the criminal proceedings are in accordance with the strict requirements outlined in classical legal doctrines.



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Michael Skjelderup  
Oslo, November 2011

# Somalia

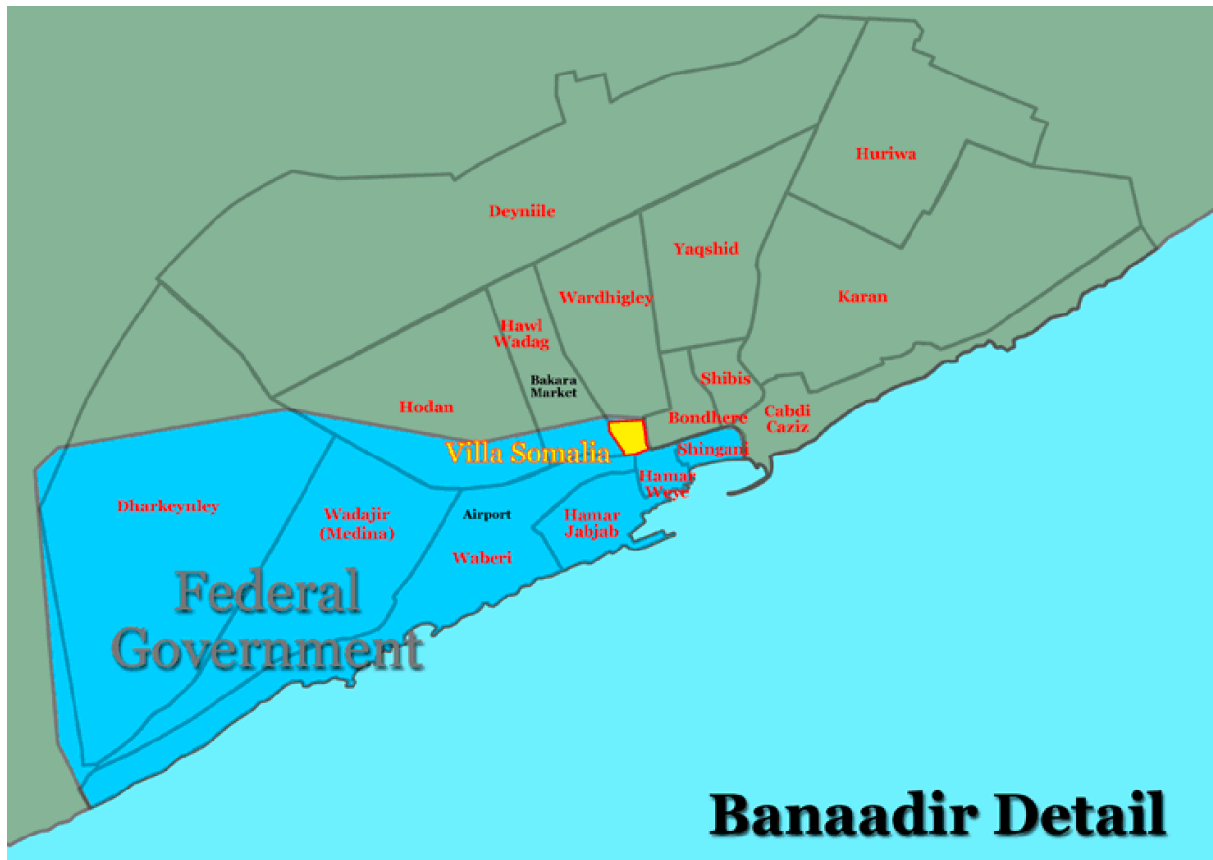


Jubbada Hoose: Lower Jubba  
 Jubba Dhexe: Middle Jubba  
 Shabeellaha Hoose: Lower Shabelle  
 Shabeellaha Dhexe: Middle Shabelle





## Mogadishu



The political situation in Mogadishu, 26<sup>th</sup> November 2010



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## Part 1: Context

### Chapter 1: Introduction

For decades, the rights of the Muslims have been lost in either man-made or tribal laws, or bribes, sources, or favoritism. These rights which were lost were inherited by successive generations as mountains of disputes which have filled people with hate, taking a toll on peace and security. This was of course until the sun of the *Shariah* rose and did away with the darkness of oppression.<sup>1</sup>

This statement by the general command of Harakat al-Shabaab al-Mujahideen (“The Mujahideen Youth Movement”) was released on an Islamist web page as a part of a general outline of the movement’s ideology. This movement, often referred to as al-Shabaab (“the youth”) has for the last three years dominated most parts of the war-torn Southern and Central Somalia. Although it is currently under massive military pressure al-Shabbab has developed a relatively centralized “state” administration which through the application of *sharī’a*<sup>2</sup> has provided a certain degree of law and order. However, it has had its price. Al-Shabaab’s interpretation and brutal application of *sharī’a* has caused and still causes fear and insecurity among the population. The main question which I pursue in this study is al-Shabab's relation to Islam, notably its use of *sharī’a* as a means of gaining religio-political legitimacy. The thesis consists of two parts: Part 1 provides the necessary background, the theoretical framework and methodological reflections, and Part 2 consists of the analysis of my material.

Part 1 consists of four chapters: chapter 1 gives a short introduction to general theoretical considerations and the two research questions which inform my thesis. In chapter 2 I describe and reflect on important aspects and challenges regarding my fieldwork which was conducted in the Somalian district in Nairobi, Kenya, during October 2010. During this stay, I gathered important material through interviews with refugees from al-Shabaab controlled territories. Also, the field trip was necessary in order to establish a network among Somalis in Nairobi, which, in the course of the following months, would provide essential information from newly arrived refugees.

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<sup>1</sup> Global Islamic Media Front, *The forgotten Obligation: A Call to the Most Important Obligation After Iman*, 29. April, 2010, p. 6, <http://forgottenobligation.wordpress.com/2010/04/29/mujahideen-youth-movement-al-shabaab-%E2%80%9Cand-on-that-day-the-believers-will-rejoice%E2%80%9D/>, [14.06.2010] (URL not longer available).

<sup>2</sup> I apply diacritical marks on all Arabic terms unless the term is written differently in the source material. Except from proper nouns and categories applied in the academic literature, all Arabic and Somali terms in this thesis are written in italics.

Chapter 3 focuses on religion, law and traditional clan structures in Somalia. Through a historical sketch I emphasize the changing relationship between two important and often opposing ideas, namely clan and religion. Within this framework, I give a short outline of the emergence of Islamic radicalism in Somalia, with emphasis on al-Shabaab.

Chapter 4 is devoted to al-Shabaab and its ideology. This approach rests on Jonathan A. C. Brown's,<sup>3</sup> Quintan Wiktorowicz's<sup>4</sup> and Bernard Haykel's<sup>5</sup> theoretical perspectives on Salafism. I apply their categories in order to place al-Shabaab within a model of contemporary Islamic trends and use their categories as a framework for my analysis. By discussing certain ideological traits as well as al-Shabaab's practice, I argue that al-Shabaab in many respects could be categorized as a Jihadi-Salafi group.

Part 2 consists of the analysis of my material. In order to throw light on the salient features, the functioning and the logic of al-Shabaab's legal system and judicial practice, I systematically compare my material with classical Islamic legal doctrines, *fiqh*.<sup>6</sup> In the last chapter I discuss the most notable findings in light of the Jihadi-Salafi model mentioned above. It provides a framework for understanding al-Shabaab's application and enforcement of law, notably the frequent use of brutal punishments and executions. I also point out the challenges that al-Shabaab faces when trying to establish itself as a legitimate religious-political regime by using Jihadi-Salafi ideas and symbols.

## 1.1 Previous research and research questions

Although there has been some research on al-Shabaab, particularly regarding its link to global Islamism and terrorism, little research has been conducted on its legal structure and application of law. To my knowledge the only scholarly works which touch briefly upon these topics are Roland Marchal's *The Rise of a Jihādi Movement in a Country at War: Harakat al-*

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<sup>3</sup> Jonathan A. C. Brown, *Hadith: Muhammad's Legacy in the Medieval and Modern World*, (Oxford: Oneworld Publications, 2009)

<sup>4</sup> Quintan Wiktorowicz, "Anatomy of the Salafi Movement", *Studies in Conflict & Terrorism* 29, 3, (2006).

<sup>5</sup> Bernard Haykel, "On the Nature of Salafi Thought and Action", in Roel Meijer (ed.), *Global Salafism: Islam's New Religious Movement*, (London: Hurst & Company, 2009).

<sup>6</sup> "Classical legal doctrines" or "classical *fiqh*" are collective terms for the comprehensive legal literature compiled roughly from the 8<sup>th</sup> century to 14<sup>th</sup>-15<sup>th</sup> century AD by Islamic legal scholars. The term "*fiqh*", meaning "knowledge" or "reason" was already used by the early legal scholars in the 8<sup>th</sup> century as a term for Islamic jurisprudence. While *sharī'a* was perceived as the God given law by these scholars, *fiqh* was seen as the human interpretation of this law. The hermeneutical tradition developed during this period is still being studied and lectured both in the West and in the Muslim world and exerts great influence on contemporary *sharī'a* discourses.



*Shabaab al-Mujaheddin in Somalia*<sup>7</sup> and Stig J. Hansen's *Report for the Norwegian Defence Research Establishment*<sup>8</sup>. In addition, several reports by NGOs/GOs concerning human rights violations have been issued, which contain valuable eyewitness accounts of al-Shabbab's judicial practice and law-enforcement. However, there has been no systematic study of al-Shabaab's legal system and its application and enforcement of law. My intention is that this thesis will contribute to the understanding of the structure and function of al-Shabaab's legal system, with a particular focus on judicial practice and enforcement of criminal law. Hopefully, this limited study will not only increase the understanding of al-Shabaab's legal system, but also contribute to a better understanding of its role as a national and global religious-political actor. I also hope that the study will serve as a starting point for further research both on al-Shabaab and application of *sharī'a* in Somalia.

In order to throw light on al-Shabaab's jurisprudence and to contribute to the understanding of *sharī'a* in contemporary Somalia, I focus on two main questions:

1. Al-Shabaab and its relation to the Islamic legal heritage:

To what extent does al-Shabaab conform to classical *fiqh*? In order to throw light on this question I compare al-Shabaab's judicial practice with concepts, provisions and requirements from classical legal doctrines.

2. Al-Shabaab and Salafism:

How does al-Shabaab manage to gain legitimacy as a state power? In order to throw light on this question I look at the use of symbols and terms from the current Salafi discourse with emphasis on *sharī'a*.

## **1.2 Studying al-Shabaab and *sharī'a*: a social constructionist perspective**

A basic theoretical premise for this thesis is the social constructionist claim that social categories, e.g. religion and *sharī'a*, are not something ahistorical and given, but rather historical and socio-cultural constructions. This implies that categories are given meaning through social interactions, in contrast to an essentialist view, where categories are understood

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<sup>7</sup> Roland Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, (Paris: SciencesPo, March 2011), <http://www.ceri-sciencespo.com/ressource/shabaab.pdf>, [19.08.2011].

<sup>8</sup> Stig J. Hansen, *Report for the Norwegian Defence Research Establishment*, (2011, forthcoming).

as static entities and considered separately from context.<sup>9</sup> Social interactions, or discourses, are, as Foucault puts it: “practices which form the object of which they speak”.<sup>10</sup> In a constructivist perspective, religious categories like sacred law, moral conduct and just punishment etc. are continually defined or redefined. Epistemologically, this suggests that one cannot have knowledge of the world outside what is, in a certain historical and cultural context, created in the discursive interactions. As S. Hall summarizes:

Discourse, Foucault argues, constructs the topic. It defines and produces the objects of our knowledge. It governs the way that a topic can be meaningfully talked about and reasoned about. It also influences how ideas are put into practice and used to regulate the conduct of others.<sup>11</sup>

Central to the social constructionist perspective is the question of power, in the sense that every truth claim or discourse is constantly under threat from other discourses which offer alternative versions of “the truth”.<sup>12</sup> What is to be understood as true or truthful is contingent on the relative authority or power of the actors who make the utterance.<sup>13</sup> Thus, for instance in a trial conducted in al-Shabaab dominated areas, the judge (*qāḍī*), the complainant and the defendant all participate in the discourse where al-Shabaab’s world view (their ideas, norms and values) and its version of *sharī’a* is constructed as normal.

What are the implications of a constructionist perspective for the approach to al-Shabaab and *sharī’a*? Firstly, the meaning of the term *sharī’a* cannot be isolated from its concrete representation and those who enforce it. In the al-Shabaab areas this means that *sharī’a* is nothing more than its continuous reconstructions through authoritative statements and application by the courts. Since a “valid” application of *sharī’a* relies on the authority of those who enforces it the question of authority is crucial but also very problematic for al-Shabaab. The group gained territorial power through the use of violence and is now trying to establish itself as a legitimate political force and as a guarantee of justice, stability and order. In order for al-Shabaab’s *sharī’a* practice to be counted as valid, normal and truthful it cannot deviate too radically from preestablished conceptions of *sharī’a*, justice and law. However, jurisprudence in Somalia is not only restricted to *sharī’a* but also includes customary law,

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<sup>9</sup> Torjer A. Olsen, “Diskursanalyse i religionsvitenskapen”, in Siv Ellen Kraft and Richard J. Natvig (eds.), *Metode i religionsvitenskapen*, (Oslo: Pax Forlag, 2006), pp. 55-56.

<sup>10</sup> Foucault quoted in Vivien Burr, *Social Constructionism*, 2nd ed. (London: Routledge, 2003), p. 64.

<sup>11</sup> S. Hall quoted in Burr, *Social Constructionism*, p. 65.

<sup>12</sup> Anne Eriksen and Anne Stensvold, *Maria-kult og helgendyrkelse i moderne katolisisme*, (Oslo: Pax Forlag, 2002).

<sup>13</sup> Iver B. Neuman, *Mening, materialitet, makt: En innføring i diskursanalyse*, 2nd ed., (Bergen: Fagbokforlaget, 2002), pp. 166-172; Burr, *Social Constructionism*, pp. 67-80.

which has been increasingly important in the absence of Somali state institutions during the last twenty years. Al-Shabaab's application of *sharī'a* is therefore, to a certain extent, restrained by history and tradition, making it difficult for al-Shabaab to gain legitimacy if their practices are too radical.

## **Chapter 2: Method**

When I started working with this thesis, my primary interest was to acquire knowledge about the legal system of al-Shabaab with focus on its judicial practice of criminal law. This I intended to do by gathering as much relevant information as possible from internet sources, e.g. media reports, reports from NGOs and GOs, and al-Shabaab statements and propaganda material found on Islamist web pages, as well as through fieldwork. However, there were two major challenges: Firstly, most of the reports found on the Internet focused primarily on application of the brutal *hudūd* punishments<sup>14</sup> and other human rights violations, such as beheading of alleged spies. Moreover, few of these reports, or the numerous propaganda pamphlets found on the net, could provide much information about what actually happens during court proceedings. Secondly, already from the outset of my project, the al-Shabaab dominated Southern and Central Somalia were ravaged by fighting between the forces of al-Shabaab on the one side, and the TFG<sup>15</sup>, AMISOM<sup>16</sup> and other groups on the other. Al-Shabaab's hostile attitude towards Western organizations, journalists and others, which occasionally had led to expulsion and even to killings, made it difficult or even impossible for me to conduct fieldwork in the areas they control. These practical difficulties limited my access to relevant source material since I could not observe first-hand al-Shabaab's judicial practice, and to my knowledge there were no records of court cases accessible.

### **2.1 The quest for information – initial stages**

As direct observation of court cases and interviews with *qāḍīs* and other al-Shabaab functionaries in Somalia was out of the question, I had to consider other, though less adequate, methods in order to acquire relevant information. Through one of my supervisors, Stig Jarle Hansen's extensive network of Somalis in Scandinavia and the Horn of Africa, I

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<sup>14</sup> *Hudūd* punishments are described later.

<sup>15</sup> TFG, the Transitional Federal Government, is the internationally recognized government of Central and Southern Somalia which was established in November 2004.

<sup>16</sup> AMISOM, the African Union Mission in Somalia, is a regional peace keeping operation headed by the African Union. It was established in January 2007 and is based in the Somali capital Mogadishu.

initiated a preliminary survey in order to find out whether it would be possible to acquire information about judicial practices through local Somali contacts. I prepared a questionnaire, sent this to two Somalis living in Kismayo and Baidoa, hoping that they would be able to find relevant answers by questioning litigants, *qāḍīs*, eyewitnesses or others. However, this soon turned out to be far too risky for the two fieldworkers: As soon as the one in Kismayo started to ask questions, he was brought to the police station and asked what he was doing. When he told about the project, he was ordered by the the Ḥisbah, al-Shabaab's equivalent to police, not to ask any questions again, or face imprisonment. The other fieldworker, conducting research in Baidoa, managed to speak with some litigants and eyewitnesses, and sent a couple of valuable reports about court cases in the area. Sadly, he was soon after arrested by al-Shabaab, although for other reasons than helping me with my research. He was imprisoned for several months, facing torture, but luckily, managed to escape and flee the country. Anyway, this made it clear that it was out of the question to rely on local fieldworkers as this obviously was far too risky for them, and thus could not be justified ethically. Therefore, it was obvious that I had to meet and interview litigants from criminal cases myself.

One of the best and easiest accessible location where to find witnesses that I could interview was Nairobi, Kenya. In addition to being the major rallying ground for Somali governmental and non-governmental organizations outside Mogadishu, this city contains the urban district of Eastleigh, called "Little Mogadishu", which hosts a large Somali population. Many of the Somalis there have close ties to relatives living in Somalia, and Eastleigh is a place which continuously attracts new refugees fleeing from al-Shabaab. My aim with the field work was to interview Somalis with direct experience with al-Shabaab's court system and the police, either as litigants or witnesses in court cases, or at public punishments. I also aimed to meet other people with valuable knowledge about how al-Shabaab is organized and how it operates. To find such people in this busy metropolis would naturally be a challenge, as I had no prior knowledge of the city or the Somali network there. However, this turned out to be easier than I could have hoped for. Due to the network of Stig Jarle Hansen, I managed to establish some contacts before my arrival in Kenya. Moreover, I got the opportunity to travel together with and work alongside Mohammed Gaas, a Norwegian-Somali researcher who was working on projects regarding the conflict in Somalia. He had much experience from the city due to prior research projects, and had an extensive network within the Somali community there. He introduced me to his network, which immediately accepted me, thereby allowing me to conduct interviews already the day after my arrival in the middle of October

2010. This network helped me to find suitable interpreters, two Kenyan-Somalis, Mohamed and Abdow, who also came to function as research assistants. Due to their local knowledge and family connections, they became decisive in finding relevant interviewees, especially newly arrived refugees with direct experience from criminal cases, which would otherwise have been inaccessible.

Despite the fact that the interpreters tried to assure the potential informants that I could be trusted, several were too scared and refused to meet me. This was not surprising taken into consideration that many had terrible experiences with al-Shabab in Somalia and still were worried about facing assaults from them, as al-Shabaab were believed to have a relatively strong presence and a lot of sympathizers in Eastleigh. In addition, several stayed there without having a residence permit, and were thus afraid of being noticed by the Kenyan authorities. Several of the informants who decided to meet me were evidently still suspicious about my intentions with the interview, despite the fact that Mohamed and Abdow had given them some information about the project in advance. However, after having thoroughly explained about my intentions and goals for the project, and assured them that they would be anonymized and that any sensitive personal information would be omitted from the thesis, the informants became more relaxed and seemed to be quite comfortable with the setting. It also should be noted that the presence of the interpreters during the interview was crucial in establishing trust between me and the informant, and that without them being guarantees of trust, several of the informants would not have been there in the first place.

## **2.2 The quest for information – finding interviewees**

### **2.2.1 Security concerns – where to conduct interviews**

Due to the security concern of the informants, and the fact that many of them were most comfortable with keeping a low profile, we arranged interviews in places that didn't draw a lot of attention, either in hotel rooms in Eastleigh or in the city center. This was also favorable for my own security concerns for several reasons: Firstly, Nairobi in general, Eastleigh being no exception, is often labeled as one of the most insecure cities in Africa, with frequent petty thefts, armed robberies and killings. Thus, for me to hold frequent meetings in public places or cafés in Eastleigh, where there were few white Westerners, would have drawn a lot of attention, and could have increased the risk of facing assaults from criminals. Secondly, questions regarding al-Shabaab were perceived as a sensitive subject by many Somalis. Thus, for me, as a white foreigner, to ask questions about al-Shabaab openly in Eastleigh would be

noticed, and as a worst case scenario, I could have met with a response from al-Shabaab members or sympathizers. Both of these aspects concerned my Norwegian-Somali travel partner, Mohamed Gaas, as well as the two interpreters, as they all felt responsible for my security. Therefore, in order to minimize these risks, the modus operandi was that I spent time at my hotel room in one of the mid-level international hotels in the city center which seemingly had a good security standard, while the research assistants went around in Eastleigh and used their network to find potential informants. When they found one, we made an assessment of whether he could be trusted or not. If so, they brought him or her to my hotel room where I conducted the interview. If they had little knowledge about the background of the potential interviewee, or were doubtful about his affiliations, we went together to Eastleigh and conducted the interview in a room in one of the hotels there deemed to be fairly secure. Although this way of working seemed quite secure, it simultaneously meant that I lost control of where to hold the interview as well as who to interview, which resulted in a couple of interviews that didn't give me as much relevant information as expected. However, as the research assistants after some days gained more knowledge and understanding about my project, this was resolved and resulted in valuable interviews. Moreover, for them to have me with them when they were working in Eastleigh, being a foreigner, white and not speaking Somali, would obviously not have been a good idea anyhow since this only would have made their job more difficult.

### **2.2.2 Ethical reflections – paying for information**

As mentioned above, I told my informants about the purpose of my project and how the information they gave me would be used and treated afterwards. I did not do this only in order to create a relationship of trust during the interview, but also because informed consent as such is a basic tenet in research ethics. This means that the informants must be informed about the project and its purpose in order to be able to consent to being interviewed. It also implies that the informant participates voluntarily, without any kind of coercion or promises of benefits or generous compensation.<sup>17</sup>

Before leaving for Nairobi I had consulted Stig Jarle Hansen and Mohamed Gaas, who both had prior experiences from conducting research in the area, about giving money for

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<sup>17</sup> Knut Aukrust, "Det informerte samtykke og andre kategoriske imperative: Om feltarbeidets etikk", in Anders Gustavsson (ed.), *Kulturvitenskap i felt: Metodiske og pedagogiske erfaringer*", (Kristiansand: Høyskoleforlaget AS, 2005), pp. 231-233.

information. Thus, I was not surprised when the assistants and others pointed out that it was reasonable to give the informant a small sum of money (“lunch money”) after the interview. However, I was more surprised when one of the potential informants demanded 100 USD in advance for answering my questions. Similarly, I felt concerned when the research assistants came to me after a few meetings with a potential informant and informed me that they had just paid for (which meant that I was financially responsible for this, as I covered the assistants’ expenses during the time they worked for me) his visit at the hospital, as well as antibiotics, and informed me that I could interview the informant as soon as he got better! Obviously, clear guidelines for our work had to be established in order to secure that it remained an ethically justifiable research. After discussing the matter further with Mohamed Gaas and my assistants, we agreed not to give any promise about money or services prior to the interview. However, I could not deny the fact that to give a small sum of money after an interview would be, though not demanded, perceived as a polite gesture, and a sign of gratitude. Thus, I decided to give a small sum of money after each interview, and simultaneously told the informant that this was a small gift as a sign of gratitude, since he had given me of his time and told me his story. However, none of the respondents were told they would receive money in advance, and, of course, I refused to interview the man who demanded 100 USD. By handling it this way, I felt that my research conformed to the ethical requirements while simultaneously taking into consideration prevailing expectations.

In fact, I have to admit that after hearing the traumatic stories of several of my informants, and becoming aware of the difficult situation many of them still had to face as illegal immigrants without work, I felt that it was right to give them a small contribution for helping me. Why should they give me something if they got nothing in return? Although I first considered it ethically problematic to give money to informants, I soon found myself feeling it was wrong not to give them something, especially considering their prior experiences and current situation.

Another aspect of my fieldwork that concerned me a lot during my stay in Nairobi, and still does, is the security of my research assistants. The objective of my project can of course under no circumstances justify ethically any act that could put them at risk. Particularly, I feared during my fieldwork that, since I paid a sum of money every day for their services, they would push themselves too far in order to make sure that I got “good value for my money”. They could, for example, attract the attention of Kenyan security services, which after the al-Shabaab bombing in Kampala in August 2010, lead to increased

surveillance of Somalis. Even though this probably would not have been problematic in the long run, as their work could easily have been linked to my project, it could at least have resulted in unpleasant interrogations or even worse, imprisonment. They could also risk meeting al-Shabaab affiliates who might respond unfavorably to their questioning. However, I felt that hiring them could be defended to some extent ethically taking into consideration that they had experience from similar work, and that to hire local assistants had been usual for researchers, journalists and others in order to get access to relevant sources. In addition, my assistants possessed great local knowledge and benefitted from huge family and clan networks, which might help them in making the right decisions regarding their own security. Moreover, they seemed to exercise, as far as I could assess, a reasonable degree of cautiousness. It should also be noted that the seemingly increased Kenyan surveillance activity after August 2010 may have reduced the freedom of operation of al-Shabaab affiliates in Eastleigh and reduced the risk for my assistants. Anyway, I frequently told them to be careful; that security had priority and that if they had a bad gut feeling about a person, they should not follow up the contact even though he might have valuable information.

### **2.3 The quest for information – final stages**

Initially, I planned to stay in Nairobi for about four weeks. However, for practical reasons I decided to stay for two and a half weeks, and go back if needed a second time at a later date.<sup>18</sup> However, when the field trip drew to a close, I decided not to return. Firstly, this was due to the fact that I had conducted far more interviews than I had hoped for. The field work had given me a fairly good general overview of how the courts and the police of al-Shabaab operated, not in the least due to many eyewitness testimonies. However, I needed further information about actual court practice, especially regarding the criminal proceedings of the courts. In practice this meant that I would have to interview refugees who had direct experience with criminal cases. Since I had already experienced that such persons kept a low profile and that my assistants used a lot of time to localize them, I decided that it would be more productive to allow the assistants to work for a longer period on their own, rather than for me to conduct a small number of interviews in the course of two additional weeks. Another important aspect in this regard was the expenses. My costs for bed and board as well

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<sup>18</sup> I am a father of two small children, and the youngest one was only eight months at the time of my field trip. My wife and I therefore agreed to split the fieldwork into two short trips instead of one long, in order to make it easier for her. We hoped that I would manage to get sufficient data on the first trip, so that I would not have to make another one.



as the costs for interpreters/assistants, taxis, different hotel rooms for interviews etc., made the field work an expensive experience.<sup>19</sup> In sum, these factors made me decide to rely on the assistants for future interviews. They could conduct interviews on my behalf as they now had acquired great insight into what kind of information I was searching for, as well my methods and the intention and goal of the overall project. Before I left, I made a concise question manual which we talked through together, and I once more explained the concept of informed consent and other ethical questions.

## **2.4 Methodological reflections**

The interviews that I conducted during my fieldwork diverge from standard qualitative interviews by asking for what, where, when and how, rather than why. Qualitative research interviews may be described as a process in which one learns to know a human being: one gets access to the person's thoughts, attitudes, knowledge, experiences, feelings and hopes.<sup>20</sup> During my interviews, I paid little attention to the informant's opinions or feelings about the "object" of study. Rather, I was first and foremost interested in collecting information and receive as detailed descriptions as possible of the informant's experiences and knowledge about actual judicial practices and the structure of the legal system. Although I strive for "objective" descriptions of the object of study, I acknowledge the constructivist character of knowledge. This does not mean that the information is created in the sense that it is fictive or entirely subjective, it only emphasizes that it has to be understood within the framework in which it has been produced. As such, the interviews are created as a result of an interaction between the interviewer and the informant. The theoretical perspective applied and the kind of questions asked by the researcher is decisive for the information that emerges from the interview. Likewise, the relationship between researcher and informant, as well as the overall dynamic of the interview situation, is substantial for the outcome.

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<sup>19</sup> Staying at mid-level hotels in the city center was particularly expensive. However, I was advised to do this by Mohamed Gaas as well as the research assistants for two reasons. Firstly, this gave me enough flexibility in meeting with the interviewees on short notice. If I had stayed outside of the city, it would have been almost impossible to work as dynamical as we had done, and I would probably have lost the opportunity to meet with important interviewees. Secondly, the level of security at these hotels made me and the assistants feel safe, and also gave me the possibility to be able to offer a quiet and safe place outside Eastleigh where the interviewees could relax.

<sup>20</sup> Trude A. Fonneland, "Kvalitative metoder: Intervju og observasjon", in Siv Ellen Kraft and Richard J. Natvig (eds.), *Metode i religionsvitenskap*, (Oslo: Pax Forlag, 2006), p. 223.

## **2.5 The material**

### **2.5.1 Informants and anonymity**

The primary material for this thesis constitutes 18 in-depth semi structured interviews that I conducted during my fieldwork in Nairobi, one in-depth semi structured interview conducted in Norway, 39 structured interviews conducted by my research assistants in Nairobi, and three additional reports from other local Somali assistants. Additionally, I have made use of reports from local journalists, human rights organizations and governmental organizations which either quote eyewitness testimonies or statements of al-Shabaab officials, and I have as well, to some extent, made use of al-Shabaab affiliated propaganda and statements released on the Internet.

Out of the 18 informants whom I interviewed in Nairobi – each interview lasting for one to three hours - 17 were either recently arrived refugees from al-Shabaab controlled areas, mostly Kismayo and Mogadishu, or were still living in Somalia close to the al-Shabaab areas. 14 of these could either give eyewitness testimonies about incidents directly related to the work of the courts and the actions of the police or by virtue of their position possessed considerable knowledge of such. Three of the informants had been directly involved in criminal court cases.

The 39 interviews made by the research assistants have been conducted over a period of one year, the first reports arriving in November 2010 and the last one in November 2011. Except in one case, all informants are refugees from al-Shabaab dominated areas, most having been directly involved in criminal court cases tried by one of the al-Shabaab courts, the majority having been sentenced by the courts and punished accordingly. In contrast to the informants that I interviewed in October 2010, many of these informants come from other areas than Kismayo and Mogadishu, e.g. Baidoa, Merka, Afgooye and Baladwayne.

Of the three additional reports received, two describe court cases and judicial practice from the Baidoa area in the Bay province. The third report gives valuable information regarding local al-Shabaab administration. All reports are produced by local Somali respondents.

In order to maintain a satisfactory level of anonymity for the informants, no names or sensitive personal information has been used in this thesis. Also, I have omitted the dates of the court cases in order to make it more difficult to trace the informants.<sup>21</sup> Although this could

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<sup>21</sup> An exception in this regard is the case of “Roble” where the date is included in the description of the trial and execution. This is due to the fact that I compliment the information from the interview with eyewitness reports

reduce the value of the material for further research, the informants' security and the security of close relatives who in many instances still live in al-Shabaab controlled areas, has naturally been of more importance.

### **2.5.2 Reliability**

To the extent possible, in order to enhance the reliability of the material collected, I have used source triangulation, i. e. comparing information gathered from different sources in order to look for convergence of the material.<sup>22</sup> Firstly, I have compared the material from all the informants and tried to identify any contradictions or other inconsistencies in the material. Secondly, I have compared this material with the different reports found on the Internet, as well as with statements and propaganda material related to al-Shabaab. In many cases there has been consistency between what informants tell, reports released by media or NGOs/GOs and al-Shabaab propaganda releases, especially when it comes to spectacular events such as public stonings and amputations. However, in many instances I have not succeeded in verifying the information from one source with other sources, and have had to rely on single source information. When the information comes from informants who have been eyewitnesses to the incidents described, as has often been the case, I have nevertheless regarded the information as being quite credible.

When it comes to Internet sources, I have as far as possible tried to use reports from acknowledged actors, i.e. news agencies such as BBC or Shabelle Media Network, NGOs like Amnesty International and Human Rights Watch and GOs like the U.S. State Department. However, in some cases I have relied on information from web pages previously unknown to me. This is not least the case with al-Shabaab affiliated propaganda material and press releases which to a large extent are released on Islamist sympathetic web pages. As some of the information from these pages has been hard to verify with other sources, the conclusions based on it should be treated with caution.

Regarding the reliability of the information received through interviews, there is little doubt that to master the language of those one is studying, is an advantage. But, as I do not speak Somali, and the level of English of my informants was highly variable, I was dependent

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from the media which contain the dates for the trial and the execution. However, "Roble" explicitly stated that I could use all personal information about him as he now feels safe in Norway and his closest family has managed to escape from al-Shabaab areas. Anyway, I have chosen to omit any sensitive information except from the dates.

<sup>22</sup> John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, 3rd ed. (Los Angeles: Sage Publications, 2009), p. 191.

on an interpreter. Therefore, it was essential for the outcome of my fieldwork to find a good interpreter who mastered both Somali and English. However, I soon realized, as already described above, that it was of equal importance to have a person that could help me to find relevant informants, as well as being a person sensitive to security concerns. Also, it was very important for me to choose someone I could trust and who had experience from similar work, in addition to good local knowledge. I therefore ended up with a Kenyan-Somali who had valuable experience, good contacts in the local community, focus on safety, but rather limited English skills. We coped with this by taking with us his cousin, who lacked some of the aforementioned skills, but in return spoke reasonably well English.

An obvious weakness of using interpreters with limited language skills was that there could be misunderstandings or vital information could be lost during the interview. However, most of my questions were quite simple and specific, in the sense that they asked about things I expected them to know something about. For example: How many judges were there? What kind of punishment was being inflicted? Which Qu'rān verse was read? There were few questions that required an advanced vocabulary, and I felt that I received answers that were in accordance with what I could expect. In addition, during the interviews, I had on several occasions other English speaking Somalis present, who approved the translation that had been given by the two interpreters. In sum, I therefore felt that the situation could be deemed satisfactory, even though I sometimes had to ask additional questions in order to be sure that I really had understood what the informant had meant.

Another point to discuss is the question of giving money for information. Not only is this ethically questionable, it could also be said to reduce the reliability of the information. One can easily imagine that an informant who is paid to provide information, would like to make a good impression and might give the answers that he or she thinks I am expecting, and in that sense might adjust some of the answers to justify the fact that he or she actually is getting paid. One could also imagine informants fabricating stories in order to earn some money, especially, taken into consideration that several informants in the area were without a job. However, by refusing to meet those who demanded money for information, and by only giving a small sum of money as a sign of gratitude *after* the interview was conducted, I am reasonably sure that I avoided such unwanted situations as described above. Of course, it is not totally unlikely that informants could have talked to each other, and in light of the certainty of payment, could have agreed to meet for an interview. That being said, the sums received by the various informants were relatively small, even in their eyes.

Another factor that might have negatively influenced the information gathered during the interviews was the fact that several of the informants were skeptical to the use of a tape recorder. I started every interview by telling about the project, and also explaining that I used the recorder in order to remember what was being said during the interview, but that it was up to the informant to agree to this. As several informants were afraid that their voice could be recognized, I had to conduct interviews by taking notes of what was being said. In order to remember as much as possible, the interpreters and I decided that all of us should take notes, so that I could be more confident in grasping the most important information. Another factor that made me feel comfortable about the situation was the fact that after every question I posed, the interpreters had to translate the question into Somali, and then listen to the answer in Somali, before translating it into English. Thus, there were continuously small breaks in the interview in which I had time to finish the notes from the last question, before it was time to pose a new one.

A last point that should be mentioned regarding the reliability of interview data was that all informants, with one exception, were explicitly critical of al-Shabaab and their judicial practice. This is no surprise, as many of the informants had either escaped from Somalia after having experienced infringement by al-Shabab in one way or another, or had positions linked to political groups that were currently fighting al-Shabaab.<sup>23</sup> Thus, I discovered, during several of the interviews, that it was useless to ask general questions about the work, operation and practice of the al-Shabab judicial and police system. Rather, when asking precise questions about specific issues, especially descriptions about their own experiences, or where a certain incident actually took place, I felt that I got correct information that limited the effect of their bias. However, it is quite obvious that I, as a researcher, could not escape being colored by the many stories. When informants, with tears in their eyes, told me about wives, mothers, sons, brothers or neighbours that had been killed by al-Shabaab, or about sisters that had been forcibly married to foreign al-Shabaab fighters, I found it next to impossible not to be somewhat affected and to develop a negative bias towards al-Shabaab.

### **2.5.3 Generalizability**

On basis of the limited number of interviews and reports made use of in this thesis, there could naturally not be drawn any clear conclusions when it comes to the nature of the legal

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<sup>23</sup> Some of the interviewees currently worked for the TFG, the AMISOM or Ahlu Sunna wal-Jama, a militant Somali Sufi group.

system of al-Shabaab. For example, based only on some court cases from a certain court or area, spread out in time, it would not be possible to reveal any distinct differences between the judicial practice of the different regions, or to expose clear changes in judicial practice during the period in question, i. e. from the end of 2008 to the first half of 2011. The forthcoming analysis will therefore primarily suggest rough trends and features from the al-Shabaab dominated areas as a whole during the last two and a half years.

### **Chapter 3: Religion, tradition and law in Somalia – a historical sketch<sup>24</sup>**

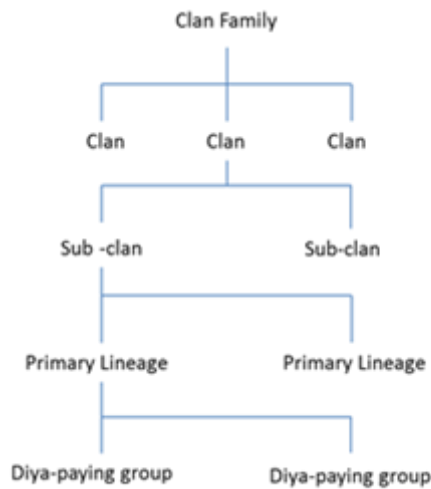
Somali speaking peoples<sup>25</sup> have been Sunni Muslims since the early days of Islam when close contact with the Arabian Peninsula and Arabian traders who settled along the Somali coastline brought Islam to the Horn of Africa. As a modern expression of the Somali's close connection with the Arabs, the Republic of Somalia was granted membership of the Arab League as the first non-Arab country in 1974.<sup>26</sup> Like other peoples in the region, the Somali speaking peoples have been influenced religiously and ideologically by the Middle East. In the wake of Islamic revivalism in the 1970s Somali branches of the Muslim brotherhood, non-violent Salafi groups, as well as radical Jihadi-Salafi groups, of which al-Shabaab is an example, have had much success. Despite the impacts of external Islamist ideas, religious practices in Somalia are part of local traditions and do not change so fast. When discussing Somali religion and the role and function of *sharī'a*, it is necessary to have knowledge about the basic traditional structures of the Somali society, namely kinship, customary law (*xeer*) and traditional juridico-political entities. In this chapter, I first explore traditional Somali structures and then I give an outline of the interrelationship of traditional law and *sharī'a*. Lastly, I indicate how the political context of the last decades has given *sharī'a* a status and a role that finds no precedence in Somali history.

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<sup>24</sup> The Somali culture has throughout history mainly hosted an oral tradition, the exception being the religiously educated who spoke and wrote Arabic. The Republic of Somalia did not develop its own written language before in 1972. Therefore, most of the written sources (except sources in Arabic, such as historical records from as early as the 9th and 10th centuries and religious texts) available about Somali history, politics, anthropology and religion were first produced during the colonial period and onwards. Important descriptions of Somali culture and religion available in English which touch upon the subject of *sharī'a* were written in the 1950s and 1960s by British scientists like J.N.D Anderson, Arthur Phillips and Ioan M. Lewis.

<sup>25</sup> Somali speaking peoples are spread among several states on the Horn of Africa: South Central Somalia, the North Eastern semi-autonomous region of Puntland, the Northern self-declared state of Somaliland, South Eastern Ethiopia (Ogaden), Djibouti and North Eastern Kenya.

<sup>26</sup> Ioan M. Lewis, *Understanding Somalia and Somaliland: Culture, History, Society*, (London: Hurst&Company, 2009), pp. 1-2, 29.



### 3.1 Kinship, *xeer* and traditional authority

According to the anthropologist Ioan M. Lewis, who still represents an authority within Somali studies, the Somali kinship structure is based on a vertically oriented agnatic segmentary lineage system, which could be separated into categories of clan-family, clan, sub-clan, primary lineage and *diya*-paying group (see figure). These kinship groups constitute the basic political units in the Somali society and are decisive for the position of an individual and for his relation to others. By reference to his genealogy, traced through the male line, the Somali gets his exact place within the social hierarchy.<sup>27</sup>

Lewis identifies six major clan-families into which most of the Somalis as a whole are divided. The members of the first four: Dir, Isaaq, Hawiye and Darood,<sup>28</sup> are mainly pastoral nomads, while the members of Digil and Rahanweyn are mostly agriculturalists. However, in practice, the clan-families are often not politically important entities as they are consisting of too many people. For example, the Darood clan-family is consisting of more than a million members. Nevertheless, in cases of animosity between groups belonging to different clan-families, the strong clan identities come to the fore and define the overriding conflict lines. In contrast, the clan, i.e. the category into which the clan-family is subdivided according to Lewis' model, frequently acts as a corporate political unit, and tends to have some territorial exclusiveness. The next two levels of Lewis' model, the sub-clan and primary lineage group, are important when it comes to group identity and questions regarding marriage. However, the most basic and functional lineage unit is the *diya*-paying groups, or *mag*-paying groups,<sup>29</sup> counting from four to eight generations, thus numbering from a few hundreds to a few thousand men. Every member of a *diya*-paying group is obliged to support each other in political and legal issues, e.g. the payment and receipt of *diya*, i. e. compensation. If a member of one group kills a member of another, the members of the group of the perpetrator as a

<sup>27</sup> Ioan M. Lewis, *A pastoral democracy: A study of pastoralism and politics among the Northern Somali of the Horn of Africa* / I.M. Lewis; new introduction by Said Samatar and new afterword by I.M. Lewis, (Oxford: LIT and James Currey, 1998 (1961)), pp. 1-4.

<sup>28</sup> Lewis treats Isaaq as an independent clan-family, although many Somalis regard them as belonging to the Dir clan-family.

<sup>29</sup> *Diya* is the Arabic word for blood compensation, and *mag* is its Somali equivalence. I will use the term *diya*, as this is the word used in the classical *fiqh* literature.

general rule has to pay 100 camels collectively, the standard amount for a man's life (the full compensation for a woman is 50 camels).<sup>30</sup>

Somali customary law, or *xeer*, meaning “contract” or “bilateral agreement”, is a body of explicitly formulated, though unwritten obligations, rights and duties, passed down from one generation to the next. These sets of codes, which are agreed upon among agnatic kinsmen, both regulate internal interactions within the kinship group, as well as external relations with non-related groups.<sup>31</sup> When for example two *diya*-paying groups of a clan regulate their interactions by an agreement (either entered into by them, or accepted as a legacy from their ancestors), they are said to be of the same *xeer*.<sup>32</sup>

Traditionally *xeer* has been guarded and implemented by respected elders, who could interpret precedence relatively freely. If a case has had no applicable precedent the elders would base their decisions on their reasoning, but there has nevertheless been some generally accepted principles of *xeer*, which would only be applied with minor variations. These principles have, for example, been the welfare of guests, protection of the weak and vulnerable, such as elderly women and children during war, and the sharing of natural resources like grazing pastures and water.<sup>33</sup>

In general, when an issue has been raised, a jury of selected elders from both afflicted parties of the dispute with great knowledge of *xeer* is gathered in order to discuss and make a final decision. Traditionally Somalis have normally tried to solve disputes at the lowest genealogical level as possible. If, however, a dispute arises between clan groups which are not bound by a mutual contract of *xeer*, a settlement will be dependent upon the readiness of the

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<sup>30</sup> Ioan M. Lewis, *A pastoral democracy: A study of pastoralism and politics among the Northern Somali of the Horn of Africa* / I.M. Lewis; new introduction by Said Samatar and new afterword by I.M. Lewis, pp. 4-7, 163.

<sup>31</sup> *Xeer* has traditionally been divided into two broad categories, namely *xeer gaar*, i.e. norms that regulate traditional economic matters such as pastoral issues, fishing, frankincense harvesting and other economic activities, and *xeer guud* which refers to the settlement of disputes at different levels of the lineage segments, either within a clan or between clans, in regards to day-to-day social interactions. *Xeer guud* could be subdivided into *xeer dhagan*, “social conduct”, including social or civil regulations related to theft, banditry and family related issues like domestic violence, marriage, divorce and inheritance. The other sub-category, *xeer dhiig*, refers to serious crimes such as homicide, injury and rape. See: Joakim Gundel and Ahmed A. Omar Dharbaxo, *The predicament of the ‘Oday’: The role and structures in security, rights, law and development in Somalia*, (Nairobi: Danish Refugee Council & Novib/Oxfam, 2006), [http://www.logcluster.org/ops/som/infrastructure-communication-various/Gundel\\_The%20role%20of%20traditional%20structures.pdf](http://www.logcluster.org/ops/som/infrastructure-communication-various/Gundel_The%20role%20of%20traditional%20structures.pdf), [03.08.2011], pp. 9-10, 12.

<sup>32</sup> Ioan M. Lewis, *A pastoral democracy: A study of pastoralism and politics among the Northern Somali of the Horn of Africa* / I.M. Lewis; new introduction by Said Samatar and new afterword by I.M. Lewis, pp. 161-162, 175.

<sup>33</sup> Joakim Gundel and Ahmed A. Omar Dharbaxo, *The predicament of the ‘Oday’: The role and structures in security, rights, law and development in Somalia*, pp. 9-10, 12.



disputants to make peace, and on the ability of the arbitrators in obtaining an acceptable compromise.<sup>34</sup>

*Xeer*, which also may be translated as community regulations, has traditionally not been a rigid legal system but characterized by flexibility and pragmatism. It may be described as the principle social regulations of Pastoral Somalia, a traditional society where family ties and community life have been important and where the elders have played a key role. Whenever there has been a major inter-clan conflict, new *xeer* regulations could be decided, and other important issues could be discussed by the elders during an all-clan council called *shir*, traditionally the most fundamental institution of governance in the Somali Pastoral society. In contrast to *shir*, which only has taken place at certain times or in relation to specific circumstances, the elder's *guurti*, i. e the permanent governing body of the family, the clan and the community, has governed everyday issues. The elders of the *guurti* have been the heads of the nomadic encampment, the nominating delegates for conflict mediations, the maintainers of Islamic and cultural values, and the ones who have policed public resources, infrastructure, pasture and other matters of common concern.<sup>35</sup>

### **3.2 Islam and the limitations of *sharī'a***

In addition to clan membership, Islam has traditionally been an important identity marker for the Somalis. While the kinship structure has divided the society along lineage lines Islam has to some extent transcended such fault lines. The overall esteem for Islam is particularly visible in the common mythological pattern of clan-families which each claim direct lineal descent from the Qurayshitic line of the Prophet Muhammad.<sup>36</sup>

Although no date can be set for the arrival of Islam among the Somalis, the proximity to Arabia, in addition to constant travel and trade between the peninsula and the Horn of Africa, it is probable that Islam was introduced already a short time after the *Hijra* in 622 AC. Islam soon became rooted in the Muslim commercial colonies that emerged along the Somali coast. However, mass conversions among the majority of the Somalis do not seem to have taken place until the 11th to the 13th centuries. In the course of these centuries a particular form of Somali religiousity emerged. The most salient influences came from Sunni orthodox

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<sup>34</sup> Ibid, 11-12.

<sup>35</sup> Ibid, 12, 14-15; Ioan M. Lewis, *Understanding Somalia and Somaliland: Culture, History, Society*, (London: Hurst&Company, 2009), pp. 228-229.

<sup>36</sup> Ioan M. Lewis, *Saints and Somalis: Popular Islam in A Clan-based Society*, (Asmara: The Red Sea Press, 1998, pp. 6-7.

theology and legal philosophy, notably the school of Imam al-Shāfiʿī<sup>37</sup>, which merged with elements of indigenous practices that predate Islam. In addition, Somalis came to be deeply influenced by Sufism, and Sufi brotherhoods gained a prominent role in everyday life, especially in the course of the 19<sup>th</sup> century.<sup>38</sup>

Each Sufi brotherhood, *tarīqa* (“path”), consisted of several congregations or communities of adherents, known as *jamaʿa* (“congregation”). The head of a *jamaʿa*, called a sheikh, was usually a man, whose personal genealogy could be traced to the Prophet’s Qurayshitic lineage, thus giving him religious prestige and some of the Prophet’s grace or *baraka* (“blessing”). The different Sufi congregations were distributed throughout the country cutting right across clan-family lines, and either formed a loose organization or established a permanent autonomous settlement of cultivators. The latter was particularly the case among the agricultural communities along the Shabelle and Jubba rivers in the south. Either way, the congregations functioned as training centers for the local men of religion, the *wadaads*, usually described as “bush teachers” or “bush preachers”, who traveled around and visited different camps and villages to preach and teach about the Qu’rān and Islamic theology. *Wadaads* also had an important social and legal function by acting as unofficial *qāḍīs* (“judges”) and administering *sharīʿa* to the extent that his competence was recognized. This usually meant adjudicating in cases within the area of Islamic family law, for example in matrimonial affairs, divorce and inheritance, as well as in cases within contract law and mortgage. In addition, a *wadaad* could be asked to assess the proper compensation, *diyya* (“blood money”), for injuries, and he would function as a mediator and give advice in questions of communal importance.<sup>39</sup> Al-Shabaab has to a large extent reduced the role of these traditional *wadaads*, especially in the urban centres, and those who have dared to raise critical voices against al-Shabaab’s political and legal project have in some cases as Roland Marchal points out been killed.<sup>40</sup> The traditional functions of the *wadaads* have instead been replaced by the al-Shabaab’s new political and legal administration, which often include clerics and *qāḍīs* who are not known among the local population. Moreover, the *wadaads*’

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<sup>37</sup> Abu Abdullah Muhammad ibn Idris al-Shāfiʿī (d. 820), often only referred to as Imam al-Shāfiʿī, is the perceived founder of the Shāfiʿī legal school.

<sup>38</sup> Lewis, *Saints and Somalis: Popular Islam in a Clan-Bases Society*, pp. 8-17, 22-24; Mohamed Diriye Abdullahi, *Culture and Customs of Somalia*, (Westport: Greenwood Press, 2001), pp. 55-57; Hussein M. Adam, “Islam and Politics in Somalia”, *Journal of Islamic Studies* 6, 2, (1995), pp. 189-190.

<sup>39</sup> Lewis, *Saints and Somalis: Popular Islam in a Clan-Bases Society*, pp. 8-14; Abdullahi, *Culture and Customs of Somalia*, pp. 58-61.

<sup>40</sup> Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, p. 70.

close link to Sufism has also made them vulnerable to al-Shabaab who perceives Sufi practices as un-Islamic. Al-Shabaab's distaste for local Sufi practices as well as its administrative structure and function will be discussed further in subsequent chapter.

Although the *wadaads* functioned as *qāḍīs* within the traditional Somali society, their jurisdiction was in many respects influenced and restricted by customary law, *xeer*.<sup>41</sup> For example the *wadaad* could be asked for advice about the amount of compensation to be paid for injuries and homicide, but it was the *odayaal*, i.e. the traditional elders, applying prevalent *xeer*, who had the power to adjudicate. Lewis and other experts on Somali history argue that classical *fiqh* provisions were subordinate to *xeer*, particularly in matters where collective responsibility took precedence over personal liability, for example in cases of homicide and bodily harm. In a traditional Somali context, homicide as well as bodily harm would generally result in the paying of compensation by the perpetrators in a *diya*-paying group, rather than retaliation against the perpetrator in person. As such, *xeer* does not recognize criminal law in the modern sense, i.e. where the perpetrator is personally punished for his offences, but emphasizes restitution and compensation. For example, when theft occurs, the offender has to give back the object stolen. If this is not possible the object has to be replaced by a similar one, or compensated. Likewise, in cases of rape and adultery, violations that may be punished harshly according to classical *fiqh*-doctrines (stoning or lashing), *xeer* prescribes compensation although sometimes it may be that the perpetrator is forced to marry the girl.<sup>42</sup> Lewis describes the *waddad* as having a double role, combining *sharī'a* practice and traditional *xeer*, but maintains that the *wadaad* traditionally tended to apply *xeer* regulations rather than classical Shāfi'ī doctrine. For example, in certain divorce cases where the wife had failed in her role as a well serving wife, the *wadaads* would overlook the Shāfi'ī provisions and dissolve the marriage without forcing the husband to pay the wife's rightful dower, *mahr*.<sup>43</sup> Lewis' claims regarding the *wadaads* are strengthened by other studies, e.g. J. N. D. Anderson's who points out that in matters of custody of children the Somali *wadaads* often would allot the child to its father at the time of weaning or at the age of two, contrary to

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<sup>41</sup> In the urban settlements at the coast and among the agriculturalists in the arable areas in the south the lineage principle was less conspicuous, and hence the classical *sharī'a* provisions had wider jurisdiction: See Lewis, *Saints and Somalis: Popular Islam in a Clan-Based Society*, p. 25.

<sup>42</sup> Lewis, *Saints and Somalis: Popular Islam in a Clan-Based Society*, p. 25; Gundel and Dharbaxo, *The predicament of the 'Oday': The role and structures in security, rights, law and development in Somalia*, pp. 8-11; Lewis, *A Pastoral Democracy*, pp. 162-166.; Michael van Notten, *The Law of the Somalis: A Stable Foundation for Economic Development in the Horn of Africa*, Spencer Heath MacCallum (ed.), (Asmara: The Red Sea Press, 2005), pp. 54-59.

<sup>43</sup> Ioan M Lewis, *Blood and Bone: The Call of Kinship in Somali Society*, (Lawrenceville: The Red Sea Press, 1994), p. 64.

classical Shāfiʿī prescriptions which gives the mother the prerogative to keep the child until the age of discrimination (e.g. seven years).<sup>44</sup>

According to Lewis, the relatively weak status of the *sharīʿa* within the pastoral Somali society should be seen in relation to the social-political origin of *sharīʿa*, which emerged in a theocracy that had transcended the bonds of tribalism.<sup>45</sup> Lewis asserts that *sharīʿa* elaborates a corpus of private and public law based upon the concept of citizenship, which to a large extent would not be applicable in a stateless, clan-based society. However, he claims, *sharīʿa* provisions regarding ritual and religious observance apply easily to Somali society because they deal with the believers' relations to God and do not challenge the tribal structures.<sup>46</sup>

For similar reasons, Lewis asserts, Sufi mysticism, which concentrates on the personal relationship between man and God, was very suitable to the traditional Somali society.<sup>47</sup> An important factor in this regard, again according to Lewis, is assimilation of Sufi mysticism and pre-Islamic Somali belief: for example, the traditional *saar* dance ritual where possessed people are purged of spirits was assimilated into the Sufi *ḍikr* (“rememberance” or “reminder”) ritual, i.e private or collective prayer rituals where one typically recite the names of God or verses of the Quʿrān or *ḥadīth* texts. Likewise, veneration of Muslim saints through prayer and sacrifice has, according to Lewis, become a substitute for pre-Islamic deities. The previous pre-Islamic shrines have been taken over by Muslim saints whose *baraka*, or blessing, has replaced the powers of the old deities. The veneration of the (Sufi) saints also has an additional function, Lewis asserts: since the genealogy of the Somali clans were assimilated with the genealogy of the Sufi orders, a Sufi saint is also identified as one of the eponymous ancestors of the clans. Therefore, to venerate a saint at a local shrine simultaneously meant to promote canonization of a clan ancestor and emphasize clan identity among Somalis.<sup>48</sup>

### 3.3 From colonialism to dictatorship

When the European colonial powers arrived in the Somali territories and established in the northern part the British Somaliland Protectorate in 1886 and the Italian colonial

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<sup>44</sup> J. N. D. Anderson, *Islamic Law in Africa*, (London: Frank Cass & Co., 1970 (1955)), p. 48.

<sup>45</sup> Lewis, *Saints and Somalis: Popular Islam in a Clan-Based Society*, p. 24.

<sup>46</sup> Ibid, pp. 24-25

<sup>47</sup> Ibid, pp. 24-26.

<sup>48</sup> Ibid, pp. 23, 28-30.

administration in the southern territories in 1893, *xeer*, inspired by *sharī'a* in certain domains, was the only system of justice and public order. But soon both the British and the Italians imposed their own legal systems in their respective areas. In the area which today constitutes South Central Somalia, the Italian administration adopted the Italian civil and penal codes but, however, allowed disputes between Somalis to be settled through *xeer*, at least when there was no threat to public order. In this manner the Italians managed to regulate, but not to replace, the continued practice of *xeer*. The Italians also recognized *sharī'a* within some areas and actually integrated it as part of the formal judicial system. They institutionalized a *qāḍī* court of first-instance and appeal with jurisdiction in family matters and minor civil disputes. However, *wadaads* continued to apply their traditional *sharī'a* outside the reach of the formal system.<sup>49</sup>

When Somalia became an independent state in 1960, the new Somali government tried to form a single coherent judicial system. This was not an easy task, considering the multitude of legal systems that were inherited from the colonial powers: British Common Law, Italian Continental Law, *sharī'a* and customary law which had had a more formal role within the so called subordinate courts in British Somaliland. Anyway, due to lack of qualified jurists and lawyers, the state's legal system was seldom applied outside urban areas.<sup>50</sup>

After the military coup in 1969 which brought General Siyad Barre to power, there followed a period referred to as a Scientific Socialism experiment which was supported by the Soviet Union. One of the aims of the Barre government was to replace clan identity with a pan-Somali identity. This led, not surprisingly, to reforms of the legal system. In 1973 the regime introduced a new civil code which in many respects curtailed both *sharī'a* provisions and *xeer* regulations, in particular provisions pertaining to inheritance, personal contracts and water grazing rights. In addition, the new code radically changed the system of *diya* for death and injury, making homicide punishable with death, and compensation for injuries payable only to close relatives. This stood in contrast to the traditional system, in which the whole *diya*-paying group was responsible, as described above. However, in contrast to his strategy in combating clanism, Barre respected Islam, and allowed *sharī'a* courts to function as before as long as they didn't contradict the political and economic directives. Nevertheless, there came

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<sup>49</sup> Andre Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, (Geneva: Centre for Humanitarian Dialogue, July 2005), [http://www.ssrnetwork.net/uploaded\\_files/4397.pdf](http://www.ssrnetwork.net/uploaded_files/4397.pdf), [04.08.2011], pp. 17-18; Lewis, *Saints and Somalis: Popular Islam in a Clan-Based Society*, p. 25.

<sup>50</sup> Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, pp. 17-18; Anderson, *Islamic Law in Africa*, pp. 40-42.

to clerical and public protests in 1975 when the regime introduced a new family law that recognized the legal and economic equality for women.<sup>51</sup>

### **3.4 Anarchy, reemergence of traditional elders and *shari'a* courts**

Although *xeer* had been suppressed during the authoritarian rule of Siyad Barre, the government never succeeded fully in its policy. For example, attempts to outlaw collective responsibility failed due to strong public resistance and weak application in nomadic areas. The biggest blow to the traditional system was the reduction of the authority of the traditional elders, a process which started already during colonial rule.<sup>52</sup> Andre LeSage asserts that a major reason for the elders' loss of authority was that since colonial times, the various governments tried to manipulate them and pay them to secure their loyalty in order to maintain public order, and thus were perceived as corrupt by fellow Somalis.<sup>53</sup>

Despite this, the traditional elders reemerged as a stabilizing factor during the anarchy that followed the fall of Siyad Barre in January 1991 when warlords and military factions from different clans and sub-clans fought each other. During these chaotic and violent times without a functioning government and a formal legal system, "grassroots" governance began to emerge, bringing traditional legal structures to the fore. And in the course of the next decade, *xeer* was again the most prominent judicial system<sup>54, 55</sup>.

However, despite the fact that traditional *xeer* and the role of the elders were revitalized after the collapse of the Somali state, there is, as Joakim Gundel concludes in his report about *xeer* in 2005, a paradox here: although the traditional order was the glue that prevented a total anarchy, it is also a system in crisis: The authority of the elders has gradually been undermined as many of them have been actively involved in fights between factions and have misused their authority to further their own interests. Also, there has been a proliferation of elders, making people confused about who is in charge. Another problem is the fact that the traditional system is stretched to its limits due to lack of power, respect and resources to cope with a precarious situation. For example, how is one to solve the huge number of killings

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<sup>51</sup> Ibid., pp. 19-20.

<sup>52</sup> Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, pp. 34, 36; Gundel and Dharbaxo, *The predicament of the 'Oday': The role and structures in security, rights, law and development in Somalia*, p. 27, 43.

<sup>53</sup> Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, pp. 36.

<sup>54</sup> However, at least in areas outside immediate control of Somalia's internationally recognized interim government, the Transitional National Government (TNG) which was established in 2000 and the Transitional Federal Government (TFG) which succeeded TNG in 2004.

<sup>55</sup> Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, pp. 22-24, 32.

committed by clan-factions, which would amount to an enormous level of *diya* that no one could afford? Moreover, the elders have strived to adapt to the changing times and new challenges, such as youths involved in drug abuse, premarital sex, just to mention some issues lacking *xeer* precedents.<sup>56</sup>

Another factor that has limited the role of *xeer* in post-Barre Somalia is the increasing importance of *sharī'a*. In contrast to the traditional authorities that was viewed with suspicion already from the colonial times, the sheikhs were not paid as they often used to be from wealthy families, and thus not dependent on external sources of income. Due to this they were perceived as more impartial and having a higher moral standard. In addition to the traditional respect which has surrounded religious authorities in the Somali society, there are also political factors which have contributed to the positive image of religious law and prominent religious figures: during Siyad Barre's totalitarian regime, Islam, represented by the sheikhs, became an important source of anti-government resistance, especially in urban areas. In addition, the religious charities that operated during the chaotic period that followed the fall of Barre contributed to a positive image of Islam, and so did the pious persons who were trusted to handle matters of security and justice, as they were believed to respect the Qu'rān and condemn destructive actions such as theft and rape. The moral integrity of Muslim scholars, combined with hopes that the *sharī'a* courts could prevent conflicts with neighboring clan communities, made *sharī'a* courts a viable alternative to traditional *xeer* as a means to improve social security.<sup>57</sup>

Already in 1991 the first *sharī'a* court was established in Mogadishu, though, only surviving a month. However, other similar courts were established throughout the city and soon also in other regions, such as Hiiran and Middle Shabelle. In general these experiments were supported by a combination of leaders of militia-factions, businessmen, clan elders and religious leaders, mostly affiliated with the Sufi brotherhoods, and to some extent Islamist groups. The *sharī'a* court experiments lasted until 2000, when most of the court apparatus

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<sup>56</sup> Gundel and Dharbaxo, *The predicament of the 'Oday': The role and structures in security, rights, law and development in Somalia*, pp. 41, 43, 46-47; Le Sage *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, pp. 36-37.

<sup>57</sup> Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, pp. 20, 38; Stig J. Hansen, "Somalia: Grievance, Religion, Clan, and Profit", in Stig J. Hansen, Atle Mesøy and Uncay Kardas (eds.), *The Borders of Islam: Exploring Huntington's Faultlines, from al-Andalus to the Virtual Ummah*, (London: Hurst&Co, 2009), p. 129.

were integrated into the newly established Transitional National Government, the TNG, and many of the court leaders became members of the new parliament.<sup>58</sup>

The *sharī'a* courts were simple structures consisting of some *qāḍīs* and a small militia which functioned as a police force. Its role was to implement the decisions of the *qāḍī*, intervene in community disputes and arrest suspected criminals. According to LeSage most decisions were made by the *qāḍīs* based on their own legal reasoning with no consistent following of a specific *madhhab*<sup>59</sup>. Although some of the *qāḍīs* were educated in Sudan, Egypt and Saudi-Arabia, they are mostly believed to have been poorly trained. Despite questioning the litigants and bringing witnesses to testify in front of the court when this was deemed necessary by the *qāḍīs*, the court rulings, according to LeSage, tended to be quite arbitrary. While Le Sage ascribes this to the *qāḍīs*' lack of formal training and poor knowledge of existing rules of evidence, he also points to another factor that made the application of law unpredictable, namely clan interest. According to LeSage several of the *qāḍīs* of the *sharī'a* courts asserted that there was no conflict between *sharī'a* and *xeer*, and when making adjudication they combined *sharī'a*, *xeer* and relevant state laws in order to find a workable "win-win" resolution to a court case that all parties would accept.<sup>60</sup>

This pragmatic approach by the *qāḍīs* must be seen in light of the relatively weak position of the *sharī'a* courts which were financially, politically and militarily dependent on the clan or sub-clan of the area of which it operated. If a *sharī'a* court challenged the interests of the clan, the clan elders could simply withdraw their support of the court and just recall the clan's militia which often constituted the main military asset of the court, thus leaving the court unoperational. In 1997 the North Mogadishu court (also called the Ali Dhere or *Karar* court) which was perceived by the dominating clan leaders in the area to have become too politically ambitious was even attacked and shut down. Due to this dependency on the clan the *sharī'a* courts had a very limited role in mediating inter-clan disputes, which would still be the prerogative of the clan elders. The courts were also hesitant to get involved in political issues and large-scale security problems, and instead directed their efforts to civil matters,

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<sup>58</sup> Roland Marchal, "A tentative assessment of the Somali Harakat Al-Shabaab", *Journal of Eastern African Studies*, 3, 3, (London: Routledge, 2009), pp. 384-386; Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, p. 38-39.

<sup>59</sup> *Madhhab* (pl. *madhāhib*) is the Arabic term for the Islamic legal "schools", i.e. common scholarly mileus, which developed during the first centuries of Islam. From the 14<sup>th</sup> century and onward four Sunni legal schools prevailed, namely the Ḥanafī school, the Mālikī school, the Shāfi'ī school and the Ḥanbalī school. Although a legal school constitutes a scholarly mileu with its own distinctive legal methods and opinions, each school mutually recognizes the other schools. Ḥanbalī

<sup>60</sup> Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, pp. 39-41.



such as marriage and divorce, inheritance and the settling of business disputes. Criminal cases were also dealt with, but corporal and capital punishment were seldom applied unless intentional murder could be proven. An exception to this practice was found at some of the Mogadishu courts, in particular the abovementioned Northern Mogadishu court, which even applied the *hudūd* punishments.<sup>61</sup> But, as noted, this court was perceived as too ambitious and thus shut down. As such the *sharī'a* courts seemed to be in a quite similar situation as the traditional *wadaads* of the colonial times, both having to limit their application of *sharī'a* in order to conform to clan interests.

The integration of the *sharī'a* courts into the bodies of the TNG in 2000, the influence of the courts almost disappeared (discussed below). However, some opponents of the TNG and earlier court members who soon decided to leave the TNG, enabled some *sharī'a* courts to survive, although with little power to enforce their rulings. Not until 2004, when several courts managed to establish a joint courts administration, the Supreme Council of Islamic Courts (SCIC), and as well a considerable court militia, they regained strength, and new courts spread throughout Mogadishu.<sup>62</sup>

SCIC, headed by persons with different religious affiliation, such as Hassan Dahir Aweis, the former leader of the militant Islamist group Al-Ittihad al-Islamiyya (“The Islamic Union”), and Sheikh Sharif, who is associated with the Sufi group called Ahlu Sunna wal Jama’a, was initially dominated by Hawiye sub-clans but slowly managed to gain support from several clan groups. They formed a council, or *shūrā*, with representatives from religious groups, clan elders, and businessmen, headed by an executive committee and furnished with a non-clan based militia. Seldom seen in the Somali civil war, this new union of Islamic courts, to be known as the Islamic Courts Union (ICU), contained fighters that were religiously motivated to the extent that they saw Paradise as the ultimate victory regardless of the outcome of the battle itself. A hard core of fighters, consisting mostly of young men recruited from *madrasas* (religious schools) fought with unprecedented discipline. They were often referred to as al-shabaab (“the youth”). So, when ICU clashed with local warlords over an economical issue in January 2006, and then confronted the Alliance for Restoration of Peace and Counter Terrorism (ARPCT), an alliance of warlords supported by Ethiopia and the US, the ICU soon gained the upper hand. In the months to follow, the ICU

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<sup>61</sup> Ibid., pp. 39-45; Marchal, “A tentative assessment of the Somali Harakat Al-Shabaab”, p. 385.

<sup>62</sup> Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, pp. 46-47; Marchal, “A tentative assessment of the Somali Harakat Al-Shabaab”, p. 387; Hansen, “Somalia: Grievance, Religion, Clan, and Profit”, p. 127.

won considerable influence and soon controlled huge parts of South Central Somalia. However, after the Ethiopian invasion in December 2006, ICU rapidly fell apart and many of its leaders fled the country.<sup>63</sup> They left behind an almost shattered organization but with a core of young, dedicated fighters: al-Shabaab.

### **3.5 Al-Shabaab and the emergence of radical Islamism in Somalia**

In the first *sharī'a* court experiments which lasted until 2000, radical Islamists had minor influence although they were overrepresented in the militias that enforced the decisions of the courts. During 2004 and 2005 the situation was reversed. In order to understand the underlying factors, it is necessary to take a closer look at the radical Islamist trajectory in Somalia.

Al-Ittiḥād al-islāmiyya, a radical Islamist group that got an influential position later, was established in the Somali universities in the early 1980s. The group was generously funded by Somali migrants established in the Gulf. Although this increased the Salafi influence on the group, it also encompassed members with other ideological beliefs. When the Barre regime fell in 1991, Al-Ittiḥād established its own military wing and tried to compete with clan-based militia. However, the group experienced several defeats, and had to reconsider its strategy. Instead of continuing its violent *jihād*, it embraced *da'wah*, i.e. propagation of political and religious work among the public. This decision was contested, and some members, still striving for a military solution, left the organization and started working for Islamic businessmen and Islamic NGOs. During this period, Somali Islamists in general were increasingly in contact with foreign Islamists who propagated Salafi ideology and provided support, mostly, in the form of aid facilitated by Islamic NGOs e.g. by giving contracts to Somali businessmen who funded Somali Islamists. Young Somali men were also recruited for military training outside or inside Somalia.<sup>64</sup>

Although the Islamists were active in various court militias that emerged during the 1990s, initially led by the former head of Al-Ittiḥād, Hassan Dahir Aweys, they had limited power because of the courts' strong link to specific clan groups, as already pointed out. In

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<sup>63</sup> Hansen, "Somalia: Grievance, Religion, Clan, and Profit", pp. 128-129, 133, 134-136; Marchal, "A tentative assessment of the Somali Harakat Al-Shabaab", pp. 390, 392; Le Sage, *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*, p. 47.

<sup>64</sup> Roland Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, pp. 12-13 ; Marchal, "A tentative assessment of the Somali Harakat Al-Shabaab", p. 383; Ali Abdirahman Ali, "The anatomy of Somalia's Al-Shabaab Jihadists", *Horn of Africa* 27 (2009), <http://www.scribd.com/doc/34053611/The-Anatomy-of-Al-Shabaab-by-Abdi-Aynte>, [14.10.2011], p. 12.

addition, their power was restricted by local businessmen who funded the military equipment used by the court militia. When most of the court members joined the ranks of the TNG in 2000, some Islamists under the leadership of Aweys started a project which addressed the limitations that they experienced through the 1990s. Firstly, they set up a training camp for court militia in order to reduce clan allegiances. Secondly, they sought to find ways to acquire their own equipment in order to avoid dependency on the businessmen. The newly established militia<sup>65</sup> from this camp came to pave the way for Harakat al-Shabaab al-Mujaahideen (al-Shabaab) which,<sup>66</sup> according to Ali Abdirahman, was officially established in 2003 after a major conference of Somali Salafis. Abdirahman asserts that during this conference, which was set up to de-militarize the Salafi movement and to forge a post-9/11 strategy, a group of battle-hardened, Afghan-trained men greatly disagreed with leading figures at the conference, who propagated what they perceived as “a capitulation to the US and its Christian infidels” and the abandoning of the cause of *jihād*. Some days later a parallel conference was held by these men, and Harakat al-Shabaab al-Mujahideen was established.<sup>67</sup>

In the years to follow there were several external factors that made the situation favorable for the Islamists in general. Firstly, neither TNG nor its successor, the Transitional Federal Government (TFG), established in November 2004, had much success. Secondly, after 9/11, the US government added a number of key Somali Islamists and Islamist organizations, like Al-Ittiḥād, to their terrorist list. Somali hit squads created at the initiative from US and Ethiopian Security Services started to assassinate and kidnap assumed Jihadi-Islamists. However, there was considerable collateral damage which made the Somali public quickly to side with the militant Islamist, even though they otherwise had little in common. In this context the new *sharī'a* courts emerged, this time also, as noted above, as a common project between the business community, clan elders and different religious actors. However, in addition to the Islamists, there were now also others who wished for a joint court system that would transcend clan structures in order to enforce law and order. For the Islamists, who

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<sup>65</sup> This militia, initially called *Mu'askar Mahkamad* (“court camp”) was commanded by Aadan Hashi ‘Ayro, a Somali Islamist that is widely believed to have attended an Afghan training camp in 2000 and 2001

<sup>66</sup> Marchal, “A tentative assessment of the Somali Harakat Al-Shabaab”, pp. 386, 388; Hansen, “Somalia: Grievance, Religion, Clan, and Profit”, p. 136; Stig J. Hansen, “Misspent youth: Somalia’s Shabab insurgents”, *Jane's Intelligence Review* 20, 10 (2008), p. 17.

<sup>67</sup> Abdirahman, “The anatomy of Somalia’s Al-Shabaab Jihadists”, p. 13-15.

now faced wider support and had a stronger base than ever before, the new courts suited their political objectives.<sup>68</sup>

As noted above, the Islamic Courts Union (ICU) which was established in 2004, recruited and trained its own militia which soon gained the upper hand against local warlords. The militants of al-Shabaab stood out as an elite force among the court militia. Their success was not least due to being self-supplied with military equipment and having an effective organization. Also, the leadership of al-Shabaab managed to maneuver itself into positions of the ICU executive council. However, despite their relative strength, al-Shabaab and the rest of the ICU forces were easily defeated by the Ethiopian forces that invaded in December 2006 at the request of the Transitional Federal Government (TFG).<sup>69</sup>

The TFG militia and the Ethiopian forces soon became unpopular among the population in Mogadishu. They failed to normalize the situation, and in early 2007 al-Shabaab had established itself as the most notorious insurgency group. The US-backed invasion of Ethiopian forces also fuelled the Jihadi-Salafi propaganda, which depicted al-Shabaab as the most effective resistance group and secured international support from other Islamists as well as the Somali diaspora. Due to foreign economic support, and also considerable funding by local businesses, al-Shabaab managed to pay relatively good wages for those who joined their ranks. This made al-Shabaab especially attractive for many youths, who could obtain relative economic stability by joining the group. When the Ethiopian forces left Somalia in January 2009, the TFG and several earlier Islamists from the UIC failed to establish a broad alliance and left the road open for al-Shabaab to take control of most of South and Central Somalia and to introduce their version of *shari'a*.<sup>70</sup>

### **3.6 Al-Shabaab's state and province administration**

Analysts agree that al-Shabaab is not a fully homogenous organization. Michael Taarnby and Lars Hallundbaek for instance claim that by late 2009 the movement consisted of 12 different groups ranging from hardcore Jihadis to less religious and more opportunistic affiliates.<sup>71</sup>

Although this might be true, al-Shabaab's territories function today, according to Stig

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<sup>68</sup> Marchal, "A tentative assessment of the Somali Harakat Al-Shabaab", pp. 386-388; Hansen, "Misspent youth: Somalia's Shabab insurgents", p. 17.

<sup>69</sup> Marchal, "A tentative assessment of the Somali Harakat Al-Shabaab", pp. 390, 392.

<sup>70</sup> Ibid, pp. 392-396; Hansen, "Misspent youth: Somalia's Shabab insurgents", p. 18; Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, p. 17, 41-43.

<sup>71</sup> Michael Taarnby and Lars Hallundbaek, *Al-Shabaab: The Internationalization of Militant Islamism in Somalia and the Implications for Radicalisation Processes in Europe*, (Report for the Danish Ministry of Justice: February 2010).

J. Hansen, more or less as a state in South Central Somalia, with central administrative bodies which control taxation, application and enforcement of law as well as recruitment and organization of military personnel.<sup>72</sup> In order to get an idea of the administrative structures of the al-Shabaab “state”, I have systemized information from Stig J. Hansen<sup>73</sup> and Roland Marchal<sup>74</sup> as well as from own informants. It must, however, be noted that lack of reliable data makes such an outline only a tentative sketch.

The highest decision-making body of the al-Shabaab organization is the executive *shūrā* (“consultation”), headed by Ahmed Abdi Godane alias Sheikh Abu Zubeyr, whose title is *amīr* (“commander” or “prince”). In 2009 this *shūrā* consisted, according to Hansen, of 8 to 10 members. In addition there is a larger *shūrā* of up to maybe 45 persons<sup>75</sup> who are summoned when needed.<sup>76</sup> The role of the larger *shūrā* is according to Marchal to discuss all important matters concerning the organization, notably questions regarding ideological, political and military issues, and he assumes that the *shūrā*’s decisions are based on a principle of consensus.<sup>77</sup>

Linked to these *shūrās* are different bodies or ministries called *maktabas* (“offices”), each headed by a prominent al-Shabaab member from the *shūrās*, often referred to as *amīrs*. According to Marchal the ministries are as follows: Maktabatu Da’wah, the ministry of Religious Affairs and Orientations; Makatabatu Difa’u, the ministry of Defense; Maktabatu Amniyaat, the ministry of Intelligence and Internal Security; Maktabatu I’laam, the ministry of Information; Maktabatu Ḥasba or Ḥisbah; the ministry of the Religious Police; Maktabatu Maaliya, the ministry of Finance; Maktabatu Siyaasada iyo Gobolada, the ministry of Internal Affairs, focusing on local administration, politics and social issues.<sup>78</sup>

The territory being controlled or partly controlled by al-Shabaab is divided into nine<sup>79</sup> provinces, termed *wilaayah* (“province”) which correspond to the former Somali provinces (see figure). Each *wilaayah* is governed by a regional administration, but, as Hansen points

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<sup>72</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, pp. 76-82, 88, 91.

<sup>73</sup> Ibid.

<sup>74</sup> Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*.

<sup>75</sup> Marchal (2011) suggests that the number of members of this extended *shūrā* might have been increased to 53 after the fusion of al-Shabaab and Hisbul Islam, which took place after the defeat of the latter in December 2010. Whether this means that the inner circle of the executive *shūrā* also is expanded remains uncertain.

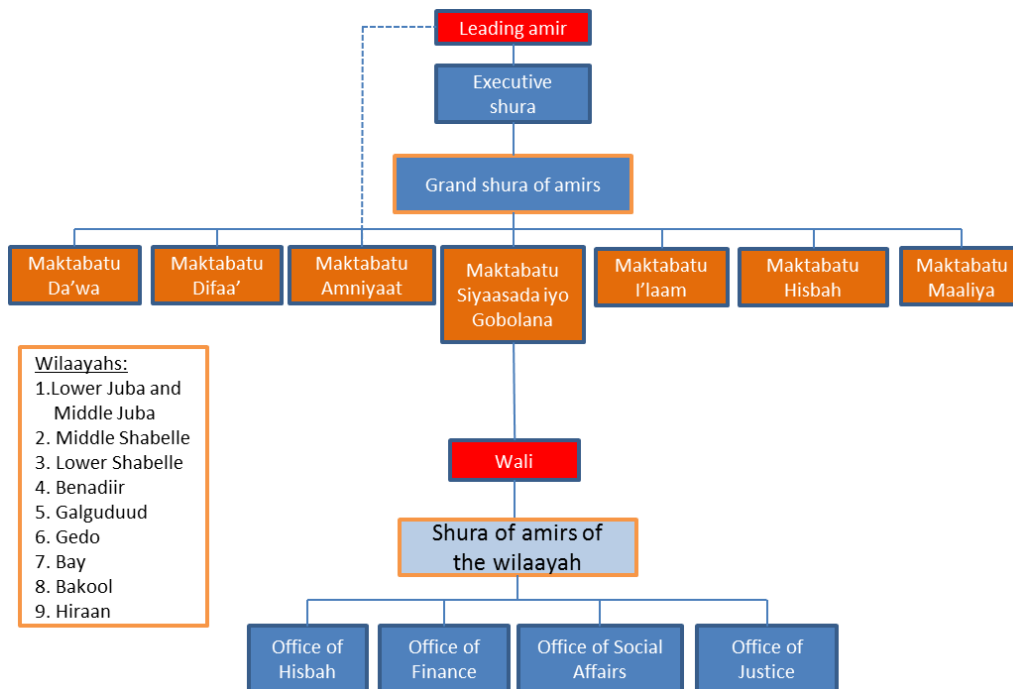
<sup>76</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 76.

<sup>77</sup> Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, p. 19.

<sup>78</sup> Ibid, pp. 20-22.

<sup>79</sup> Marchal (2011) asserts that Middle and Lower Jubba is governed as one *wilaayah*, while my informant “Hassan”, claims they constitute two distinct *wilaayahs*. Thus, there are either nine or ten *wilaayahs* in total.

out, the strength and efficiency of these regional administrations vary.<sup>80</sup> According to “Hassan-nor”, a Somali informant, the Hiiraan, Middle Shabelle, Lower Shabelle, Lower Jubba, Bay, Bakool and parts of Galgadud have been the most stable and administratively advanced.<sup>81</sup> But even there, Hansen claims, the administrations primarily exercise control over the urban centers, al-Shabaab’s control being very limited or entirely absent in rural areas.<sup>82</sup>



Every province or *wilaayah* is headed by a *walī* (“governor”) who take orders from the Ministry of Internal Affairs,<sup>83</sup> or according to “Hassan-nor”, directly from the Amīr Abu Zubeyr himself.<sup>84</sup> Like the Ministries or *Maktabas* of the extended *shūrā*, there are equivalent offices linked to the central provincial administration, each office headed by a senior leader or commander, an *amīr*.<sup>85</sup> The exact organization of the provincial administration is not certain, but according to Hansen, there is, in theory at least, an Office of Social Affairs, an Office of Tiqtisadi/Finance, an Office of the *Qudhaa*/Justice and an Office of the Ḥasba (or

<sup>80</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, pp. 81-82.

<sup>81</sup> Report from “Hassan-nor” received in November 2010.

<sup>82</sup> Ibid, p. 83.

<sup>83</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 86.

<sup>84</sup> Report from “Hassan-nor” received in November 2010.

<sup>85</sup> The term “*amīr*” seems to be used to describe commanders without referring to any specific level within the al-Shabaab hierarchy. Thus, there may be central *amīrs* as well as provincial and local *amīrs*.

Ḥesbah/Hisbah).<sup>86</sup> According to “Hassan-nor”, the *wilaayah* administration is also coordinating construction and maintenance work, charity works, teaching of *sharī’a* in the mosques and organizing of religious-political seminars termed *uluumul Muslim ummah* (“teaching of the Muslim Ummah”) which are held in the towns of the province in order to create awareness of al-Shabaab’s policy and ideology. Additionally, the provincial administrations, “Hassan-nor” claims, run religious-legal courses for *qādīs* and *imāms*.<sup>87</sup>

Outside of the civil *wilaayah* structure, there is a military structure governed by the top commanders of al-Shabaab, such as the grand *amīr*, Abu Zubeyr, Abu Muqhtar Robow and Sheikh Fu’ad Mohamed Khalaif Shangole. Somali soldiers are recruited locally and trained in the many military training facilities that are scattered throughout South Central Somalia. The al-Shabaab army, the Jaysh al-‘Ushrah (“Army of Hardship”),<sup>88</sup> deals with internal as well as external matters: minor clashes in the *wilayaahs*, as well as major offensives against AMISOM and TFG forces in Mogadishu.<sup>89</sup> In addition to the proper combat units there are also, according to several of my Somali informants, mobile military tribunals or courts that move along with the armed forces wherever they operate.

#### **Chapter 4: Al-Shabaab and Salafism**

On basis of its violent actions, e.g. use of suicide bombers and assassination of political opponents, as well as its utilization of global Jihadi rhetoric, al-Shabaab is immediately perceived as a radical Islamists group. However, as Hansen points out, in order to get a grip on al-Shabaab’s ideological stand one must take into consideration that the group does not constitute a homogenous movement. According to Hansen this became especially evident after the group’s takeover of relatively huge territories in 2008-2009 when the movement attracted a wide array of people, such as bandits, affiliates from rivaling Islamist organizations, as well as non-Somali Jihadis. Hansen also adds that al-Shabaab had to recruit persons with little awareness of Islamist ideology in order to fill the many administrative posts in the rapidly expanding administration. Some of these were, according to Hansen, even

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<sup>86</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 82.

<sup>87</sup> Report from “Hassan-nor” received in November 2010.

<sup>88</sup> The term “*Jaysh al-‘Ushrah*” is taken from the name of the army that the Muslim Caliph ‘Uthman Ibn ‘Affan (d. 656) formed in 630 prior to the battle of Tabuk against the Byzantines. See: Reuven Paz, “The Youth are Older: The Iraqization of the Somali Mujahidin Youth Movement”, *Global Research in International Affairs Center: The Project for the Research of Islamist Movements (PRISM) Occasional Papers* 6, 2 (December 2008), [http://www.e-prism.org/images/PRISM\\_no\\_2\\_vol\\_6\\_-\\_Millat\\_Ibrahim\\_-\\_Dec08.pdf](http://www.e-prism.org/images/PRISM_no_2_vol_6_-_Millat_Ibrahim_-_Dec08.pdf), [02.09.11], p. 7.

<sup>89</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, pp. 98-91.

reformist-minded and strived first and foremost to achieve justice in the newly controlled areas rather than to propagate Islamist ideology.<sup>90</sup> It should also be noted, as Hansen points out, that al-Shabaab never has been a static organization. It has operated within quite different contexts: first as a part of the *sharī'a* court alliance in 2005-2006, then, as an insurgency group in 2007-2008, and from 2008 the most powerful political actor in South Central Somalia.<sup>91</sup> Different contexts also require different tactical decisions and may also influence the group's ideological approach. What kind of symbols and terms that are applied may be contingent on their immediate utility for the group within the prevalent context.

To make an elaborate analysis of al-Shabaab's ideological traits from its emergence until today is outside the scope of my dissertation.<sup>92</sup> Instead, I will try to identify, from the last three years, an overarching narrative propagated by leading voices within the group, which may give meaning to events and provide a framework for the understanding of al-Shabaab's actions on the ground. This ideological framework, I will argue, is the Jihadi-Salafi discourse, which will be explained below.

#### **4.1 Salafism - resurgence of a pristine Islamic society**

On basis of its ban on all sorts of “un-Islamic” practices, e.g. Western clothes, TV, music and cinemas, as well as its struggling against Sufism, “secularism and modernism” and its praise of the righteous *Salaf* (“ancestors”),<sup>93</sup> al-Shabaab shows resemblance to a current trend of Islamic thought, namely the Salafi trend. Jonathan A. C. Brown traces the origin of this trend to two main events: First, the challenges of modernity, i. e. the economic, technological, social and political changes that emerged in Western Europe during the 18<sup>th</sup> century, which soon came to colonize and dominate large parts of the world. By questioning why they, as Muslims, were subordinate and powerless to confront the Modern West, many started to question contemporary practice of Islam and turned their attention to the foundation of Islam and its textual sources. However, even before the impact of modernity, the Muslim world witnessed several revivalist Islamic movements in West Africa, India and the central Arabia

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<sup>90</sup> Stig J. Hansen, *Report for the Norwegian Defence Research Establishment*, pp. 9-10.

<sup>91</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, pp. 67-68, 81.

<sup>92</sup> For a more elaborate analysis of al-Shabaab's ideology, see for example Hansen, *Report for the Norwegian Defence Research Establishment*; International Crisis Group, “Somalia's Divided Islamists”, *Africa Briefing No. 74* (2010), [http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/somalia/B74%20Somalias%20Divided%20Islamists.pdf](http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/somalia/B74%20Somalias%20Divided%20Islamists.pdf), [01.09.2011].

<sup>93</sup> Global Islamic Media Front, *The forgotten Obligation: A Call to the Most Important Obligation After Iman*, p. 4.



where the famously militaristic Wahhabi movement<sup>94</sup> had its origin. These movements generally propagated that the Muslim community had lost its moorings in the legacy of the Prophet, and felt that it had been led astray by heretical accretions in theology and worship as well as excessive loyalty to the orthodox legal schools.<sup>95</sup>

The current Salafī trend has inherited the notion of a world in decay. To cope with this, Salafīs seek to reconstruct Islam’s original purity based on the model of the first Muslim generations or the *al-salaf al-ṣāliḥ* (“the pious ancestors”).<sup>96</sup> By purging away what they perceive as superstitions, notably popular Sufi practices, blind loyalty to tradition and cultural influence from Greek logic as well as Persian mysticism, they hope to recreate the true Islam as propagated by the Prophet and the early Muslims. One of the means to do so is to revive the traditional usage of *ḥadīth* and use these texts as models for right behavior in a modern society. Salafī scholars feel entitled to break with an established ruling of the four Sunni schools if he assesses it to lack sufficient *ḥadīth* evidence. Moreover, Salafis endorse independent legal reasoning, *ijtihād*, and blame the classical legal schools for misguiding the Muslims away from the Sunna. However, such notions and methods are criticized by traditionalist scholars as “childish *ijtihād*” and total ignorance of legal theory in terms of following random *ḥadīths* instead of understanding how those *ḥadīths* fit into the process of deriving law.<sup>97</sup>

#### **4.2 *Tawḥīd, shirk and bid’a***

The Salafī trends embrace theological tenets which are centered on the concept of *tawḥīd*, the oneness of God. According to Quintan Wiktorowicz this concept contains three components:<sup>98</sup> the first is stated in the testimony of faith, *shahāda*, namely that the one God is the sole creator: “I testify that there is no God except Allāh and that Muhammad is His messenger.”

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<sup>94</sup> The movement that emerged around the 18th century Islamic scholar and reformer Ibn ‘Abd al-Wahhab (d. 1792) in the Arabian peninsula.

<sup>95</sup> Jonathan A. C. Brown, *Ḥadīth: Muhammad’s Legacy in the Medieval and Modern World*, (Oxford: Oneworld Publications, 2009), pp. 240-242.

<sup>96</sup> The Salafis are often referring to the first three “generations” of the Muslims, a period, which is understood to have lasted from the time of the revelations of Prophet (610) to around the death of the founding father of the Ḥanbalī legal school, Ahmad ibn Hanbal (855). A generation in this sense must be understood as being approximating eighty years, not twenty. The three-generation model, for the Ḥanbalīs at least, consists of a period of around two hundred and fifty years, and thus are the overlapping periods between generations not significant: See Bernard Haykel, “On the Nature of Salafī Thought and Action”, in Roel Meijer (ed.), *Global Salafism: Islam’s New Religious Movement*, (New York: Columbia University Press, 2009), p. 38-39.

<sup>97</sup> Jonathan A. C. Brown, *Ḥadīth: Muhammad’s Legacy in the Medieval and Modern World*, pp. 251, 256-261.

<sup>98</sup> Quintan Wiktorowicz, “Anatomy of the Salafī Movement”, *Studies in Conflict & Terrorism* 29, 3, (2006), pp. 208-209.

Secondly, God is understood as supreme and entirely unique, and does not share any characteristics or powers with humans or any other of His creations. He is also the supreme legislator, which makes all humans obliged to follow His commands, i.e. the holy *sharī'a* in its entirety. Rejecting this is to say that humans can legislate, a domain which is reserved for God alone. Ideologies or institutions that suggest supremacy of human made laws, like secularism or state governed religions are therefore banished by the Salafis. Thirdly, the Salafis have the common understanding of the Muslim teaching that God alone has the right to be worshipped. To the Salafis this means that any form of *shirk*, i. e. idolatry, polytheism or veneration of other gods, objects or humans, is a grave sin. However, this component of *tawhīd* is even more profound for the Salafis: grounded on the idea that the Qu'rān and the Sunna is God's provisions for how humans should behave in this world, the Salafis see every act in accordance with this God given law as worship. Any act that deviates from this law, *sharī'a*, indicates submission to other things than God. In order to follow these notions, the Salafis try to live strictly according to the provisions in the Qu'rān and to emulate the behavior of the Prophet, which are given in the *hadīths*. Hence they adhere to the guidance of the first three "generations" of Muslims, the *al-salaf al-ṣāliḥ*, because of their first-hand experience of the "authentic" message of Islam.<sup>99</sup>

Another central theological concept of Salafi thought related to *tawhīd* is *bid'a*, i.e. innovation. This concept implies that any belief or action which is not explicitly approved by the Qu'rān, the Prophet or the Salaf (the *hadīths*) is an innovation which should be rejected because it threatens the oneness of God.<sup>100</sup> In this concept there lies a potential rejection of everything which is not found in the Qu'rān and in the *hadīth* stories of the first "generations" of Muslims.

The concepts of *tawhīd*, *shirk* and *bid'a* are all treated in al-Shabaab affiliated propaganda leaflets on the web. For example, in the aforementioned declaration issued by the general command of al-Shabaab *tawhīd* is established as one of the main goals of the movement. Here *tawhīd* includes the extermination of:

(T)he apparent symbols of polytheism and idolatry, such as tombs and domes. Abu Umamah (t) related that the Prophet (r) said: "Indeed Allāh has sent me as a mercy to mankind and has ordered me to wipe all traces of idolatry." (Ahmed and others). Allāh purified many segments of our society from grave-worship, grave pilgrimage, sacrificing animals for the saints buried there, and seeking blessings from them, after they saw with their own eyes that they were merely false deities who can neither benefit nor

<sup>99</sup> Wiktorowiz, "Anatomy of the Salafi Movement", pp. 208-209; Roel Meijer, "Introduction", in Meijer, Roel (ed.), *Global Salafism: Islam's New Religious Movement*, (London: Hurst & Company, 2009), pp. 3-4

<sup>100</sup> Wiktorowiz, "Anatomy of the Salafi Movement", p. 209

harm. They were guided to Tawḥīd, and they cast aside shirk. All praise be to Allāh for the blessing of being able to worship in an atmosphere not polluted with raised domes or over-respected graves.<sup>101</sup>

This categorization of popular Somali religious practices such as the veneration of saints as a form of polytheism and hence as *shirk* is a strong indication of al-Shabaab's Salafi inclination. This view finds support from events that have taken place on the ground. Not long after al-Shabaab took control of Kismayo town in August 2008 they started to destroy local graves of Sufi sheikhs. Sheikh Hassan Yakub, the al-Shabaab spokesman in Kismayo at the time, told a local journalist in December 2008 that they “destroyed graves where people used to worship dead people”, a practice which is particularly prominent during the Eid-celebration, but which he deems “un-Islamic.”<sup>102</sup> Similar destructions were also executed in other places where al-Shabaab has taken control. For example, in the city of Brave in Lower Shabelle, graveyard caretakers has been arrested and mosques located near graveyards closed because al-Shabaab deemed the prayers conducted there “not to be proper prayers”, and that praying there would amount to worshipping the graves themselves.<sup>103</sup>

According to an al-Shabaab pamphlet it is not only un-Islamic practices that should be shunned but also “innovations” and “the framework of apostasy”- the latter being an indirect reference to secularism and modernism associated with the West.<sup>104</sup> Seen in light of the concept of *bid'a* (innovation), central in Salafi thought, any idea or object not anchored in the Qu'rān or the *ḥadīth* is understood as sinful because it may threaten *tawḥīd*, the unity of God, since this would draw attention away from the pure revelation of God. The practical implications of this notion could be seen through the many bans issued by al-Shabaab e.g. the prohibition of traditional wedding music, dancing and traditional female dress. Likewise, in order to purge Western influence al-Shabaab has banned listening to music, watching TV, films, going to cinemas and even wearing a bra. “Hassan”, one of my informants who used to live in Mogadishu was called a *kāfir* (“unbeliever”) by al-Shabaab militiamen and punished on the spot in the streets of Mogadishu with for lashes for wearing a belt.<sup>105</sup>

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<sup>101</sup> Global Islamic Media Front, *The forgotten Obligation: A Call to the Most Important Obligation After Iman*, pp. 4-5.

<sup>102</sup> Garowe Online, *Somalia: Al Shabaab fighters 'destroy graves' in Kismayo*, (9 December 2008), [http://www.garoweonline.com/artman2/publish/Somalia\\_27/Somalia\\_Al\\_Shabaab\\_fighters\\_destroy\\_graves\\_in\\_Kismayo.shtml](http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Al_Shabaab_fighters_destroy_graves_in_Kismayo.shtml), [23.06.2011].

<sup>103</sup> Mohamed Mohamed, *Somali rage at grave desecration*, BBC, (8 June 2009), <http://news.bbc.co.uk/2/hi/africa/8077725.stm>, [23.06.11].

<sup>104</sup> Global Islamic Media Front, *The forgotten Obligation: A Call to the Most Important Obligation After Iman*, pp. 3-4.

<sup>105</sup> Interview with “Hassan” conducted by the author in Nairobi, October 2010.

### 4.3 Salafis and politics

Although the Salafis embrace a common creed there are several prevalent political trajectories among them. Wictotowicz sees the different approaches to politics as a result of the inherently subjective nature of interpretation. When a Salafī scholar consults the Qu’rān and the *ḥadīths* or turns to the opinions of influential scholars like Ibn Taymiyyah and Abd al-Wahhab to find answer to a certain issue, he naturally cannot grasp the message of the text without using his own reason. Firstly, how he understands a certain issue depends on his understanding of the prevalent context. Secondly, how to identify a text that would seem relevant for the issue at hand is also contingent on the scholar’s understanding of the text. For example, when the Prophet in a *ḥadīth* sanctions the use of a catapult during the siege of the city of Taif, some Salafis argue that this is equivalent to modern weapons of mass destruction, and is legitimate to use in their struggle today. To assess whether the text is analogue and relevant to the current context is thus contingent upon the interpreter, and could result in a radically different outcome.<sup>106</sup>

Based on interpretation of context and texts, Wiktorowicz divides the Salafis into three main categories: Purists, Politicos and Jihadis. The purists are first and foremost eager to maintain the purity as propagated by the Qu’rān and the *ḥadīth*.<sup>107</sup> Rather than political activism, the emphasis is to promote the Salafī doctrine, centered around *tawḥīd*, and to combat deviant practices as an analogy to the Prophet’s struggle against polytheism, human desire and human reason. Until the religion is purified, any political action will probably lead to corruption and injustice, according to the Purists. Therefore they advise against the implementation of *sharī’a* in a society which is not ready, i.e. that the society lacks the proper understanding of the tenets of faith. The proper modes of action for the purists are to propagate the right belief (*da’wah*), to purify the society and to promote religious education. Even during times of repression Salafī Purists have abstained from activism, and refrained from violence, arguing that the Prophet and his Companions also were repressed during the Mecca period, but that they remained peaceful in order to facilitate the spread of Islam. This reflects an understanding that actions should not lead to greater evil, such as creating problems for Salafī propagation.<sup>108</sup>

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<sup>106</sup> Ibid., pp. 214-216

<sup>107</sup> The “Companions” is the term applied for the Muslims who were contemporary of the Prophet. By the Salafis they are perceived as having a privileged insight into how to understand the revelation as they were eyewitnesses to the conduct of the Prophet.

<sup>108</sup> Ibid, pp. 207, 217-221

In contrast to these Purists, the Politicos, as the name implies, are more politically minded. The Politicos constitute a younger generation of Salafis that are critical to the Purists' stance which they criticize for being naïve and ignorant, and in their view, lacks understanding of the current political realities which Muslims face and the need to address their suffering, be it in Palestine or in Chechnya. Instead of focusing on how to conduct proper rituals, or how to combat the veneration of saints (Sufism), or to offer prayers for the very leaders who facilitated the destruction of the Muslim world, the Politicos believe they have a moral responsibility to discuss politics and critique un-Islamic rulers and policies.<sup>109</sup>

The third category, the Jihadis, like the Politicos, engage in politics, but unlike the Politicos they sanction the use of violence and see it as a legitimate mean in order to reach their aim which is to establish an Islamic state. Wictorowics traces its emergence to the Afghan war against the Soviet Union in the 1980s.<sup>110</sup> Unlike other Salafis and Islamists who discussed politics at the universities, not least in Saudi Arabia, the participants in the Afghan war received their religious as well as political training on the battlefield. When the war ended and many of the now radicalized Muslims returned home at the beginning of the 1990s, they met repression, e.g. in Saudi Arabia, which resulted in an increased hostility towards what many perceived as un-Islamic regimes. The Jihadi trend that now took form, with Osama Bin Laden as one of its most famous representatives, distanced itself from the Purists and criticized them for not putting the Salafi doctrine into practice when they failed to address the injustices of un-Islamic regimes and their allies, the US and Israel.<sup>111</sup>

In view of al-Shabaab's origin as a revolutionary insurgency group and a protagonist in Somalia's civil war which has not hesitated to use a wide range of violent methods, such as suicide bombers, assassinations, road side bombs and conventional attacks in order to reach their goal of governing an independent Islamic state, it must be put in the Jihadi-category. However, contrary to most Jihadi groups al-Shabaab actually enjoys political and military control of a territory and exerts a religio-political program through a relatively stable administrative structure, not dissimilar to a modern state. By analyzing al-Shabaab's handling of court cases and its practical use of punishment in the next chapters, I get a privileged look into al-Shabaab's view on *sharī'a* in its judicial practice as well as an understanding of al-Shabaab's attitude to violence as an instrument to create an (ideal) Islamic state.

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<sup>109</sup> Ibid, pp. 221-225.

<sup>110</sup> Ibid, p. 225.

<sup>111</sup> Ibid., pp. 225-227.

#### 4.4 Jihadi-Salafism and excommunication

What is characteristic for the Jihadi or Jihadi-Salafi trend is not their aim to establish an Islamic state governed in conformity with *sharī'a*. This goal is also prevalent within other Salafī trends. However, they differ from other Salafis by their emphasis on violent *jihād* (“struggle”), i. e. holy war, as a method to reach their goals, and by their extensive targeting of fellow Muslims who do not follow their strict rules of conducts. In order to legitimize its ideology Jihadi-Salafi ideologues, like the Palestinian-Jordanian Abu Muhammad al-Maqdisi, have turned to the theological-judicial concept of *al-walā' wal-barā'*, which may roughly be translated into “loyalty and disavowal”,<sup>112</sup> or in other words “friendship towards those who worship Allāh and enmity towards those who adore any other god”.<sup>113</sup>

Although the idea of *al-walā' wal-barā'* is not a part of orthodox Sunni Islamic thought, the idea is found in the works of Ibn Taymiyya (1263-1328) who uses the concept in connection with *bid'a* (reprehensible innovation). He was concerned about the influence of Jewish and Christian religious festivals and customs on Islam, as many contemporary Muslims lived close to them. In his view, Muslims should not take part in such events, but demonstrate their loyalty only to God by abiding to Islam. Of special concern to Ibn Taymiyya were certain popular practices among his contemporary Muslims which he describes as *bid'a* and therefore regards as non-Islamic e.g. visiting of graves of holy men and women.<sup>114</sup>

During the 18th and 19th centuries scholars, especially followers of the famous Ḥanbalī reformer Muhammad ibn 'Adb al-Wahhab, developed the content of *al-walā' wal-barā'* further, making the concept a tool in the fight against unbelief, *kufṛ*, by relating it to the concept of *tawḥīd*. They asserted that all Muslims must give their exclusive loyalty to God, or else they would be like unbelievers, *kuffār*. On an even more aggressive note, some Wahhabi scholars held that if you, as a Muslim, did not disavow the people of unbelief and declare that they were your enemy, you were not adhering to the oneness of God, *tawḥīd*. It was this

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<sup>112</sup> Joas Wagemakers, “The Transformation of a Radical Concept: *Al-wala' wa-l-bara'* in the Ideology of Abu Muhammad al-Maqdisi, in Roel Meijer (ed.), *Global Salafism: Islam's New Religious Movement*, (New York: Columbia University Press, 2009), pp. 81-82.

<sup>113</sup> Farhad Khosrokhavar, *Inside Jihadism: Understanding Jihadi Movements Worldwide*, (Boulder: Paradigm Publisher, 2009), p. 21

<sup>114</sup> Wagemakers, “The Transformation of a Radical Concept: *Al-wala' wa-l-bara'* in the Ideology of Abu Muhammad al-Maqdisi”, pp. 81-87.

perception of the concept of *al-walā' wal-barā'* which came to be incorporated into the ideas of modern day Salafi scholars.<sup>115</sup>

However, contemporary Salafi scholars use *al-walā' wal-barā'* in different ways: For example, Saudi state-employed Wahhabi scholars and their followers use it in an apolitical way, limiting its province to social matters, such as banning unorthodox religious celebrations or to condemn non-Muslim custom when it comes to clothing, using of words and names, or practices like hand shaking. However, the same scholars tend to be lenient with the political leaders' deviating behavior. On the other hand there is a branch of contemporary Salafi scholars who see *al-walā' wal-barā'* as applicable in the political sphere, stating that one should criticize and act against leaders that are unfit to rule, like the Saudi rulers. The already mentioned Salafi scholar al-Maqdisi goes even further, claiming that politics and excommunication, *takfir*, cannot be separated. He maintains that political obedience and willingness to abide by laws when the regime is non-Islamic, is equivalent to showing loyalty to other than God. This also means that Muslim politicians who propagate these man-made and un-Islamic laws are in fact worshipping someone or something other than God, and as such they are guilty of the grave sin of *shirk*, and should be condemned as *kuffār* (sg. *kāfir*). In Al-Maqdisi's extremist view the whole Muslim world is permeated by idolatry and astray by un-Islamic leaders who apply man-made laws instead of applying the only valid, Islamic law, *sharī'a*, in full. According to al-Maqdisi all Muslims should denounce such unbelieving leaders, and the best way to act against these *kuffār* is by waging *jihād* in order to restore *tawhīd* in legislation, which means in practice to abandon all man-made laws and apply *sharī'a*.<sup>116</sup>

To what extent the al-Shabaab leadership is familiar with this concept is outside my knowledge, but al-Shabaab statements are anyhow permeated by an "infidel vs. righteous" rhetoric and they frequently use terms such as "apostate" or "*kuffār* government" when referring to the TFG (the Transitional Federal Government). Although the TFG consists of Somali Muslims, al-Shabaab puts it in the same category as external enemies, such as the AMISOM (African Union Mission in Somalia) forces and the Ethiopians, all being deemed unbelievers or infidels.<sup>117</sup>

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<sup>115</sup> Ibid, pp. 87-88.

<sup>116</sup> Ibid, pp. 88-95.

<sup>117</sup> See for example Global Islamic Media Front, *Translated official reports: from youth mujahiden movement*, Sada al-Jihad Media Center, (22 May 2009-23 December 2009), <http://www.alqimmah.net/archive/index.php/t-6158.html>, [02.09.2011].

However, to separate the Muslims in “*kuffār*” and “righteous” is not only propagated through al-Shabaab’s statements but also becomes evident in practice. There are several examples which show that Somalis are regarded as *kuffār* by al-Shabaab and have been sentenced to severe punishment or the death penalty in the courts or have faced extra-judicial assassination just because they have had links to the TFG or any other enemy group or organization. For example, “Ghedi”, a Somali informant from Mogadishu, was arrested by al-Shabaab militiamen in his house in Mogadishu one night in July 2010. He was forced to stand up and they tied his hands and legs. Then they dragged him through the streets of Mogadishu by a rope tied to the tow bar of a car. According to “Ghedi” this treatment was due to two factors: the fact that he had previously been working for the World Food Program, a UN organization which had been banned by the al-Shabaab administration, and the fact that he used to live in the area dominated by TFG, or the side of “the *kufir* government” of Mogadishu. For these reasons he was deemed by al-Shabaab to be a *kāfir*, and was punished accordingly. Luckily, he had some distant relatives within al-Shabaab who arranged his release. However, sadly, his wife, son and mother-in-law were all killed by the militia during his absence.<sup>118</sup>

#### 4.5 *Sharī’a* and the legal schools

Inherent in the concept of *tawhīd* is, as mentioned above, the idea that God is the supreme being and that He does not share His powers with anyone, neither humans nor other of His creations. Because the Qu’rān describes God as the supreme legislator, humans are obliged to follow his law, the *sharī’a*, and only *sharī’a*. Also, the Jihadi-Salafi reasoning with regard to *al-walā’ wal-barā’* (“loyalty and disavowal”) stresses the importance of *sharī’a*, in the sense that lack of application of *sharī’a* would justify *takfīr*, i.e. excommunication of Muslims, and thus be a legitimate reason for *jihād* where the goal is to establish *sharī’a* as the only legislation. As such, *sharī’a* becomes a focal point within the Jihadi-Salafi discourse, and a main goal for any Islamic state. As the former official spokesman and leading figures of al-Shabaab, Sheikh Muqhtar Robow, stated in an interview: “Shabab Al-Mujahideen is an Islamist-Salafi movement that wants to implement *sharī’a* completely – every single element of it. That's what the movement stands for.”<sup>119</sup>

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<sup>118</sup> Interview with “Ghedi” conducted by the author in Nairobi, October 2010.

<sup>119</sup> MEMRI: Middle East Media Research Institute, *In-Depth Report on Shabab Al-Mujahideen in Somalia - Activists Demolish Churches: "We Will Establish Islamic Rule From Alaska & Chile to South Africa, & From*



However, while it is one thing to have *sharī'a* as a utopian goal and a means of legitimizing the fight against a corrupt and ungodly regime, it is something else to govern a state on basis of it. Although *sharī'a* is widely discussed within Salafī discourses, there are not many concrete explanations on how to use it in practice apart from the references to the Qu'ran, the Sunna/*ḥaḍīth* and the *salaf* as the sources of godly rule. Nevertheless, as Brown points out there is ambivalence in regards to the classical legal tradition of the four legal schools among the Salafī trends. While Salafis in general are skeptical to the following (*taqlīd*) of the opinions of the classical legal schools (the *madhāhib*) and propagate new *ijtihād* (independent legal reasoning), some influential Salafī scholars, like the Albanian-Syrian Muhammad Nasir al-Din al-Albani (d. 1999), advocate the study of classical books of legal theory and makes use of legal principles compiled by this discourse.<sup>120</sup> Bernard Heykel elaborates further on this issue and asserts that the position adopted vis-à-vis the four established Sunni *madhāhib* (Ḥanafī, Mālikī, Shāfi'ī and Ḥanbalī) constitutes a major dividing line among the Salafī trends.<sup>121</sup> Heykel applies two categories: firstly, Salafis who follow the teachings of the *madhāhib*. This category I will term the *madhhab*-minded Salafis (in contrast to Heykel's second category, *ijtihād*-minded Salafis, described below). Within this category he puts the Wahhabi trend who he claims tends to follow the Ḥanbalī school. Neither the founding father al-Wahhab nor the 14th century scholar Ahmad Ibn Taymiyyah (d. 1328), who exerted great influence on the Wahhabis, Heykel asserts, argued that ordinary Muslims should break with the orthodox *madhāhib*. However, Ibn Taymiyyah insisted that a person with elaborate knowledge in the Islamic sciences, a *mujtahid*, i.e. a scholar who exercises *ijtihād*, like himself, was expected to follow his own judgments. This means that legal rulings could be based both on the opinions of the legal schools as well as *ijtihād* if the scholar possesses sufficient knowledge.<sup>122</sup>

In contrast, the *ijtihād*-minded Salafis fully reject the orthodox schools. They argue that even ordinary Muslims should be “liberated” from *taqlīd* (the following of the opinions of the *madhāhib*). Instead of just following blindly these orthodox opinions, ordinary Muslims should, according to the *ijtihād*-minded Salafis, ask a contemporary scholar of his opinion as well as the proof on which he bases his ruling. As such, the ordinary Muslim, according to

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*Japan to Russia – Beware, We Are Coming*”, Special Dispatch no. 2181 (9 January 2009), <http://www.memri.org/report/en/0/0/0/0/3004.htm>, [03.09.2011].

<sup>120</sup> Ibid, pp. 256-257, 261.

<sup>121</sup> Heykel, “On the Nature of Salafī Thought and Action”, p. 42.

<sup>122</sup> Ibid., p. 42-43.

this perspective, is not engaging in *taqlīd*, but rather a practice which the Salafis refer to as *ittibā'* (“following”). This practice increases the awareness of the textual proofs and the “true” teachings of the first generation. In their view, the traditional scholarship of the centuries old legal schools has not only become a barrier between the believer and God, but also distorted the revealed truth as given to the Prophet Mohamad. Like an echo of Martin Luther’s critique of unbiblical, Catholic traditions, the *ijtihād*-minded Salafis denounce the traditional Islamic jurisprudence of the *madhāhib* as a reprehensible innovation, *bid’a*, which should be purged from the true religion of the pious forefathers.<sup>123</sup>

To my knowledge, most of al-Shabaab’s Internet statements and propaganda material does not state how the group perceives the classical legal tradition and the four Sunni *madhāhib* (Ḥanafī, Māikī, Shāfi’ī and Ḥanbalī). However, there is some al-Shabaab press releases published on the Internet that describes activities related to a certain Abdullah Azzam Training Center.<sup>124</sup> In this regard, one statement from May 2010 is interesting. It describes a graduation ceremony for 209 preachers who have just finished their four months course and shows the course curriculum which consists of Qu’rān exegesis, studies of *tawḥīd*, the science of *hadīth*, biographies of the Prophet, Arabic studies and studies of *fiqh*. The two works mentioned in regards to *fiqh* are *al-tahdheeb fī matn al-ghayah wal-taqreeb* and *nadhm al-waraqat*.<sup>125</sup> According to Nora S. Eggen, the former, written by Mustafa al-Bagha, a Syrian imam, is a short, modern introduction to *fiqh* according to the Shāfi’ī school’s tradition. It follows the classical form of a *fiqh* manual with separate chapters discussing different legal subjects e.g. ritual aspects (*‘ibādāt*), family law, contract law and criminal law. The latter work, according to Eggen, written by the 11<sup>th</sup> century Shāfi’ī scholar Abu ‘Abd Allāh al-Juwayni, is a short collection of definitions and terms used within *uṣūl al-fiqh*, i. e. a genre of the *fiqh*-literature where the scholars discuss how to derive positive law from the textual sources.<sup>126</sup> Another al-Shabaab statement from January 2011 describes a graduation ceremony from the same center where the best students receive religious books as a reward for good

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<sup>123</sup> Ibid, pp. 43-45.

<sup>124</sup> Global Islamic Media Front, *Youth Mujahideen Movement: Graduation Ceremony at the Abdullah Azzam Training Center*, Sada al-Jihad Media Center, (5 May 2010), <http://www.aussiemuslims.com/forums/showthread.php?37267-Youth-Mujahideen-Movement-Graduation-Ceremony-at-the-Abdullah-Azzam-Training-Center>, [02.09.2011]; Global Islamic Media Front, *Youth Mujahideen Movement: The Graduation of 130 Islamic Preachers in Benadir Province*, Sada al-Jihad Media Center, (16 January 2011), <http://alqimmah.net/showthread.php?t=21766>, [02.09.11]. Translated from Arabic by Adiam Tesfamariam.

<sup>125</sup> Global Islamic Media Front, *Youth Mujahideen Movement: Graduation Ceremony at the Abdullah Azzam Training Center*, Sada al-Jihad Media Center.

<sup>126</sup> Mail correspondence with Nora S. Eggen, Senior Research Fellow in Arabic at the University of Oslo.

results. Most of the ten books mentioned are according to Eggen classical works, such as *ḥaḍīth* collections, *ḥaḍīth* commentaries, Qu’rān commentaries and biographies about the Prophet, of which four of the commentaries are written by Shāfi’ī scholars, one by a Ḥanbalī/Wahhabi scholar, and one by a Mauritanian scholar from the classical period who probably, according to Eggen, was adhered to the Māikī school.<sup>127</sup> Thus it seems that al-Shabaab at least wants to propagate that it recognizes the classical legal schools, with emphasis on the Shāfi’ī school, which has been the most influential *madhhab* throughout Somalia’s Islamic history.

It is possible that this adherence to Somali legal tradition is propaganda directed towards the Somali population in order to gather support among Somalis who are sceptical to religious radicalism. However, among my interviewees from al-Shabbab dominated areas there were several who supported the above-mentioned claim that al-Shabaab in general does not reject the orthodox schools and classical *fiqh*. “Abu Mohammed” from Baidoa claims, for example, that al-Shabaab’s *qāḍīs* recognize the Shāfi’ī manuals, but only make use of them in some cases, while in other they ignore them. Moreover, “Hassan”, who lives in Mogadishu and follows the judicial practice of al-Shabaab *qāḍīs* closely, asserts that many *qāḍīs* nowadays claim to adhere to the Ḥanbalī school due to increasing Salafī influence. However, according to “Hassan”, the legal reality “on the ground” is different: the various al-Shabaab *qāḍīs* apply the legal doctrines they know. As many of the *qāḍīs* have studied abroad, he explains, for example in Egypt, Sudan, Saudi Arabia and Pakistan, they have acquired knowledge about the legal doctrine that is prevalent in that specific place. Thus, in Somalia under al-Shabaab rule, one may encounter *qāḍīs* who practice law in accordance with the Ḥanbalī, the Shāfi’ī, as well as the Māikī and the Ḥanafī school (the four orthodox schools). To what extent the al-Shabaab *qāḍīs* are following the classical *fiqh*-doctrines of the four *madhhaib* in questions regarding application of criminal law will be addressed in the next chapter.

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<sup>127</sup> Global Islamic Media Front, *Youth mujahideen movement: The graduation of 130 Islamic preachers in banadir province*, Al-qimmah Media; Comments by Nora S. Eggen, Senior Research Fellow in Arabic at the University of Oslo.

## Part 2: Al-Shabaab's legal system

*Sharī'a* as practiced by al-Shabaab is more in accordance with classical Islamic legal doctrines than with modern Western legal systems. This is apparent in the overall logic of the system where the main categories are the offences and punishments which are explicitly described in the Qu'rān and the *ḥadīth*. For example, a murder charge cannot be tried as a *ḥadd* crime (see below) while adultery can. In a case of adultery there is still a possibility to treat it as another sort of crime if the evidences are insufficient. For example, if there are four women witnessing adultery, the crime cannot in principle be tried as a *ḥadd* crime, but may be tried as *ta'zīr* case (see below) with other evidence requirements.

In the classical *fiqh* doctrines criminal law is not regarded as a single, unified branch of law, but is discussed in three separate chapters. The first chapter contains provisions regarding offences against a person, i.e. murder and bodily harm. This category is further subdivided into provisions regarding retaliation, *qiṣās*, and provisions regarding financial compensation, *diya*. The second chapter treats provisions regarding offences which have mandatory, fixed punishments outlined in the Qu'rān and/or the *ḥadīth*, i.e. the *ḥudūd* (sg. *ḥadd*) (“limit” or “restriction”) punishments. These offences, namely theft (*sariqa*), banditry (*al-ḥirāba*), unlawful sexual intercourse (*zinā*), unfounded accusations of *zinā* (*qadhf*), consumption of alcohol (*khamr*) and apostasy (*ridda*) are perceived by the classical scholars to be violations of the claims of God (*ḥuqūq Allāh*).<sup>128</sup> The third category deals with provisions concerning discretionary punishment of sinful and forbidden behavior, and of acts which endanger public order or state security (*ta'zīr* and *siyāsa*). The first two chapters, i.e. murder and bodily harm, and *ḥadd* crimes, are expounded in the *fiqh* manuals with great precision and detail while the third chapter is a residual category. However, this category is the most comprehensive one as most offences would fall into this category.<sup>129</sup>

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<sup>128</sup> There are different opinions among the classical jurists when it comes to what offences to include into the *ḥadd* category. Some exclude apostasy and drinking of alcohol from the category, while other jurists count revolt against a legitimate ruler and homicide as *ḥadd* crimes. This is among other things dependent on whether the scholar deems it necessary for a *ḥadd* punishment to be described in both the Qur'an and the *ḥadīth*, or only in one of them. I will, however, conform to the treatment of *ḥadd* crimes as outlined in: Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, p. 7.

<sup>129</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, p. 7.

## Chapter 5: Legal actors

According to classical Islamic theory on government and law,<sup>130</sup> the head of state<sup>131</sup> holds wide executive and judicial powers and may pass legislations within the limits set by *sharī'a*. In addition to the *qāḍī* court, which in classical legal literature is described as consisting of a single *qāḍī* who adjudicates in accordance with *fiqh*, classical theory also recognizes several other agencies with jurisdiction in criminal matters, the most prominent being the *mazālim*, i. e. the private court of the sultan, the *shurṭa*, i. e. the police, and the *muḥtasib*, i. e. the market inspector. All these institutions operate according to the Islamic jurists within the framework of *sharī'a*. However, they operate in a different manner. The *qāḍī* whose position is described to be of religious-legal nature, must apply the law in accordance with strict rules in regards to procedure and evidence as outlined in the *fiqh* literature. The same procedures characterize to some extent the *muḥtasib*, a kind of municipal supervisor and judge which in principle is a religious position bound by *fiqh* provisions. The *mazālim* and the *shurṭa*, however, are more related to the mundane power of the sultan and enjoy much wider latitudes as long as they enforce the law according to the “spirit of *sharī'a*”, i. e. that they do not rule in contradiction to *sharī'a* principles.<sup>132</sup>

### 5.1 The structures of al-Shabaab’s legal system<sup>133</sup>

At first glance the legal system of al-Shabaab seems to differ from classical theory since there are no formal courts equivalent to the *mazālim* or the *shurṭa* (police) court. While the Muslim ruler, according to classical theory, enjoys wide jurisdiction when it comes to criminal law, even in *ḥadd* cases,<sup>134</sup> all my data indicates that the primary institution dealing with major criminal cases in general and *ḥadd* cases in particular, are the *qāḍī* courts.

The *qāḍī* court system of al-Shabaab seems to be an integrated part of the *wilaayah* structure, every *wilaayah* being responsible for a number of courts. According to most of the

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<sup>130</sup> This theory is based on accounts of medieval Muslim scholars like the 11th century jurist Abu al-Hasan al-Mawardi and the famous 14th century Ḥanbalī scholar Ahmad Ibn Taymiyyah.

<sup>131</sup> The head of state in Muslim state entities have been termed differently throughout history, for example, *khalīfa* (“successor”), *imām* (“leader”), *sultān* (“power”) and *amīr* (“commander” or “prince”) are terms frequently used.

<sup>132</sup> Knut S. Vikør, *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, (Oslo: Spartacus Forlag, 2003), pp. 181-189; Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, p. 8-11; Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, pp. 170, 226-231

<sup>133</sup> The model of al-Shabaab’s judicial system outlined below is based on a limited source material and must be read with caution. Moreover, the judicial system must not be seen as a rigid structure as the different judicial agencies described may function differently within the different regions, and their ability to operate may be dependent on changing situations on the ground.

<sup>134</sup> Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, pp. 226, 233-236.

Somali informants, there are two levels of courts: the provincial court (high court) and the residential court (low court). In every *wilaayah* there seems to be only one provincial court,<sup>135</sup> situated in the capital city, while there are several residential courts, some in the capital city and some located in other major towns of the *wilaayah*.<sup>136</sup> The provincial court seems to handle major criminal cases involving murder, robbery, adultery and espionage, i.e. cases where the accused may face capital punishment. Additionally, these courts may also hear civilian cases. For example, the court at the Bakarra market, the main market in Mogadishu, which is believed by informants from Mogadishu to be a provincial court, is carrying out *nikahs* i.e. the wedding ceremony which involves the wedding contract. On the other hand, the residential courts seem mainly to deal with civilian cases, like marriage, divorce and inheritance cases, as well as minor criminal cases such as theft and bodily harm. Although such cases also may involve serious corporal punishment, e.g. amputation of the right hand for theft, none of the cases tried here seem to involve capital punishment. However, in many respects it seems that both courts overlap and may try many similar types of cases. The most distinct difference seems to be that the provincial court is involved in cases where the convict is facing death penalty.

According to my Somali informants, court hearings in criminal cases are closed to the public, the exception being the serious *hudūd* cases which are often held in front of large audiences. However, several of the informants who have faced court trials were allowed to bring some relatives and clan elders as witnesses to the trial, while other informants tell how they were alone in front of a panel of *qādīs*. None of them were allowed a lawyer of any kind. Most of the respondents describe a court panel of three to four persons both in the residential as well as in the regional courts. According to some, all of them were *qādīs*, while others said that there were one or two scribes/assistants and one, two or three *qādīs*.<sup>137</sup> Although the number of *qādīs* and court assistants tends to vary, it seems to be a general trend that there is one chief *qādī* who leads the court session and has the final say in the sentencing. This is

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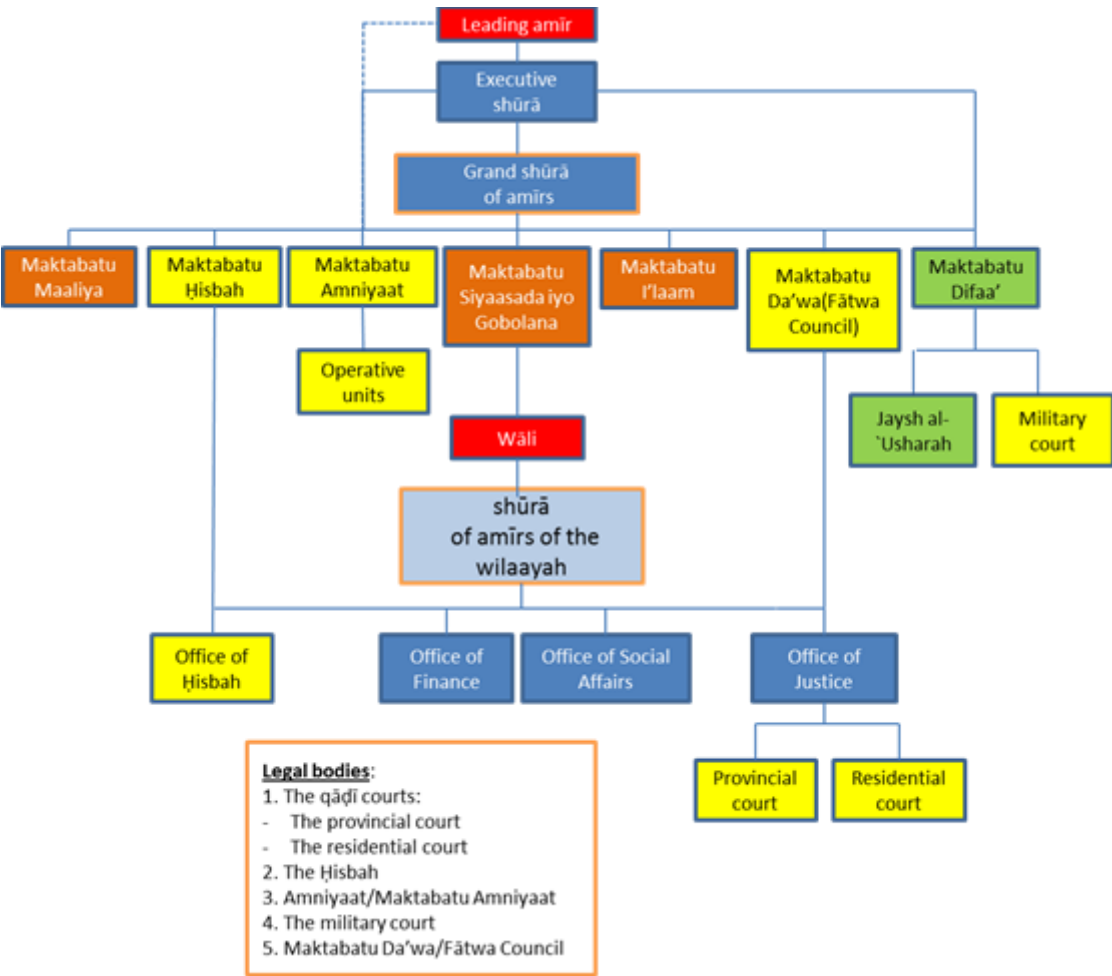
<sup>135</sup> In the Benadiir province there seems to be two provincial courts: one at the Bakara Market in Mogadishu and one at Maslah on the outskirts of the Suuqa Hoolaha (animal market) in the district of Huriwa, Mogadishu.

<sup>136</sup> For example, in the Lower Shabelle *wilaayah* there seems to be a provincial as well as a residential court in Merka, the capital city of the *wilaayah*, in addition to several residential courts, at least in the cities of Qoryooley, Wanla Weyn and Afgooye.

<sup>137</sup> The lowest number of court members reported is from a case in the residential court of Dinsor, in the Bay region, where the convict was, according to him, brought before a panel consisting of one assistant and one *qadi*. Anyhow, it might be difficult for the accused to separate between those who actually function as *qadis* and those who only work as assistants/scribes. Therefore, the distribution described by the informants must be read with caution.

supported in Hansen’s recent report where he claims the Baidoa court to be headed by a President *qāḍī* who is supported by a Deputy President *qāḍī* and a court cleric.<sup>138</sup>

In addition to the *qāḍīs* and the court assistants, there may also be others present in the court, such as prosecutors and witnesses, as well as militiamen functioning as guards. According to “Yusuf Oman”, an informant from Mogadishu, there is a dedicated court militia, called *Janjawiil*, belonging to the courts in Mogadishu.<sup>139</sup> However, according to Hansen, this may not be the case for all courts.<sup>140</sup>



Within the al-Shabaab controlled areas there are, in addition to the *qāḍī* court system, also other parallel legal structures. First, there seems to be a system of military courts which moves around with the armed forces. However, the information about these courts is limited. In my material, the only one who supposedly experienced this was the informant “Dalmar”

<sup>138</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 80.  
<sup>139</sup> Interview with “Yusuf Oman” conducted by the author in Nairobi, October 2010.  
<sup>140</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 80.

who was brought before three masked men somewhere in the bush, after being held in custody for 8 months due to suspicion of espionage because he had been working for Somali and international NGOs. He did not know at that time that this was a military court, but was told that this was the case by the local population when he returned. While he was present in the assumed military court, he was interrogated by the three masked men. Luckily for him, he was told that they had caught the wrong person, and released him.<sup>141</sup> Although “Dalmar” has no more to tell than this, several of the other Somali informants believe these courts to enjoy a relatively wide jurisdiction. In their opinion, these courts primarily hear cases of a disciplinary/military nature as well as serious criminal cases, in particular charges of espionage in connection with foreign NGOs operating within al-Shabaab dominated territories. The last claim at least, corresponds with the case of “Dalmar”.

A third legal actor is the security services called Amniyaat (“security”) which consists of units of security agents. These units are believed by my Somali informants to operate clandestinely and to carry out assassinations of dissidents and political opponents - even outside the al-Shabaab controlled areas including Nairobi and other parts of Kenya. Although these greatly feared units cannot be compared to the *mazālim* in terms of constituting a court or tribunal, they seem to be, like the *mazālim*, closely controlled by the mundane leadership, i.e the top management of al-Shabaab, or according to some informants, even directly by the leading *amīr*, Abu Zubeyr.

A fourth legal actor is the Ḥisbah (“balance” or “verification”), a kind of religious police that in many regards is equivalent to an ordinary police force. The Ḥisbah is responsible for the enforcement of law and order. It has jurisdiction in minor criminal offences, and may sentence and punish perpetrators independently of the *qāḍī*s court. As such it may be resembled to the *shurṭa*, as both do policing and have some jurisdiction in regards to criminal cases. However, while the *shurṭa* had their own courts independent of the *qāḍī* court and were able to adjudicate serious crimes,<sup>142</sup> the Ḥisbah may only punish minor offences on the spot and cannot conduct independent court hearings. All major criminal cases are tried in the *qāḍī* courts.

A fifth legal actor is the Fatwā Council, a central body which seems to be an integrated part of the *Maktabatu Da’wah*. There is little certain information about its organization and function, but it seems to constitute a council of scholars who issue decrees

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<sup>141</sup> Interview with “Dalmar” conducted by Mohamed and Abdow in Nairobi, July 2011.

<sup>142</sup> Vikør, *Mellom Gud og Stat: Ei historie om islamsk lov og rettsvesen*, p. 184, 189.



on political and religious-legal matters which regulate the social behavior of the citizens. These decrees or *fatwās*, i.e legal opinions on a specific issue, appear to be followed up by the *Ḥisbah* and implemented in the *qāḍī* courts.

In the following chapters, I shall discuss the judicial practice/function of these five institutions (the *qāḍī*s court, the military court, the Amniyaat, the *Ḥisbah* and the Fatwā Council), however with an emphasis on criminal proceedings of the *qāḍī* court.

## **Chapter 6: The *qāḍī* court**

According to classical doctrine, the *qāḍī*'s role is passive, in the sense that he is not allowed to investigate facts regarding the case. His main task is to make sure that the strict formal procedures are followed and to assess the evidence produced by the litigants. In principle, the litigants are persons, not institutions, one party acting as the plaintiff and the other acting as the defender. The trial has to be initiated by the affected party, for example the victim or his close family. As such, classical *fiqh* as a general rule does not recognize public prosecution, i. e. that representatives of the state initiate and prosecute violations of the law on behalf of the community. However, the *qāḍī* may initiate a case under certain specific circumstances on behalf of a person who is absent, or on behalf of a group of persons, and, like any other Muslims he may initiate a *ḥadd* case. No lawyers or juridical advisors are recognized.<sup>143</sup>

### **6.1 The al-Shabaab *qāḍī*s and their courts**

When it comes to the role of the *qāḍī* in the al-Shabaab controlled areas, the court case of “Mohamed Ahmed’s” son illustrates the *qāḍī*'s role: “Mohamed Ahmad’s” son, an al-Shabaab militiaman, was brought before the provincial court in Kismayo after having shot and wounded an innocent civilian in the thigh. This had happened when he was patrolling the city streets with other militiamen. They had stopped a man who was carrying a gun, telling the man to hand it over to them. When the man refused, “Mohamed Ahmed’s” son shot and wounded the man. As this act ran counter to the standing orders, he was jailed by the *Ḥisbah* (the police) and was then, after a short time in prison, brought before the regional court accused of wounding an innocent man. The *Ḥisbah* brought four witnesses, namely the other militiamen who had been present at the time of the shooting. After their testimonies had been

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<sup>143</sup> Vikør *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, pp. 162-166; Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 8-9, 54.

heard, the accused admitted to the crime, and was sentenced to pay compensation, *diya*, of five camels to the victim.<sup>144</sup>

This court case displays a pattern which is found in the majority of the court cases reported by my informants. First, the suspect is imprisoned. After some days in prison, often exposed to torture, the suspect is brought before the court where he has to defend himself against the accusations presented by the *Ḥisbah*. After having assessed the evidence brought before them, the *qāḍīs* (usually one, two or three) render a verdict. The *qāḍīs* seem to play a quite passive role, recognizable from classical doctrine where they are prescribed to focus mainly on procedural rules and the evidence presented to them. The active role, on the other hand, is played by the *Ḥisbah*, who arrest the offender, bring him to the court, act as a prosecutor, and present the evidence, either witnesses or other proofs, in order to support their accusations. Even though the classical doctrine allows the *shurṭa*, a pre-modern equivalent to the police, to assist the *qāḍīs* by bringing the accused to court and to execute the sentences given by the *qāḍī*,<sup>145</sup> the fact that the *Ḥisbah* actually functions as a state prosecutor who leads the court proceedings, finds no support in classical doctrine.

There are, however, some cases that derogate from this pattern in the sense that there is no public prosecutor, but only a complainant who addresses the *qāḍīs* directly to deliver his complaints. For example, in a case tried in one of the Mogadishu courts, a woman, “Kadra”, went to court after having been threatened with a pistol, beaten and raped by a *Ḥisbah* official. Although the neighbors had witnessed the rape and recognized the perpetrator, having been made aware of the crime by “Kadra’s” screaming, they did not dare to give testimony in front of the *qāḍīs* because they were afraid of reprisals from al-Shabaab. Hence, as “Kadra” did not have any evidence to support her claims, the case was dismissed.<sup>146</sup> Although this case is different from the former because it lacks an official prosecutor, the role of the *qāḍīs* are quite similar in the sense that they are only considering the evidence brought before them, rather than initiating additional investigation in order to find out whether or not the claims were true. However, there is a third category of cases where the *qāḍīs* play an active role as prosecutors themselves, like they e.g. do in the case of “Hassan”, a radio reporter who was tried in the residential court of Kismayo. After having released information, deemed sensitive by al-

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<sup>144</sup> Interview with “Mohammed Ahmed” conducted by the author in Nairobi, October 2010.

<sup>145</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, p. 10; Farhat J. Ziadeh, “Compelling Defendant’s Appearance at Court in Islamic Law”, *Islamic Law and Society* 3, 3 (1996), p. 309.

<sup>146</sup> Interview with “Kadra” conducted by Mohamed and Abdow in Nairobi, April 2011.

Shabaab, on the local radio station and thus “putting the lives of Muslims in danger”, “Hassan” was arrested by the Ḥisbah. After 7 days in prison he was brought before the court. Although the Ḥisbah commissioner and an al-Shabab militiaman were present during the session, it was the *qāḍīs* who announced the charge and presented the evidence, which in this case was a recording of the accused’s radio news program. Thereafter, the *qāḍīs* sentenced him to banishment, and presented him with an ultimatum: either leave the region within 36 hours or be killed.<sup>147</sup>

## 6.2 Classical legal procedures

In classical Islamic jurisprudence, like in Roman law, the burden of proof lies with the plaintiff. In trying to convince the *qāḍī* about his claims, the plaintiff should present two witnesses, either two men, or one man and two women, all of whom must be righteous persons. The other main type of evidence is the defendant’s admission of guilt. An admission must be made voluntarily and stated in front of the *qāḍī* in court, or restated if uttered at an earlier occasion. However, witness testimonies to an admission made by the defendant outside of the court are accepted, as long as the witness is deemed reliable. Interestingly, police officers cannot be used as witnesses to a defendant’s admission because the police are representatives of the sultan, a relationship which may influence their reliability. However, if someone else is present at the moment of confession, for example a caretaker, he may submit a testimony.<sup>148</sup>

A third category of evidence is the oath.<sup>149</sup> If the plaintiff has brought valid and credible witnesses in support of his claims, or a defender has confessed his guilt, the *qāḍī* will ask the plaintiff to swear that he has told the truth. If he does this, the case is closed in his favor. However, if one of the litigants fails to bring sufficient evidence, the defendant will be asked to take an oath. If he complies, he is free of charge.<sup>150</sup>

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<sup>147</sup> Interview with “Hassan” conducted by the author in Nairobi, October 2010.

<sup>148</sup> Vikør, *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, pp. 166-167; Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, p. 12.

<sup>149</sup> All legal schools, except from the Ḥanafī school, approve of the usage of one valid witness in combination with the oath as sufficient proof for the plaintiff. Surprisingly, if one of the litigants denies to take an oath the other party will be asked. If he then swears, he will win the case, even when the other party had sufficient evidence.

<sup>150</sup> Vikør, *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, pp. 168-170; Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 12-13.

### 6.3 Cases treated in the al-Shabaab *qāḍī* courts

#### 6.3.1 Murder and bodily harm – *qiṣāṣ* and *diyya*

A criminal case regarding *qiṣāṣ* (retaliation) and *diyya* (compensation) constitutes a private prosecution,<sup>151</sup> in the sense that the victim, his relatives or a valid representative of the victim are the ones who bring the case to the court and act as plaintiffs. As long as the plaintiff brings sufficient evidence, it is his prerogative to either demand retaliation or blood money, *diyya*, or to pardon the perpetrator.<sup>152</sup> Retaliation in cases of murder or bodily harm, on the other hand, may only be demanded if the offence was proved to be intentional. This is defined by both the Shāfiʿī and the Ḥanbalī school as: “Homicide or bodily harm is intentional if both the act against the victim and its results (death or injury) were intended.”<sup>153</sup> If this is not the case, and the act is assessed by the *qāḍī* to have been accidental or semi-accidental, the perpetrator must pay *diyya*.<sup>154</sup>

*Qiṣāṣ*, retaliation in connection with cases of wounding means that the perpetrator will suffer the equivalent wound as has been inflicted on the victim according to the principle of “a life for a life, an eye for an eye and a tooth for a tooth”.<sup>155</sup> In homicide cases the murderer will be killed, ideally in the same way as the victim was killed. The legal schools differ in the question of whether the victim or his family may carry out the punishment themselves under supervision by the legal authority, or whether the execution must be done by an executioner.<sup>156</sup>

In cases of *qiṣāṣ* the general rules of evidence are stricter than those standard proofs outlined above. Neither the testimony of one witness combined with the plaintiff’s oath nor the defender’s refusal to swear an oath, is valid. Likewise, circumstantial evidence is not accepted. The required evidence is either the testimony of two witnesses that have actually seen the act, testimonies to the defendant’s confession of guilt outside the court, or a confession by the defendant in court. Moreover, a perpetrator cannot be sentenced unless he

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<sup>151</sup> Exception from this rule is when the *qadi* or another individual act as plaintiff on behalf of a person who is absent or on behalf of a collective of persons. This is however limited to certain conditions.

<sup>152</sup> However, these are the choices according to the Shāfiʿī and Ḥanbalī school. The Ḥanafīes and Mālikītes only allow two choices, either to demand retaliation or to pardon. Besides, the plaintiff may in this case anyway receive *diyya*, although only if agreed on by the perpetrator.

<sup>153</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, p. 43.

<sup>154</sup> *Ibid*, pp. 38-39, 43, 45-46.

<sup>155</sup> *Ibid*, p. 30.

<sup>156</sup> *Ibid*, pp. 30, 36-37.

knew that the act was an offence, which means that minors up to the age of puberty<sup>157</sup> and the insane, are exempt from liability.<sup>158</sup>

Moreover, an insane person or a minor may be deemed responsible to pay *diya* because liability in such cases does not require a will or intent behind the action that resulted in the killing or wounding. In procedures regarding the adjudication of *diya* normal rules of evidence is followed as such cases are regarded to be of financial, not punitive nature. In court cases where the perpetrator kills or wounds by accident or semi-intentionally it is a question of how much to be compensated. In contrast to *qiṣāṣ* cases where the perpetrator is personally responsible and has to face the punishment himself, the payment of *diya* is, as a rule, the responsibility of his *diya*-paying group. The *diya*-paying group is defined by the Māikī and Ḥanbalī legal schools as all the agnatic relatives of the killer, including minors. How much to compensate in each case is related to the status of the victim. The standard sum against which everything is valued is 100 camels or an equivalent sum of money, which is the *diya* for killing a free Muslim man. The value, for example, for a woman is 50 camels, the half of that of a man. In cases of wounding, the amount of *diya* to be paid depends on which limbs or organs are damaged. If there are several injuries, the sum is accumulative, and the amount to compensate may be greater than the full blood price of 100 camels. Despite these standards, the amount of *diya* is, however, negotiable between the litigants.<sup>159</sup>

### **6.3.1.1 Camels and homicide – compensation and retaliation in al-Shabaab courts**

When it comes to court cases of bodily harm and murder tried by the al-Shabaab courts, I have at hand six accounts from informants who have been directly involved in criminal cases of this category; three cases of bodily harm and three of murder, five thereof having been settled by payment of *diya*, and one by *qiṣāṣ*. In addition, I have some eyewitness accounts from cases of murder and bodily harm. However, it is not possible to draw any general conclusions on this basis, but the cases give at least an indication of some distinctive trends. Each of the three wounding cases, for example, have been resolved by the payment of *diya*, and court proceedings follow to a large extent the pattern of the “Ayah” case: “Ayah” was brought before a court in Baardheere, in the Gedo province, accused of assault and for wounding a man’s forehead. As evidence the Ḥisbah brought one witness, the complainant, to

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<sup>157</sup> The lowest possible age for puberty to occur is according to the Ḥanbalītes 10 for boys and 9 for girls, and according to the Shāfi’ītes 9 for both boys and girls.

<sup>158</sup> Ibid, pp. 13-15, 20-21

<sup>159</sup> Ibid, pp. 39, 49-53

support the accusations, while the defendant did not bring any evidence to prove his innocence, but admitted to the accusations brought against him. By this, the question of guilt was determined, and the *qāḍīs* then asked the offended person whether he would prefer compensation or retaliation, of which he chose compensation, set by the *qāḍīs* at 300 USD.<sup>160</sup>

The remaining two cases of bodily harm<sup>161</sup> are similar to the “Ayah” case in the sense that the eyewitness testimonies supporting the accusations are the only kind of evidence presented during the court proceedings. However, in the “Ayah” case, the prosecutor only brought one witness, namely the complainant himself, a fact which hardly made him an impartial and thus reliable witness. In the other two cases several witnesses were presented in addition to the complainant, and at least in the case of “Mohamed Ahmad’s” son the witnesses seem to be reliable, adult men. However, all three cases of bodily harm conform to classical doctrine with regard to proving guilt as the accused admitted to the accusations brought against him. Both in the “Ayah” case and the case against “Mohamed Ahmed’s” son the aggrieved persons were given the opportunity to choose between compensation and retaliation. If they had chosen retaliation it would have meant that the victim would be allowed to inflict the same wound to the offender as he had suffered himself. However, in both cases the victim chose *diya*, something which, according to several of the informants, is generally the most preferred option among Somalis. “Hassan”, usually living in Mogadishu, gives an explanation:

The retaliation most of the time not used by the people, they are taking money. Because, if you... go 2005, start Islamic court up to now. We don't have a one case that is... we don't have one. Never. Because the people, they like to get the money. Saying, “ok, I don't like retaliation. I need...” Because, if you cut this, the Islam is condemning one camel, or two camel. That is a lot of money. But if you cut you finger, what I get? Just revenge. But it's better for me to get two camel. It's roughly two thousand dollars.<sup>162</sup>

This inclination to prefer *diya* to *qiṣāṣ* also comes to the fore in the “Mahmod” case where the clan elders, who were present in the court room during the trial, asked the *qāḍīs*, after the question of guilt was established, whether they could discuss the matter outside the court and come up with an agreement. The elders of both parties suggested that the victim, whose hand had been injured by the offender, should be paid a compensation of ten camels.

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<sup>160</sup> Interview with “Ayah” conducted by Mohammed and Abdow in Nairobi, March 2011.

<sup>161</sup> The case of “Mohamed Ahmed’s” son, already mentioned, and the “Mahmod” case, tried in Bal’ad, in the Middle Shabelle province.

<sup>162</sup> Interview with “Hassan” conducted by the author in Nairobi, October 2010.

The *qāḍīs* accepted this agreement and sentenced accordingly.<sup>163</sup> “Mohamed Ahmad” claims that this practice is widespread both in cases involving bodily harm as well as murder. As long as the complainant or his family does not demand retaliation, he asserts, the matter is usually discussed among the parties outside the court, and when an agreement is made, they go to the *qāḍī* to have it legalized.

It seems that retaliation is more common in cases of murder than in cases of bodily harm. In local media one can read several reports about murder cases in which the accused has faced the death penalty due to retaliation demanded by the victim’s relatives.<sup>164</sup> Several cases have also been reported in al-Shabaab’s own press releases, such as the *qiṣāṣ* case of Nasser Hussain Ali Alias (26): In March 2011, in the Maslah square on the outskirts of the animal market in Mogadishu, Nasser was executed in front of a huge crowd after allegedly having admitted to the killing of several persons.<sup>165</sup> According to two of the informants from Mogadishu, the Somalis, at least in Mogadishu, perceive retaliation as the proper punishment for intentional homicide. “Muhtab” explains: “But normally what happens in Somalia, people they don’t prefer *diya* [in murder cases]. If somebody kills, the relatives say: ‘We are going to kill.’ Because he killed. He has to feel the pain in fact. So, that’s what always happens in Mogadishu”. To emphasize this, he gives an example of a homicide case tried in Merka, Lower Shabelle, in 2009: in front of the *qāḍīs* a man admitted to having killed another man. The *qāḍīs* gave the relatives of the victims the choice between *diya* and *qiṣāṣ*. The relatives chose *qiṣāṣ* and the offender was subsequently killed. Although the *qāḍīs* gave the family of the victim a choice between *diya* and *qiṣāṣ* in this case, “Muhtab” believes most al-Shabaab *qāḍīs* to prefer *qiṣāṣ* in murder cases, at least in cases that involve persons who are not members of al-Shabaab. If an al-Shabaab member is accused of murder, “Muhtab” asserts, he will only be sentenced to pay *diya*,<sup>166</sup> a claim that is also supported by a recent report from Marchal.<sup>167</sup>

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<sup>163</sup> Interview with “Mahmod” conducted by Mohamed and Abdow in Nairobi, April 2011.

<sup>164</sup> An example is the case of an alleged murderer who on April 26, 2010, received his death penalty in a court in Mogadishu, reportedly due to a demand by the relatives of the deceased, Ahmed Osman. See: Mohammed Omar Hussein, *Somalia: Al-Shabab chops off one’s hand, takes another’s life*, Somaliweyn Media Center, (26 April 2010), [http://www.somaliweyn.org/pages/news/Apr\\_10/26Apr27.html](http://www.somaliweyn.org/pages/news/Apr_10/26Apr27.html), [14.09.11].

<sup>165</sup> Global Islamic Media Front, *Youth Mujahideen Movement: Execution of two men square “maslah” north of the capital Mogadishu 01/04/1432*, Sada al-Jihad Media Center, (9 March 2011), <http://www.alqimmah.net/archive/index.php/t-22215.html>, [09.09.11].

<sup>166</sup> Interview with “Muhtab” conducted by the author in Nairobi, October 2010.

<sup>167</sup> Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, p. 73.

Of course, with only three court cases of homicide at hand, it is difficult to assess whether such claims represent a general trend. However, I have two relevant court cases at hand that may throw some light on the matter. In the first court case, which was tried in Beledweyne, Hiiran, the al-Shabaab administration admitted that some of their militiamen had killed an innocent citizen. The widow, "Shamsa", and other relatives of the deceased, were summoned to discuss the matter, whereupon they accepted the compensation of 15,000 USD to be paid by al-Shabaab.<sup>168</sup> It may appear that the victim's family was not given any real choice except to agree on the amount of *diya*.

The next case, however, shows that the judicial staff of al-Shabaab, at least in Kismayo, is willing to retaliate against their own recruits. This becomes obvious in the case of "Kora". After having lost her boyfriend whom she wanted to marry, "Kora" went straight to the legal administration in Kismayo and accused a Ḥisbah official of having killed her boyfriend because the official himself had wanted her. As evidence she brought a voice recording of the official threatening her boyfriend just before the killing. The judicial staff arrested the Ḥisbah official and executed him. The details of the trial were unknown to "Kora".<sup>169</sup>

Although this last case shows that al-Shabaab has been willing to retaliate against their own, the proceedings also display several breaches with classical doctrines. Firstly, the relatives of the deceased were not consulted of whether they preferred *diya* or *qiṣāṣ*. Secondly, the evidence "Kora" presented would not have fulfilled the classical requirements, which should have been two eyewitnesses. However, it might be that the perpetrator admitted to the crime during his trial, but this information is not available.

The third case of homicide in my material is the case of "Shankar", which was tried in Dinsor, Bay. In contrast to the "Kora" case these court proceedings were in accordance with classical doctrine on several points: "Shankar", who was brought before the court accused of murder, withdrew his confession previously given in prison. He claimed that he had confessed only to escape the torture he was exposed to. "Shankar" therefore stated in the court that he was not guilty of the charges brought against him, and explained that he had shot the victim accidentally after a quarrel about an old debt. In support of his claims "Shankar" brought several eyewitnesses that confirmed his account of what had taken place. The prosecutor did not have any other evidence apart from the previous confession. What happened next was that

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<sup>168</sup> Interview with "Shamsa" conducted by Mohamed and Abdow in Nairobi, April 2011.

<sup>169</sup> Interview of "Kora" conducted by Mohamed and Abdow in Nairobi, April 2011.



the elders on both sides, like in the above-mentioned case of “Mahmod”, requested permission to solve the case outside the court. The *qāḍīs* allowed this, and the parties came up with an agreement that 7000 USD should be paid to the family of the deceased, an agreement that the *qāḍīs* acknowledged.<sup>170</sup>

This case conforms to classical doctrines in several respects. Firstly, the confession which was obtained prior to the court session and under alleged torture was perceived invalid. Secondly, the accused was allowed to bring eyewitnesses to support his claim, and thirdly, the parties were allowed to decide the *diya*, as retaliation was now, in accordance with the doctrine, out of the question, since accidental homicide may only be punished by *diya*.

### 6.3.2 *Hadd* crimes – violation of God’s limits

According to Wael B Hallaq, the pre-modern Islamic jurists were motivated by the maxim generated from a *hadīth* text of the Prophet that the fixed *ḥudūd* punishments had to be “averted at the existence of the slightest doubt”. By using this as a starting point, the jurists outlined strict rules of evidence in addition to a great number of requirements that had to be fulfilled in order to be able to enforce a *ḥadd* punishment. This is especially evident in cases regarding adultery, robbery and theft as these cases are liable to the most severe punishment in the sacred texts. As a consequence these harsh punishments were in practice almost impossible to apply, and functioned first and foremost as means to deter the public from committing these crimes<sup>171</sup>

Although a court case may be initiated by any Muslim, including the *qāḍī* himself, the classical regulations related to the *ḥadd* crimes clearly make it difficult for the courts to obtain a conviction: Firstly, the rules concerning evidence are even stricter than what is the case with *qiṣāṣ*. For example, a confession has to be explicit and precise in describing the unlawful action and only confessions made in court are valid in order to make sure that the confession is made voluntarily. Secondly, the *qāḍī* has to inform the accused about his rights to retract his confession at any time during the trial, until the moment of the execution of the punishment. A retraction will invalidate the conviction. The case is the same when it comes to testimony; a retraction of a testimony by a witness will nullify a sentence in a *ḥadd* case. Thirdly, the *qāḍī* has to drop the fixed *ḥadd* punishment in cases where there is uncertainty, *shubba*, regarding the facts, for example if a women accused of adultery claims to have been

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<sup>170</sup> Interview of “Shankar” conducted by Mohamed and Abdow in Nairobi, July 2011.

<sup>171</sup> Wael Hallaq, *Shari’a: Theory, Practice, Transformations*, (Cambridge: Cambridge University Press, 2009), pp. 311-312

impregnated during her sleep. There may also be uncertainty regarding details of the law, for example, if one steals from his child believing that one is entitled to their property.<sup>172</sup>

As a consequence of these strict rules, the most severe punishments, like stoning and amputations, were rarely applied in the pre-modern *qāḍī* courts. Instead, *ḥadd* cases were often tried in extra-*sharī'a* courts, such as the court of the *shurṭa* or the *mazālim* court, as these courts were not bound by the strict rules of the *fiqh* doctrine, and could therefore take into consideration circumstantial evidence and issue other penalties like imprisonment or fines. Another way of treating such cases, as was frequently done in the Ottoman legal system, was that the *qāḍī* either issued punishments at his own discretion, or sentenced in accordance to the provisions of the so-called *qānūn-name*, i.e. decrees issued by the sultan that covered the area of criminal law, and which to a great extent came to regulate the work of the *qāḍī*. In this regard, a combination of lashing and fines became predominant also in *ḥadd* cases.<sup>173</sup>

In the al-Shabaab-dominated areas it seems that the jurisdiction of *ḥadd* crimes, like in the Ottoman legal system, belongs to a great extent to the *qāḍī* court. But contrastingly, the al-Shabaab *qāḍīs* apply the fixed punishments quite frequently and seem not to be restricted by secular regulations like the *qānūn-name*. In many respects the al-Shabaab *qāḍīs* resemble the *qāḍīs* of the Saudi Arabian legal system, who enjoy wider jurisdiction in criminal cases, including *ḥadd* cases, than prescribed by the classical doctrines.<sup>174</sup> However, although Saudi Arabia has frequently been criticized by human rights organizations for their application of *ḥudūd* punishments,<sup>175</sup> the number of *ḥudūd* executions has been relatively low. According to Vogel's detailed study of the Saudi judicial system during the 1980s and early 90s, the main reason is the strict procedures and requirements of *fiqh*. During the 11 years, from May 1981 until April 1992, Vogel points out, in total there were four executions by stoning and forty-five amputations for theft, an average of one stoning every three years and four hand-

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<sup>172</sup> Peters *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 13-14, 21-22, 53-54, 62.

<sup>173</sup> Sami Zubaida, *Law and Power in the Islamic World*, (New York: I. B. Tauris, 2005), pp. 57-58, 107-108, 112-113; Vikør, Knut S, *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, pp. 182-186, 189-190, 196-199; Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, p. 92-93.

<sup>174</sup> Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, (Leiden: Brill, 2000), pp. 231-232, 249-250.

<sup>175</sup> See for example: Amnesty International, *Document - Medical letter writing action: Saudi Arabia: Amputations*, (18 December 1991), <http://www.amnesty.org/en/library/asset/MDE23/006/1991/en/dae4a6e7-ee38-11dd-99b6-630c5239b672/mde230061991en.html>, [28.10.11].

amputations each year.<sup>176</sup> In comparison, although it is close to impossible to find the exact number of convictions and punishments in *ḥadd* cases in the al-Shabaab dominated areas,<sup>177</sup> it seems that from October 2008 until June 2011 there were at least 8 executions by stoning<sup>178</sup> 23 amputations due to theft<sup>179</sup> and 15 amputations due to banditry,<sup>180</sup> but the number might be higher due to monitoring difficulties. This gives an average of 3 stoning executions per year, almost 9 amputations due to theft and almost 6 amputations due to banditry per year, which is more than 8 times higher than the Saudi average in regards to stoning, and more than the double average number in regards to amputations due to theft. In addition to the probability of the numbers being even higher, the reported cases must also be compared to the total numbers of cases in the respective categories. For example, in Saudi Arabia from October 1982 to October 1983 there were 4,925 convictions for theft, of which two hands were amputated, while the rest were punished by *ta'zīr* punishments of lashing or imprisonment. Of 659 convictions for adultery, sodomy, and sexual assault, no stoning was inflicted.<sup>181</sup> By comparison, I only know about one adultery case from the al-Shabaab courts where the convicted has faced other punishment (*ta'zīr*) than the prescribed *ḥadd* punishment (stoning for married persons and 100 lashes for unmarried ones). Regarding theft and banditry cases, I do not know about any case where the convicted has faced other punishment than the prescribed *ḥadd* punishment (amputation). This lack of information does not necessarily mean that such cases do not exist. One possible explanation could be that executions by stoning and amputations are more spectacular and hence draw media attention. Even so, it may also be, as my material suggests, that such practice has been limited.

### 6.3.2.1 Theft (*sariqa*)

The *ḥadd* punishment for theft rests primarily on the Qu'ranic verse: “The thief, male or female, cut off their hand in retribution for what they have done, an exemplary punishment from God, for God is mighty and wise.”<sup>182</sup> According to classical *fiqh*, stealing, or the unlawful removal of property (*ghasb*) are to be treated as a tort with civil remedies which may be resolved by returning the stolen goods, often in combination with discretionary punishment

<sup>176</sup> Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, pp. 245-246.

<sup>177</sup> The numbers are based on reports from local media, NGOs and GOs, as well as my informants. See: Appendix 2-4.

<sup>178</sup> See Appendix 2.

<sup>179</sup> See Appendix 3.

<sup>180</sup> See Appendix 4.

<sup>181</sup> Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, pp. 246-247.

<sup>182</sup> *Surah al-ma'idah*, verse 38.

(*ta'zīr*), i.e punishment decided by the *qāḍī*. Only under very special circumstances do the classical jurists sanction the *ḥadd* punishment for theft which prescribes amputation of the right hand, and for a second offence, the left foot. *Sariqa* (theft) is very narrowly defined by the classical jurists and hence difficult to apply: the act must be done surreptitiously, for example, during the night, and prior to the theft the stolen goods must have been properly stored or guarded, for example in a locked house or shop. Therefore, to snatch goods from a market stall in broad daylight cannot be regarded as theft according classical Islamic jurisprudence. Additionally, the stolen objects must exceed a minimum value, *niṣāb*, set to one quarter of a dinar. By the Māikī, Shāfi'ī and Ḥanbalī school this is set equal to the current market price of 1,06 grams of gold at the time of the theft. However, if the stolen object is partly owned by the perpetrator, the *ḥadd* punishment cannot be inflicted. Consequently, a shop assistant who takes away goods or money from the shop in which he works, or a soldier who steals war booty before it is divided, cannot be punished with amputation. In addition to these requirements, the *ḥadd* penalty cannot, for example, be inflicted on people stealing out of hunger, a provision made by the second Caliph, Umar Ibn al-Khattab's (d. 644) who ordered the suspension of the prescribed *ḥadd* punishment during a famine, or if a thief returns the stolen property before the final judgment.<sup>183</sup>

When it comes to *sariqa* cases which are tried in the *qāḍī* courts of al-Shabaab, I have not been able to conduct interviews with anyone who has been directly involved in such a case. However, several of my informants have witnessed amputations for theft. In addition, it is possible to draw useful information from theft cases reported by media and others.

Several reports describe cases where the *qāḍīs* or other al-Shabaab officials claim the convict to have “admitted to the crime in front of an Islamic court”.<sup>184</sup> However, such claims have been difficult to confirm, and according to several of my informants these claimed admissions only serve as means to legitimize the amputation, or they may imply that the convict has “admitted” in order to escape torture, in line with what happened in the “Shankar” case mentioned above. Such notions are supported by the “Roble” case discussed below, where the chief *qāḍī* announced that the accused had admitted to the accusations.

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<sup>183</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 55-57; Tahir Wasti, *The Application of Islamic Criminal Law in Pakistan: Sharia in Practice*, (Leiden: Brill, 2009), p. 32; Mohamed S. El-Awa, *Punishment in Islamic Law: A Comparative Study*, (Plainfield: American Trust Publications, 2000), pp. 3-4; Ahmed ibn Naqib Al-Misri, *Reliance of the Traveller*, (Beltsville: Amana Publications, 1994), p. 614.

<sup>184</sup> See for example the Murshid Ahmed Adan and Hassan Omar Mohamed case or the Abdirashid Saleban Hamud described in Appendix 3.

However, “Roble” persistently denies to have committed the accused crimes, and maintains that the punishment was a revenge for his refusing to join the al-Shabaab militia.<sup>185</sup> Likewise, the brothers Sayeed and Osman Ibrahim, who faced cross-amputation (see below) after having been accused of banditry make similar claims, stating that their punishment was politically motivated.<sup>186</sup>



An amputated hand in front of the Qu’rān

If these accusations of unlawful proceedings are accurate, the theft cases presented in the al-Shabaab courts can hardly be called a trial, but rather a show. However, there is at least one theft case where conformity to classical prescriptions was displayed to some extent, namely the court case of a young man who was tried before a court in Mogadishu in late 2008. According to my informant “Yusuf Osman”, who spoke with the boy after the amputation of his right arm, the boy was accused of breaking into a shop during the night stealing money and some other property. The prosecutor brought four witnesses who claimed to have seen him together with some other boys when breaking into the shop. Although the boy did not admit to the crime, the *qāḍīs* found the testimonies sufficient, and decided to inflict the fixed punishment for theft, i.e. amputation of the right arm.<sup>187</sup> There is no information about the reliability of the witnesses but at least there were the prescribed number and type of witnesses. In addition, the theft took place during night time, and the shop was locked, all requirements outlined in classical doctrines. However, a point open to discussion, is whether or not the perpetrators acted out of necessity or hunger. South Central Somalia in general and Mogadishu in particular has been devastated by civil war since the beginning of

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<sup>185</sup> Interview with “Roble” conducted by the author in Norway, April 2011.

<sup>186</sup> Australian Government: Refugee Review Tribunal, *Country Advice Somalia: Somalia – SOM37002 – Amputations – Al-Shabaab – Clans – Recruitment*, (9 July 2010), [www.mrt-rrt.gov.au/ArticleDocuments/177/som37002.pdf.aspx](http://www.mrt-rrt.gov.au/ArticleDocuments/177/som37002.pdf.aspx), [12.09.2011], p. 2.

<sup>187</sup> Interview with “Yusuf Osman” conducted by the author in Nairobi, October 2010.

the 1990's. Additionally, Al-Shabaab has banned many international humanitarian aid agencies from working inside their territories,<sup>188</sup> and forcing collection of taxes to finance the group's ongoing war,<sup>189</sup> and as such left the population to live on the margins. Thus one could argue that to apply the prescribed *ḥadd* punishment when the offence could have been done out of necessity or hunger, is a breach with classical doctrines.

Another requirement which is outlined in classical *fiqh* is the minimum value, *niṣāb*. The level of *niṣāb* as described in classical doctrines, 1,06 grams of gold, is today equivalent to 61 USD.<sup>190</sup> This minimum value cannot serve as a standard today, argues Mohamed S. El-Awa, legal advisor at the Arab Bureau of Education for the Gulf States. In his opinion it is the duty of the lawmakers in each country to decide the minimum value.<sup>191</sup> For example, the Pakistani Offences Against Property Ordinance of 1979 set the *niṣāb* to 4.457 grams of gold,<sup>192</sup> today being equivalent to approximately 257 USD.<sup>193</sup> What is the level of *niṣāb* in the courts of al-Shabaab? In the above-mentioned court case, the stolen items were money and some other objects which value is naturally difficult to assess. In the other reported<sup>194</sup> theft cases the value of the stolen goods varies: 1: clothes from a laundry, 2: Three sacks containing fishing nets, 3: 10 pairs of trousers, 10 shirts, eight other items and a bag, estimated to be worth 90USD, 4: a cow 5: 100 USD, 6: 7000 USD a loan not repaid, 7: several cell phones, 8: mattresses and some other domestic items, 9: 45 million Somali shillings, estimated to be worth 1400 USD, 10: two million Somali shillings, estimated to be worth 60 USD, 11: money estimated to be worth 30 USD.

While some items are quite valuable, e.g. a cow and fishing nets, others have quite low value, like the clothes, the mattresses and the other domestic items. Although one cannot draw general conclusions from this material, it shows that there have been several convictions for theft of objects with significantly lower value than the 4,457 grams of gold as prescribed in the Pakistani Ordinance, as well as the value of the *niṣāb* set by the classical legal schools, taken into consideration the current value of gold.

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<sup>188</sup> Human Rights Watch, *World Report 2011: Somalia*, <http://www.hrw.org/world-report-2011/somalia>, [14.09.11]

<sup>189</sup> Interview with "Mohamed Ahmed" conducted by the author in Nairobi, October 2010.

<sup>190</sup> Calculated per September 14, 2011 by using the current rate of 1,795.90/troy ounce, or 57,74 USD/grams.

<sup>191</sup> El-Awa, *Punishment in Islamic Law: A Comparative Study*, pp. 3-4.

<sup>192</sup> This sum of money is due to the rate of gold and USD in 1994. See: Rubya Mehdi, *The Islamization of the Law in Pakistan*, (London: Curzon Press, 1994), p. 111

<sup>193</sup> Calculated per September 14, 2011 by using the current rate of 1,795.90/troy ounce, or 57,74 USD/grams.

<sup>194</sup> See Appendix 3.

Although the *qāḍīs* in the above-mentioned theft case from late 2008 seem to have roughly followed the regulations prescribed in classical *fiqh* doctrine, there are other cases that indicate more serious deviances from the doctrine. For example, in a case tried for the court at the Bakara market in Mogadishu, a man was sentenced to amputation after being convicted of not paying back a business loan. According to my informant “Abu Mahmud”, the accused had received 7000 USD from the complainant as a loan in order to start his own business. However, the accused spent all the money and denied having received any loan at all. The complainant went to court and when the trial started, she brought one witness who claimed to have been present and to have witnessed the transaction of the money. The *qāḍīs* found this to be sufficient evidence and hence rendered the verdict.<sup>195</sup>

When it comes to *niṣāb* (the minimum value of stolen goods required in *ḥadd* cases) the sum of 7000 USD is naturally far above any minimum requirement. This fact disregarded, the case breaches with classical doctrine: failing to pay back a loan is not regarded as proper theft and the case therefore falls entirely outside the classical definitions of *sariqa*. In a classical manual of the Shāfi’ī scholar Ahmad ibn Naqīb al-Misri (d. 1368) it is explicitly stated that there could be no amputation in cases where the offender is “appropriating something by disavowal, i.e. denying that the victim loaned or entrusted him with such and such a thing.”<sup>196</sup>

### 6.3.2.2 Banditry (*al-ḥirāba*)

The minimum requirement for the *ḥadd* crime of banditry, *al-ḥirāba*,<sup>197</sup> outlined by the classical jurists, is to show a drawn weapon in order to frighten people travelling on a public road and to prevent them from continuing on their journey. In addition, the offenders have to be superior in strength so that the victims cannot escape. If property is taken and/or the victims are killed, the punishments will be more serious. According to all the legal schools except from the Māikī school, the punishment is banishment or imprisonment until repentance. If the offence consists of taking away property with a minimum value, *niṣāb*, equal to the requirement for theft, the culprits will be punished by cross-amputation, right arm

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<sup>195</sup> Interview with “Abu Mahmud” conducted by the author in Nairobi, October 2010.

<sup>196</sup> Ahmed ibn Al-Misri, *Reliance of the Traveller: Revised Edition: The Classical Manual of Islamic Sacred Law ‘Umdat al-Salik’ by Ahmad ibn Naqīb al-Misri (d. 769/1368)*, Nuh Ha Mim Keller (ed.), (Beltsville: Amana Publications, 1994), p. 615.

<sup>197</sup> Three terms are used interchangeably in the *fiqh* literature about this crime: *Al-ḥirāba* meaning armed robbery, *al-sariqa al-kubrā* meaning the great theft, and *qaṭ’ al-tariq* denoting high way robbery. See: El-Awa, *Punishment in Islamic Law: A Comparative Study*, p. 7.

and left foot. In cases of murder, the offenders will be killed. If both murder and plunder has taken place, the bandits will be killed and thereafter crucified.<sup>198</sup>

When it comes to banditry cases tried in the *qāḍī*s court of al-Shabaab, I am only aware of eight court cases, with a total number of 15 amputations between June 2009 and April 2011: 13 cross-amputations, one amputation of the right arm, and only one of the left foot.<sup>199</sup> Although the information concerning the cases is limited, there seems to be some correspondence between the accusations and the punishment enforced: robbery in terms of holding-up and stealing shall, according to classical doctrine, be punished with amputation of the right arm and left foot. In five of the eight cases, the al-Shabaab *qāḍī*s are reported to have announced that the convicts have admitted to the crimes in front of the court.<sup>200</sup> However, as already mentioned above, the story of “Roble”, one of four boys who were cross-amputated in June 2009 in Mogadishu, and likewise, the Ibrahim brothers who faced cross-amputation in October 2009 in Kismayo, suggest that one should not necessarily regard claimed admissions to be true.

The story of “Roble” is illustrating: he was arrested in the end of May in Mogadishu and imprisoned. On June 22, 2009 after more than three weeks in prison he was brought to the square at Maslah, an old military parade ground, on the outskirts of the animal market in Mogadishu, together with three other boys. Seated in front of them were several top leaders of al-Shabaab as well as one of the high ranking *qāḍī*s named Dahir Ga'may. As “evidence” this chief *qāḍī* only showed some pistols and mobile phones to the huge crowd gathered there and announced that all four were spies and bandits that according to *sharī'a* law had to be cross-amputated. In addition, “Muhtab”, one of my other informants who was present during this trial claims that the *qāḍī* announced that the accused already had admitted to the crime.<sup>201</sup> Neither “Roble” nor the other alleged offenders were given the opportunity to speak. Three days later, at the same square, the cross-amputation of the four youngsters was executed without any pain relief. Then, after four nights, a leading al-Shabaab official, Fu'ad Shangole, came to the house where the boys were held in custody and claimed that the legs were amputated too low. Using a plumber's saw he cut off their legs three fingerbreadths up from the stump without giving them any kind of pain relief.

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<sup>198</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 57-58.

<sup>199</sup> See Appendix 4.

<sup>200</sup> Information regarding the last three cases reported is scarce.

<sup>201</sup> Interview with “Muhtab” conducted by the author in Nairobi, October 2010.



Besides the amount of suffering that this punishment entails, there are several striking features about this case which makes it seem more like a show than a proper trial. Firstly, the public was reportedly ordered to come and witness the punishment of the “bandits and spies” or else face lashing themselves.<sup>202</sup> Secondly, the *qāḍīs* are reported to have announced that the four boys had admitted to the crime. However, contrary to the *qāḍīs*’ claim, “Roble” insists that he never admitted to any crime. Thirdly, the circumstantial evidence, the mobiles and pistols which had allegedly been stolen, would of course not, according to classical doctrine, have been valid in a banditry case, and, in addition, this “evidence” would anyway not have been necessary if the accused had actually admitted to the crime, as the *qāḍīs* claimed. Therefore, the mobiles and pistols gave a dramatic twist to the trial and helped convince the public, rather than serving as *de facto* evidence. Fourthly, the accused were not given a chance to defend themselves. Fifthly, since the boys were accused of both robbery and espionage, one would expect them to face the type of punishment corresponding to the most serious accusation, namely capital punishment rather than cross-amputation, as death sentence seems to be the normal punishment for espionage (discussed below) among the al-Shabaab *qāḍīs* as well as the prescribed punishment for espionage according to classical doctrine.<sup>203</sup>

My view of this trial as a show case finds additional support in the announcement made by the official al-Shabaab spokesman, Ali Mohamed Rage, to the local journalists who were present at the square before the execution. He explained that this punishment was “a warning to all thieves”, and that “if they [the journalists] are caught red-handed in similar circumstances, they will face amputation”.<sup>204</sup> As such, this case, and probably some or all of the other similar cases, could therefore give an indication of al-Shabaab’s crime policy. They want to use punishment as a crime preventive measure and occasionally stage large public trials to set an example in order to deter others from committing similar crimes. However, this appears to be only a part of the explanation. As “Roble” points out, the court case was indeed set up to punish the accused, although, not for espionage and robbery. He believes that he was punished because he refused to join al-Shabaab and instead preferred to focus on his school

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<sup>202</sup> Xian Rice, *Somali schoolboy tells of how Islamists cut off his leg and hand*, The Guardian, (20 October 2010), <http://www.guardian.co.uk/world/2010/oct/20/somali-islamists-schoolboy-amputation-ordeal>, [29.10.11].

<sup>203</sup> Espionage will be discussed below.

<sup>204</sup> BBC News, *Somalis watch double amputations*, BBC, (25 June 2009), <http://news.bbc.co.uk/2/hi/africa/8118306.stm>, [14.09.11].

work. Similarly, as already noted, the Ibrahim brothers make quite similar claims, asserting that they were tried and punished for political reasons.<sup>205</sup>

### 6.3.2.3 Unlawful sexual intercourse (*zinā*)

The *ḥadd* punishment for unlawful sexual intercourse, *zinā*, rests on the notion that sexual intercourse is only permitted within a marriage. However, the *ḥadd* penalty, i.e. 100 lashes for non-married individuals and death by stoning for married individuals, according to classical *fiqh* doctrines, may only be applied under special circumstances. Punishment by stoning can only be used when the person is free, Muslim and previously married, or is married at the time of the offence. In addition, there are specific requirements regarding evidence with even stricter rules than for the other *ḥadd* crimes: While two eyewitnesses are required in the other *ḥadd* crimes, four male eyewitnesses actually observing, not only the act itself, but also the actual penetration, are required in *zinā* cases. The other valid evidence is a confession by the accused, which according to the Ḥanaʿī and Ḥanbalī school, must be repeated four times in court. Circumstantial evidence is generally not valid as evidence, except in cases, according to the Mālikī school, where an unmarried woman has become pregnant. However, if the pregnancy is due to rape, she will not be punished, as this happened under duress (*ikrāh*). But, if she claims to have been raped, she has to produce circumstantial evidence herself in order to defend the claim, for example that she came back to her village screaming for help. However, if she claims to have been impregnated during sleep, being unaware of what happened to her, any corroboration is unnecessary.<sup>206</sup>

The only stoning cases in al-Shabaab controlled territories that I am aware of, are the ones reported by local media and NGOs/GOs. One of them is corroborated by one of my informants, namely the famous Aisha case, where a 13 year old girl was stoned to death in Kismayo, on October 27, 2008. This happened reportedly after she had gone to the local Ḥisbah (police) to report that she had been raped by three al-Shabaab militiamen. Instead of punishing them, the local officials sentenced and punished the girl with stoning, although she seems to have been unmarried, a victim of rape and according to some reports, mentally unstable, all of which would contradict stoning due to *zinā* if considering classical prescriptions. According to witnesses, she even tried to escape at the time of execution,

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<sup>205</sup> Australian Government: Refugee Review Tribunal, *Country Advice Somalia: Somalia – SOM37002 – Amputations – Al-Shabaab – Clans – Recruitment*, pp. 1-2.

<sup>206</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 14-15, 59-62

something which makes it probable that she would have wanted to retract her admission of *zinā*, i. e. rape, if she had been informed of this opportunity by the *qāḍīs*.<sup>207</sup>

Due to little information about *zinā* cases, as well as other stoning cases, it is difficult to say anything certain about how these trials are conducted and what happens inside the court during these trials. However, some of my informants have detailed knowledge about *zinā* cases in which the convicts have faced lashing because of their unmarried status. Five of my informants have themselves been directly involved in such a case, either as defendant or as complainant, providing me with enough information to be able to throw some light on the applied procedure and evidence. Especially striking in most of these cases is the fact that the *qāḍīs* have passed sentences based on circumstantial evidence, in the sense that they sanction witness testimonies which do not fulfill the *fiqh* requirements. This indicates that the al-Shabaab *qāḍīs* are much more lenient to procedural *fiqh* prescriptions than for example *qāḍīs* in Saudi Arabia.<sup>208</sup> “Fatima”, who used to live in Mogadishu, describes a case that was tried in the court at the animal market, Suuqa Holaha, in Mogadishu: two young unmarried cousins were accused of *zinā* by an al-Shabab militiaman. After having seen one of the accused, a young boy, leaving a house late at night, the militiaman soon found out that the boy had been staying in the house with the other accused, a young lady. The militiaman arrested them, and they were soon brought before the court. The only witness heard during the trial was the militiaman who arrested them. Neither of the accused confessed to the crime of *zinā*, rather, they explained that they were cousins and therefore innocent of the alleged crime. Despite this, the *qāḍīs* sentenced the girl to 100 lashes, the prescribed punishment for *zinā*, while the boy was imprisoned for 3 months.<sup>209</sup> In view of the lack of evidence, as well as absence of any admission of the crime, one may wonder how the court could sentence the accused in the manner they did. Firstly, the girl was sentenced to *ḥadd* punishment for unlawful fornication and received 100 lashes, while the boy received a discretionary punishment: imprisonment for 3 months. One possible explanation is that this case was rejected as a *ḥadd* case, and tried as a *ta’zīr* case (i.e. cases that fall outside the categories of *ḥadd*, *qiṣāṣ* and *diyya*) where the *qāḍīs*

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<sup>207</sup> BBC News, *Somalis grow fearful of Islamists*, BBC, (12 November 2008), <http://news.bbc.co.uk/2/hi/7722701.stm>, [14.09.11]; Amnesty International, *Somalia: Girl stoned was a child of 13*, (31 October 2008), <http://www.amnesty.org/en/for-media/press-releases/somalia-girl-stoned-was-child-13-20081031>, [14.09.11]; Rapport, *Asho, 13 år, stenades till döds*, SVT.se, (16 March 2009), [http://svt.se/2.106391/1.1481487/asho\\_13\\_ar\\_stenades\\_till\\_dods&queryArt1451716=al-Shabaab+&sortOrder1451716=0&doneSearch=true&sd=105671&from=siteSearch&pageArt1451716=2](http://svt.se/2.106391/1.1481487/asho_13_ar_stenades_till_dods&queryArt1451716=al-Shabaab+&sortOrder1451716=0&doneSearch=true&sd=105671&from=siteSearch&pageArt1451716=2), [16.09.11]; interview with “Muhtab” conducted by the author in Nairobi, October 2010.

<sup>208</sup> Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, p. 245.

<sup>209</sup> Interview with “Fatima” conducted by the author in Nairobi, October 2010.

may choose the proper punishment, whereupon the *qāḍīs* sentenced the girl to similar punishment as the fixed ones. However, there are several other examples of similar cases where the *qāḍīs* have sentenced the accused to 100 lashes after hearing only witness testimonies that fail to fulfill the classical requirements. For example, in the case of “Fuad”, tried in one of the Mogadishu courts, both he and the woman were sentenced to 100 lashes after being observed in the same car at the beach by some al-Shabaab militiamen who were guarding the area. As witnesses the prosecutor brought two men who had been there at the time of the arrest. But, as in the other case, the witnesses had not seen the actual penetration, or even the sexual act, and as well the accused denied the accusations.<sup>210</sup> Also, the “Aisha” case which was tried in Beledweyne, Hiiran, and the “Ayan” case tried in Mogadishu, exhibit similar features, the witness testimonies failing to fulfill the classical requirements.<sup>211</sup>

However, my material also contains the “Elmi” case, which is different from the other *zinā* cases, as “Elmi” and his girlfriend admitted to the crime in front of the *qāḍīs* after having heard the witness testimonies of the girl’s uncle and some neighbors (although the witnesses did not see the actual penetration). As such, the sentence of 100 lashes given to both was in accordance with the prescribed provisions. This is the only case known to me where the *ḥadd* punishment for *zinā* is applied on basis of sufficient evidence as prescribed in the *fiqh*-doctrines.<sup>212</sup>

#### **6.3.2.4 Unfounded accusation of unlawful intercourse (*qadhf*)**

In addition to the strict requirements already mentioned in connection with *zinā* (adultery), there is another factor that could further restrict the number of *ḥudūd* punishments, namely the prescribed punishment for unfounded accusation of unlawful intercourse (*qadhf*) which is 80 lashes. This means that if one accuses another person of *zinā* without bringing four reliable witnesses, the complainant will risk being punished with 80 lashes. Also, if a witness testimony is deemed by the *qāḍī* not to fulfill the *fiqh* requirements, for example that it is inconsistent with other testimonies, or fails to describe the penetrating act, the witness may receive the same punishment (80 lashes) and lose the right to testify again until he repents, or according to the Ḥanafī school, lose the right to testify for the rest of his life. As such, the

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<sup>210</sup> Interview with “Fuad” conducted by Mohamed and Abdow in Nairobi, November 2010.

<sup>211</sup> Interview with “Aisha” and “Ayan” conducted by Mohamed and Abdow in Nairobi, November 2010 and August 2011.

<sup>212</sup> Interview with “Elmi” conducted by Mohamed and Abdow in Nairobi, April 2011.

crime of *qadhif* is thus a powerful deterrent against giving false accusations or testimonies in court.<sup>213</sup>

As none of the witnesses in the abovementioned *zinā* cases actually saw the penetration, or even the sexual act, they would according to the *fiqh* provisions be guilty of the *ḥadd* crime of *qadhif*. The same is the case with the complainants who in none of the cases could present sufficient evidence to support the serious accusations. However, neither the complainants nor the witnesses were punished.

I also have another case in my material that displays the al-Shabaab *qāḍīs*' reluctance to apply the *ḥadd* crime of *qadhif* (unfounded accusations of unlawful intercourse), namely the case of "Kora" which was brought before a court in Mogadishu: "Kora" was raped by a Ḥisbah official after having refused his advances several times. When he raped her, he threatened her with a pistol and said he would shoot her if she shouted. However, as soon as he had left, she started screaming, and the neighbors saw the official, a man they knew, leaving the place. But when "Kora" brought the case to the court it was dismissed due to lack of evidence when none of the neighbors dared to meet to witness, fearing retaliations from al-Shabaab.<sup>214</sup>

The court's decision to dismiss her case follows the requirements of classical doctrine, but at the same time, the *qāḍīs* diverge from classical doctrine in terms of not punishing "Kora" with 80 lashes for unfounded accusations of *zinā* (*qadhif*).

### **6.3.2.5 Alcohol consumption and drug usage – the *ḥadd* crime of *khamr*?**

To drink wine, *shurb al-khamr*, or to consume alcoholic beverages or other forms of intoxicating substances is, according to classical doctrines, a *ḥadd* crime. The Shāfi'ī school holds that this violation should be punished with 40 lashes, while the other schools say 80 lashes. The strict rules of evidence which are manifest in the other *ḥadd* crimes are also applied to cases of *khamr*. However, according to Ḥanbalī and Māikī doctrine two eyewitnesses claiming that the accused reeked of alcohol is sufficient proof.<sup>215</sup>

When it comes to cases of alcohol consumption and drug usage, I only have detailed knowledge of four cases which have been tried in al-Shabaab courts:

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<sup>213</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 13-15, 63.

<sup>214</sup> Interview with "Kora" conducted by Mohamed and Abdow in Nairobi, April 2011.

<sup>215</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 15, 64; El-Awa, *Punishment in Islamic Law: A Comparative Study*, p. 56.

1. “Omar” was tried in Baidoa, Bay, for smoking hashish and sentenced to 80 lashes and a fine of 3 million Somali shillings.<sup>216</sup>
2. “Farah” was tried in Merka, Lower Shabelle, for drinking alcohol and sentenced to 80 lashes and a fine of 3 million Somali shillings.<sup>217</sup>
3. “Abdow” was tried in Afgoye, Lower Shabelle, for smoking tobacco in his car and resisting his arrest. He was sentenced to 6 months in jail.<sup>218</sup>
4. “Nadif” was tried in Bardheere, Gedo, for chewing *khat* in his home and for having stored pornographic content on his mobile phone. He was sentenced to 30 lashes and to swallow the memory card of his mobile phone.<sup>219</sup>

It seems apparent that the al-Shabaab *qāḍīs* have treated the above-mentioned cases of theft, banditry and adultery as *ḥadd* crimes taken into consideration the fact that they, in almost all cases, have applied the prescribed *ḥudūd* punishments corresponding with the crime. However, when it comes to alcohol consumption and drug usage, it is difficult to draw any conclusions in this regard, but it may seem that consumption of alcohol and smoking of hashish are conceived as *ḥadd* crimes (*khamr*) while smoking of tobacco and chewing of *khat* are perceived as an ordinary crime (*ta'zīr*) (discussed below). This is based on the fact that both “Omar” and “Farah” received a punishment of 80 lashes (and 3 million Somali shillings) which is the prescribed *ḥadd* punishment for *shrub al-khamr* (consumption of alcohol) by the Ḥanafī, Mālikī and Ḥanbalī schools. In contrast, neither “Abdow” nor “Nadif” have received the prescribed *ḥadd* punishment (80 lashes, or 40 lashes according to the Shāfi'ī school). Also, there is another factor to this: “Abdow” was initially arrested for smoking tobacco in his car instead of a designated smoking zone, where one can smoke legally. Similarly, “Nadif” was not arrested for chewing *khat per se*, but for doing this at home instead of inside a chewing zone. As such, both tobacco and *khat* are legal if used according to al-Shabaab's regulations. If al-Shabaab had viewed usage of these drugs as a *ḥadd* crime, i.e. an offence against the claim's of God, it would maybe also have been difficult for them to legitimize its usage, even in restricted forms.

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<sup>216</sup> Interview with “Omar” conducted by Mohamed and Abdow in Nairobi, February 2011.

<sup>217</sup> Interview with “Farah” conducted by Mohamed and Abdow in Nairobi, February 2011.

<sup>218</sup> Interview with “Abdow” conducted by Mohamed and Abdow in Nairobi, November 2010.

<sup>219</sup> Interview with “Nadif” conducted by Mohamed and Abdow in Nairobi, August 2011.

However, there is no distinction between the two supposed *ḥadd* crimes and the two other crimes when it comes to evidence. In three of the four cases the evidence brought before the court by the Ḥisbah is of circumstantial nature. In “Omar” case, the evidence was the hashish smoked by “Omar” at the time of arrest; in the “Farah” case, the evidence was five bottles of alcohol that the Ḥisbah found when searching his house; in the “Nadif” case, the evidence was the *khat* that the Ḥisbah found in his house. Only in the case of “Abdow”, there was brought witnesses who saw the incident as evidence in the court. However, only “Farah” persistently denied the accusations claiming that the alcohol was not his, while the three other men admitted to the accusations after the evidence had been brought before the court.

### 6.3.3 *Ta’zīr* and *siyāsa*

*Ta’zīr* (“prevention” or “correction”) and *siyāsa* (“policy” or “conduct of affairs”) are, according to classical legal doctrines, residual categories of criminal cases which include cases that fall outside the categories of *qiṣāṣ*, *diyya* and *ḥadd* crimes, either because they do not fulfill the narrow legal definitions of these categories, or for procedural reasons, for example lack of sufficient evidence. All cases of sinful or socially and politically undesirable behavior are included in the broad categories of *ta’zīr* and *siyāsa*. When these cases are brought to trial there are fewer restrictions regarding procedures and evidence, and it is up to the court to decide the proper punishment. This makes *ta’zīr* and *siyāsa* cases more flexible: for example in a case of theft, there may be plausible reasons to believe that the accused is guilty of the crime. But even though the case may fail to fulfill the strict requirements of the *ḥadd* crime, the court may instead decide to try it as a *ta’zīr* or *siyāsa* case. According to classical doctrines, the *qāḍī* or other executive officials may in that case make use of circumstantial evidence, for example assumptions based on a person’s reputation, and thereby a person may be convicted because he has a reputation for keeping company with thieves. Or, when it comes to other types of sinful behavior, for example extramarital sex, it may be sufficient evidence if a man is observed entering a house of a woman of bad reputation and staying there for some time. Although this fails to fulfill the strict requirements of *zinā* (adultery), it may anyway be regarded as a punishable offence. This lack of restrictions in the *fiqh* literature leaves ample room for the court to practice law but offers little legal protection to the accused.<sup>220</sup>

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<sup>220</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 7, 16, 65-68.

Classical *fiqh* emphasizes that the main objective of discretionary punishment applicable by the court is to prevent the offender from repeating the offence. As such, retribution and deterrence are two principles that come into consideration when punishment is meted out. It may range from reprimand, flogging, public rebuke, banishment and imprisonment to death penalty. Except from the Māikītes which prescribe amputation of the right hand for the forging of documents, no corporal punishment apart from flogging is allowed. The jurists of the different law schools have tried to restrict the discretionary powers of the *qāḍīs* and other officials, but they have only to a small extent reached general consensus. The legal schools, except the Māikī school, suggest that the number of lashes should be less than the *ḥadd* punishments. However, they don't agree on the exact number. There have also been controversies among the legal schools whether to allow capital punishment in these cases. The general accepted view is that death penalty may be given in serious cases, such as those of homicide (when falling outside the category of *qiṣāṣ*), spying for the enemy, spreading of heresy, repeated homosexual activity and sorcery.<sup>221</sup>

Like the category of *ta'zīr*, cases in the category of *siyāsa*, are meted out at the *qāḍīs*' or other executing officials' discretion on the basis of simple procedures without formal provisions concerning evidence. However, although *ta'zīr* and *siyāsa* sometimes is used as synonyms, they are different concepts. *Ta'zīr* cases include offences which are forbidden by *sharī'a*, while *siyāsa* cases involve acts which endanger public order or public interest. A major difference is that *ta'zīr* punishments are designed to reform the offender. In contrast the rationale behind a *siyāsa* punishment is to protect public interest, i. e. to protect society from persons whose acts constitute a danger to law and order (*fitna*). For example, according to Ḥanafī doctrine, a habitual criminal may be sentenced to death in a *siyāsa* crime because his acts may be perceived to lead to corruption of the land. However, the line between these concepts is blurred: on the one hand the ruler may deem any act punishable if he defines it as harmful to the interest of society. On the other hand the jurists may deem the same act a sin in the sense that it represents disobedience to the ruler's legitimate command. As such, the difference between *ta'zīr* and *siyāsa* is their starting point; while *ta'zīr* have the sacred texts as starting point, *siyāsa* cases have a concrete and pragmatic starting point, something which

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<sup>221</sup> Ibid, pp. 66-67; El-Awa, *Punishment in Islamic Law: A Comparative Study*, p. 109.



makes *siyāsa* a category suitable for the “secular” authorities, such as the *mazālim* court and the *shurṭa*.<sup>222</sup>

### 6.3.3.1 From drug dealing to speeding

The terms “*ta’zīr*” and “*siyāsa*” may not be part of daily usage in the al-Shabaab courts as my informants do not refer to them. Nevertheless, I choose to apply them since they are implicitly in use in the al-Shabaab court system in terms of being a distinct category constituting all other criminal offences than murder, bodily harm and the *ḥadd* crimes. In contrast to these categories where the al-Shabaab *qāḍīs* to a great extent seem to apply the punishments that are prescribed in the doctrines of *fiqh*, the residual offences seem to be punished according to the *qāḍī*’s discretion, allowing him to use a wide range of punishments, such as fines, lashing, imprisonment or banishment.

Although there are several cases related to drug dealing, most of my material consists of one or two cases of a wide range of offences e.g. releasing sensitive information about al-Shabaab, watching sex movies and football, speeding and accusations of espionage.<sup>223</sup> Due to the limited number of cases, and particularly similar kind of cases, it is difficult to discover any general trends or consistency regarding related cases. However, the proceedings in this broad category of cases seem at least to follow the same pattern: the accused is arrested by the *Ḥisbah* either on suspicions stemming from the *Ḥisbah* themselves or by another civilian. The accused stays in prison for some days or weeks, often exposed to torture, mostly beating, until the accused is brought before the court. During the trial the prosecutor, mostly a representative of the *Ḥisbah*, presents evidence in support of the charge. After hearing what the accused has to say in his defense, the *qāḍīs* render a verdict, which in the majority of cases is enforced almost immediately. There are two major trends where evidence is concerned. Either one or several witnesses support the accusations, or the court is presented with circumstantial evidence, for example objects related to the alleged crime. An example of the first trend is the “Abu Mohamed” case, tried in the provincial court at the Bakara market, Mogadishu. “Abu Mohamed” was accused of speaking to foreign al-Shabaab fighters despite having been warned not to while giving them lessons about the Qu’rān. During the trial the prosecutor brought one witness, one of the foreign students of the class who testified that he

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<sup>222</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 8-10, 67-68; Vikør, *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, pp. 181-189; Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, pp. 247-250.

<sup>223</sup> See Appendix 1.

had heard “Abu Mohamed” trying to speak to them. He was sentenced to bring back some young refugee girls he had previously helped to flee in order for al-Shabaab to marry them to their young fighters.<sup>224</sup> The other trend is illustrated by the “Ahmad” case, tried in a court in Bu’ale, Lower Shabelle, where “Ahmad” was accused of watching sex videos on his mobile phone. As evidence the *Ḥisbah* presented his mobile phone containing the pornographic material, whereupon he was sentenced to 50 lashes and a fine of 2000 USD.<sup>225</sup>

Since classical *fiqh* doctrines give few restrictions when it comes to evidence in *ta’zīr/siyāsa* cases, my material show few- if any- clear breaches with classical jurisprudence in these cases. There are even some court cases in which the accused is released because the *qāḍīs* find the evidence insufficient. An example is the “Kadra Ahlo” case, tried in Mogadishu. “Kadra Ahlo” was accused of hiding and refusing to return a small bag which had been thrown into her shop by some *Ḥisbah* officials. In court the *Ḥisbah* officials said that they didn’t need any witnesses, as they were absolutely certain that they had thrown the bag into the shop. “Kadra Ahlo” explained that she had seen the bag, but due to ongoing fighting between al-Shabaab and the TFG in the area at that time, she had been afraid that it might contain explosives and thrown the bag away. The *qāḍīs* decided to release “Kadra Ahlo” because the *Ḥisbah* officials had failed to tell her that the bag was their property, a fatal mistake especially when taking the uncertain situation in Mogadishu into consideration.<sup>226</sup>

The punishments in *ta’zīr/siyāsa* cases vary from fines, lashing and imprisonment to banishment and expropriation of property. None of the respondents have said anything about corporal punishment except lashing, which seems to be the preferred form of punishment in cases related to drug dealing:

1. “Ahmad”- Bu’ale, Middle Shabelle - **50 lashes** and 2000 USD for selling hashish.<sup>227</sup>
2. “Haliima” – Kismayo, Lower Jubba - **40 lashes** and two weeks in jail for selling *khat*.<sup>228</sup>
3. “Yusuf” – Beledweyne; Hiiran - **80 lashes**, five months in jail and expropriation of his shop to al-Shabaab for selling hashish.<sup>229</sup>
4. “Abdullahi Ali” – Mogadishu - **40 lashes** and three months in jail for selling hashish.<sup>230</sup>

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<sup>224</sup> Interview with “Abu Mohamed” was conducted by the author in Nairobi, October 2010.

<sup>225</sup> Interview with “Ahmad” conducted by Mohamed and Abdow in Nairobi, November 2010.

<sup>226</sup> Interview with “Kadra Ahlo” conducted by Mohamed and Abdow in Nairobi, November 2010.

<sup>227</sup> Interview with “Ahmad” conducted by Mohamed and Abdow in Nairobi, November 2010.

<sup>228</sup> Interview with “Haliima” conducted by Mohamed and Abdow in Nairobi, February 2011.

<sup>229</sup> Interview with “Yusuf” conducted by Mohamed and Abdow in Nairobi, February 2011.

5. “Ali Mohamad” – Kismayo, Lower Jubba - **40 lashes** and four months in jail for selling hashish.<sup>231</sup>

According to the *fiqh* prescriptions of the legal schools, except the Māikī school, the number of lashes should not exceed the fixed number of lashes of the *ḥudūd* punishments. However, there is some disagreement concerning this: as some claims that the maximum is 10 lashes, basing their argument on a *ḥadīth* stating: “No one is to be flogged with more than ten lashes except in the case of *ḥadd* crimes”. According to some Shāfi’ītes, 39 is the highest number, i. e. one less than the number prescribed by the Shāfi’ī school for *khamr*, while other Shāfi’ītes and some Ḥanbalītes assert that the number of lashes should be relative to the comparable *ḥadd* crime which is related to the *ta’azir* crime, i. e. 39 for the Shāfi’ītes or 79 for the Ḥanbalītes in *khamr* (alcohol/drug) related crimes. In my material there is no case where the punishment exceeds 100 lashes, which is the highest prescribed number for *ḥadd* cases, namely in *zinā* cases where the offender is unmarried. The “Yusuf” case listed above, where the punishment was set at 80 lashes for drug dealing equals the number of lashes prescribed by the Ḥanafī, the Ḥanbalī and the Māikī schools for drinking alcohol. 80 lashes was also the sentence in the *khamr* (alcohol/drug) cases of “Omar” and “Farah” which were discussed when treating the *ḥadd* crime of *khamr*. In contrast, in three other drug dealing cases, namely the “Haliima”, the “Abdullahi Ali” and the “Ali Mohamad” case, the number of lashes equals the prescribed number of lashes in the *ḥadd* crime of *khamr* in the Shāfi’ī school, i. e. 40. Whether this is a dominating trend regarding drug dealing cases, and the punishment of 80 lashes given in the court in Beledweyne, is an exception, is hard to assess. It may also be that this indicates influence from different legal schools in regards to this issue, as the courts in Kismayo and Mogadish have sentenced drug dealers to 40 lashes. However, this hypothesis does not explain the number of 50 lashes given in the “Ahmad” case, nor does it explain why “Laban” who was accused and tried in a court of Beledweyne, Hiiran, for selling alcohol was sentenced to have his vehicle confiscated instead of being lashed.<sup>232</sup>

As indicated in the list above, additional punishments such as imprisonment, fines and expropriation is usual. This is a result of the extensive discretionary powers of the *qādī* in *ta’zīr/siyāsa* cases. The same applies to the form and level of punishment, although there are different opinions within the legal schools regarding fines and expropriation, in fact only the

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<sup>230</sup> Interview with “Abdullahi Ali” conducted by Mohamed and Abdow in Nairobi, April 2011.

<sup>231</sup> Interview with “Ali Mohamad” conducted by Mohamed and Abdow in Nairobi, July 2011.

<sup>232</sup> Interview with “Laban” conducted by Mohamed and Abdow in Nairobi, August 2011.

Māikī school allows it unanimously.<sup>233</sup> As such the punishments given in the above-mentioned cases, as well as in the additional *ta'zīr* cases of my informants, seem in general not to diverge from classical provisions regarding *ta'zīr*.

### 6.3.3.2 Espionage

Espionage for the enemy is one of the few *ta'zīr* crimes that according to the classical jurists should be punished with death, and according to my material it seems that al-Shabaab complies with classical doctrine in this regard. There are numerous media and NGOs/GOs' reports as well as witness testimonies from my informants about executions of Somalis being accused of spying for the US, the Ethiopians, AMISOM or the TFG. "Adan", who used to live in Mogadishu, reports, for example, that a man who was brought to a court in the Deyniile district of Mogadishu, was accused for helping the TFG and AMISOM to point out where to fire their mortars. During the trial he was sentenced to death and subsequently shot by masked executioners in front of a large crowd. According to "Adan", execution by shooting, preferably in front of large audience, is the normal way al-Shabaabs deal with espionage convicts.<sup>234</sup> This claim finds support in local media coverage. For example, Adil Mohamed Hussein (21) and Abas Mohammed Abukar (19) were reportedly shot several times in the head at a public execution in Deyniile, Mogadishu. The *qāḍī*, whose name was only referred to as Omar, claimed according to the report that the boys had spied for the "apostate government". Consequently, they were executed by three masked men in front of hundreds of people.<sup>235</sup> However, none of these reports on public executions say anything about what happened inside the court room during the trials. One obvious reason for this lack of information is that most of the accused are shot dead. In addition, according to "Adan", the local journalists do not have access to the accused, either before or during the trial.

However, my material includes four interviews with informants who have been brought before the court accused of espionage, and may throw some light on this issue: "Haji", was brought before a court in Mogadishu accused of spying and working for the Transitional Federal Government (TFG). The accusations had been brought to al-Shabaab by his wife. "Haji" was arrested and beaten for seven days before he was brought before the

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<sup>233</sup> El-Awa, *Punishment in Islamic Law: A Comparative Study*, pp. 100-112; Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 33, 65-68.

<sup>234</sup> Interview with "Adan" conducted by the author in Nairobi, October 2010.

<sup>235</sup> Shabelle News, *Al Shabaab executes two teenagers for allegedly spying for Somali govt*, Shabelle Media Network, <http://www.shabelle.net/article.php?id=7754>, [22.09.2011].

court. The evidence against him consisted of the testimony of his wife, stating that he was a spy, a claim that was strengthened by the fact that his brother was a major in the TFG army. “Haji”, however, did not admit to being a spy. Instead he claimed that his wife was jealous of his second wife. During his testimony he also explained that his sympathies were different from those of his brother. Due to lack of evidence, the *qāḍīs* decided to postpone the case for two weeks. Instead of going back to custody, “Haji” was released, probably because two of his relatives, one of them working for al-Shabaab, guaranteed to bring him back for the trial. However, before the case was brought up again, “Haji” managed to flee Somalia. Although he was lucky and could escape, both his relatives were killed because they broke their promise and failed to bring “Haji” to court.<sup>236</sup>



Execution of an alleged spy by shooting

In case number two, “Asad”, also tried in a court in Mogadishu, was accused of “working for the enemy”, more precisely that he had a contract with the TFG for renovation works on the parliament building. As evidence the *Ḥisbah* brought documents which had been found in “Asad’s” shop and showed details of the contract with the TFG. Although he recognized the contract and confirmed that it was his, “Asad” claimed that he only made the work for the TFG as a business man, emphasizing that he had nothing to do with them. In addition, he also stated that he had supported al-Shabaab economically. The *qāḍīs* acknowledged this, but reminded him that his connection with the “enemy”/the TFG also made him an enemy. Therefore they adjudicated that all his wealth was to be transferred to al-Shabaab. Except from this, he was free to go.<sup>237</sup>

In the third case, “Nadifa” was brought before a court in Jowhar, Middle Shabelle, due to accusations of espionage. This happened at the same day as she was arrested, and neither

<sup>236</sup> Interview with “Haji” conducted by Mohamed and Abdow in Nairobi, November 2010.

<sup>237</sup> Interview with “Asad” conducted by Mohamed and Abdow in Nairobi, November 2010.

witnesses nor any other evidence was brought before the court to support the accusations. She told the *qāḍīs* that she probably was accused for this crime because her son, who had forcefully been recruited to al-Shabaab, had fled. But she persistently denied having anything to do with this incident, and she reminded the *qāḍīs* that she already had lost one son while he was fighting for al-Shabaab. The *qāḍīs* then dismissed the case due to insufficient evidence.<sup>238</sup>

The last case at hand, the “Dalmar” case mentioned earlier, is exceptional in terms of being the only case in my material which has been tried by what appears to be a military court. Working with a Somali NGO, “Dalmar” was arrested in Merka, Lower Shabelle, by masked men whom he believed to be officials from the feared intelligence services, Amniyaat. He was held a prisoner somewhere in the wilderness for 8 months, was continually tortured and interrogated, and repeatedly told that he was a spy. After eight months he was brought before three masked men who questioned him further, but finally released him, telling him that they had mistaken him for someone else.<sup>239</sup>

These four cases, even though they are different in some regards, indicate that there has to be at least some sort of evidence in support of the accusations before a death penalty is imposed. However, it is striking how easy it is to accuse someone of espionage, and how a single accusation may lead to imprisonment and torture. In addition, it has to be noted that, although a court hearing has taken place in all four cases, this does not necessarily mean that the executions reported in media/NGOs/GOs were preceded by proper trials nor does it exclude the possibility that some executions have been carried out after a “trial” conducted like a public show as in the case of “Roble”. Apparently, al-Shabaab wants to give the impression that espionage charges are tried in court, rather than to admit extra-judicial killings. For instance in Mogadishu in September 28, 2009, when Hassan Mulam Abdullah and Mohammed Ali Salad were sentenced for espionage and executed by a firing squad in Mogadishu, al-Shabaab released a statement claiming that the convicts had been found guilty in front of a “*sharī’a* court”. They also claimed that both had confessed to crimes of espionage, respectively for the American CIA and the “apostate government”.<sup>240</sup>

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<sup>238</sup> Interview with “Nadifa” conducted by Mohamed and Abdow in Nairobi, September 2011.

<sup>239</sup> Interview with “Dalmar” conducted by Mohamed and Abdow in Nairobi, July 2011.

<sup>240</sup> Global Islamic Media Front, *Allah's death penalty applied to two spies who committed the crime of spying for the crusader enemy and their apostate minions*, Sada al-Jihad Media Center, (16 October 2009), <http://www.alqimmah.net/archive/index.php/t-6158.html>, [24.09.2011].

## Chapter 7: Amniyaat, Ḥisbah and low-level enforcement

*Mazālim*, the court of the sultan, could according to classical theory hear cases of any type, new cases as well as cases previously heard by other law courts, e.g. if someone felt badly treated in the *qāḍī* court. The *mazālim* court is not bound by the same strict rules of procedure and evidence as prescribed by *fiqh*. It could render a judgment without even listening to the claims of both parties, nor does it need evidence before making a decision.<sup>241</sup>

Like the *mazālim*, the *shurṭa* enjoyed few restrictions compared to the legal proceedings laid down by the *fiqh* rules. Classical *fiqh* recognizes that the *shurṭa* is responsible for enforcing law and order, to crush rebellions and disturbances, and may investigate, try and punish criminals in their own *shurṭa* courts. They may hear a case with only the accused present, in contrast to the *qāḍī* court where both the plaintiff and the defendant have to be present, and may also use physical pressure during interrogation, for example by beating or lashing the accused. However, in principle, only in order to make him “realize the need to say the truth, not to force him to confess”. If he confesses while being beaten, the beating must stop and his confession will only be effective if repeated a second time. The *shurṭa* may also make use of circumstantial evidence, such as physical evidence found at a crime scene, and may take an accused’s prior criminal record and reputation into consideration when meting out the punishment. Police officials may also, if they deem it necessary, punish the offender on the spot without any kind of trial. Another difference compared to the *qāḍī* court, is that the *shurṭa*, being understood by the jurists as the sultan’s primary tool for maintaining law and order, could start an investigation, and if necessary, prosecute the subject-matter on his own initiative, on basis of suspicion, or after a formal complaint. The *shurṭa* is also responsible for the practical aspects of punishments, both verdicts in their own courts as well as the sentences rendered in the *qāḍī* courts or the *mazālim* court.<sup>242</sup>

Another legal actor recognized by classical doctrines is the *muḥtasib*, literally “one who enforces *ḥisba*”, a high public position that may be held by an Islamic scholar, for example a *qāḍī* or a *mufti* (jurisconsult). The *muḥtasib* is related to the theological concept of *ḥisba* (“balance” or “verification”)<sup>243</sup>, i.e. the obligation which rests on every Muslim to act

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<sup>241</sup> Vikør, *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, pp. 182-184.

<sup>242</sup> Vikør, *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, pp. 184-186; Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 9-10.

<sup>243</sup> This duty is in classical Islamic theory referred to as *amr bi'l-ma'rūf wa-nahy 'an al-munkar*, i.e. “Commanding Right and Forbidding Wrong”.

against illegal and immoral behavior. However, apart from the moral obligation of trying to talk someone right, this duty is by the classical scholars mostly perceived as a collective duty (*fard kifā'ī*). In practice, the collective aspect of *hisba* implies that the sultan takes the responsibility of enforcing this on behalf of the community, for example through the post of the *muhāsib*. The *muhtasib*'s main role is to supervise and control trade and the markets: to make sure that the correct weight, measures and coins are used, and that the traders offer the right prices. He is also responsible for supervising building sites, public roads and squares, keeping them open to traffic, and could as such be perceived as a kind of municipal administrator. In addition he supervises public morale, e.g. enforcing dress codes, overseeing that the rules regarding the interaction in public between men and women are respected, supervising prostitution and brothels, and enforcing public observance of religious duties, such as attendance of Friday prayer and fasting during Ramadan. Whenever he detects unlawful behavior within his jurisdiction, he may punish the violator on the spot and impose the punishment he sees fit (discretionary punishments), for example beating, exposure to public scorn or confiscation of property. However, he is not allowed to start an investigation or hold a formal trial, but is limited to deal with undisputed violations.<sup>244</sup>

### 7.1 Amniyaat

As mentioned above, al-Shabaab does not have an equivalent to the *mazailim*, i.e. the sultan's court. However, there is a security agency, Amniyaat ("security"), with some legal jurisdictions which is closely connected to the top leadership of al-Shabaab and the leading *amīr* Abu Zubeyr. Amniyaat is greatly feared among Somalis and is believed to be responsible of targeted killings of opponents and dissidents. It is surrounded by a lot of secrecy, and information about its *modus operandi* is very limited. "Muhtab", an informant from Mogadishu, claims that Amniyaat's operative units consist mainly of teenagers equipped with pistols and mobile phones and that they dress in civilian clothes in order to blend with the civilian population.<sup>245</sup> "Muhtar Adam", an informant from Kismayo, adds that they also may wear masks.<sup>246</sup> Some of my informants believe Amniyaat to be organized in cells with a high level of autonomy, and rumor has it that if an operative is hurt in battle, he will be killed

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<sup>244</sup> Vikør, *Ei historie om islamsk lov og rettsvesen*, pp. 186-189; Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 10.

<sup>245</sup> Interview with "Muhtab" conducted by the author in Nairobi, October 2010.

<sup>246</sup> Interview with "Muhtar Adam" conducted by the author in Nairobi, October 2010.



by their own agents rather than sent to hospital in order to ensure that no sensitive knowledge is leaked.

According to Hansen, Amniyaat, which is headed by Sheikh Muqhtar Abu Seyla'i, functioned as an important tool for the al-Shabaab leadership to create unity within the al-Shabaab organization in the period when it started to gain wide influence in 2007-2009. The Amniyaat may be described as a kind of secret police responsible for internal justice and thus also feared inside al-Shabaab. Additionally it functions as a kind of intelligence service, recruiting spies in all al-Shabaab controlled areas, as well as in other countries, such as Kenya. Hansen points out that in 2009-2010 Amniyaat came under direct control of the leading *amīr*, Abu Zubeyr alias Godane, and became a powerful tool for him which he used to centralize the power, for example by circumventing the *qāḍīs* courts in cases such as espionage. However, Amniyaat is not the only actor who could make adjudications independently of the *qāḍīs* courts, this may also be done by battle commanders. In addition, if high ranking commanders are suspected of espionage, the case tends to go to the top body of the al-Shabaab organization, namely the central *shūrā*.<sup>247</sup>

To what extent killing of alleged spies has taken place without any form of trial is difficult to say as I have little information about how Amniyaat actually operate. What I have at hand, are two incidents that most likely are related to Amniyaat. The first case is the “Dalmar” case, mentioned above where “Dalmar” was arrested and brought before what he perceived to be a military court. “Dalmar’s” friends told him that the men who arrested him belonged to Amniyaat, and therefore they believed he would be killed. “Dalmar” says that the men who arrested him and held him captive kept their faces covered all the time. Every week for eight months he was interrogated by a new person, whose face also was covered. The same was the case with three men who made the final interrogation in what “Dalmar” perceived to be a military court, before he was brought back to a small town in Southern Somalia and released.<sup>248</sup>

In the other case, “Aziza” tells about the incident in which her husband, a football coach and administrator was killed in their home in Mogadishu. One day, two men with covered faces appeared in their house and accused her husband of refusing to stop coaching and to promote football, even after they had given him several warnings. Consequently, they shot him in the head at close range. He died instantly. After the assassination they drove away

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<sup>247</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, pp. 76-77, 81.

<sup>248</sup> Interview with “Dalmar” conducted by Mohamed and Abdow in Nairobi, July 2011.

in a Land Cruiser with several other men who had also covered their faces. “Aziza” is convinced that all these men were from Amniyaat.<sup>249</sup>

The “Aziza” case seems to correspond with the claims that Amniyaat circumvents the ordinary court system and that they are assassinating dissidents. Although the assassination of “Aziza’s” husband seemed not to be politically motivated, he was obviously perceived as an ideological dissident and unwilling to follow al-Shabaab orders. In the “Dalmar” case, there seems at least to be some sort of trial, although the “court session” with “Dalmar” appears more like another interrogation than a real trial, as the prosecutors did not present any evidence to support the claims. This supports the claims of some of my Somali informants that the military courts do not follow ordinary procedure. For example, “Hassan” asserts that “they [al-Shabaab] take foreigners and those people whom they want to kill. In that court [the military court]. There is were they are taking...they listen and make the ruling. That is death. Capital punishment. It is just like that.”<sup>250</sup>

## 7.2 The *Ḥisbah*

The religious police, the *Ḥisbah*, is probably organized, at least in principle, under the Maktabatu *Ḥisbah* at the central level and under the Office of *Ḥisbah* at a regional level.<sup>251</sup> According to my informants, the *Ḥisbah* is responsible for internal security in the provinces (*wilaayahs*) and functions in most respects as ordinary police who enforce law and order. “Muhtab” from Mogadishu describes the *Ḥisbah* in the following manner:

[The *Ḥisbah* ] can be known even when they are walking, because they have dress, special dress. And guns and whips. Their main job is to protect the people. They say: “We are protecting [against] thieves”. They actually do. Sometimes, I have to admit, the good that they do. The good that they do is that you cannot be robbed in the street in Mogadishu, actually, the part they control. (...) You can walk openly with a lot of money, if you are not a target [of al-Shabaab]. So, they do policing. They protect thieves, they protect property, they do guard.

The name *Ḥisbah* obviously, as stated in an al-Shabaab propaganda pamphlet,<sup>252</sup> plays on the term “*ḥisbah*” which refers to the religious duty of “commanding the right and forbidding the wrong” (*amr bi'l-ma'rūf wa-nahy 'an al-munkar*), the collective duty of all Muslims as a community, to act against illegal and immoral behavior. Although this,

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<sup>249</sup> Interview with “Aziza” conducted by Mohamed and Abdow in Nairobi, April 2011.

<sup>250</sup> Interview with “Hassan” conducted by the author in Nairobi, October 2010.

<sup>251</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 82; Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, p. 22.

<sup>252</sup> Global Islamic Media Front, *The forgotten Obligation: A Call to the Most Important Obligation After Iman*, p. 4.

according to classical doctrine, is a communal duty, it is the sultan who has the responsibility to enforce it.<sup>253</sup> As such, the Ḥisbah is propagated by al-Shabaab to be the tool of the leadership/the *amīr* in upholding a “true” Islamic community. In an al-Shabaab affiliated pamphlet one can read:

*Al-Ḥisbah* in its broadest understanding, which is promotion of virtue if left by the people, and prevention of vices when they are committed. Allāh has opened us a wide door to carry out this responsibility in order to protect this society from immorality and guide it towards loftiness. For the first time in contemporary Islamic History, a specific army [the *Ḥisbah*] has been formed, watching over cities and towns (...).<sup>254</sup>

As the *amīr*'s tool in “forbidding the wrong” the Ḥisbah of al-Shabaab in many respects hold a similar role as the pre-modern *muḥtasib*, recognized by classical doctrine, who functions as a true *censor morum*. According to numerous media reports, as well as eyewitness descriptions from my informants from throughout South Central Somalia, the Ḥisbah supervises the public morale, enforces the many religious-moral decrees issued by al-Shabaab, such as making sure that women are fully covered with a thick and heavy *abāyah* (“cloak”) or *niqab* (“veil” or “mask”) when leaving the house.<sup>255</sup> In addition women are not allowed to wear a bra, as this is perceived as a Western creation. According to “Muhtar Adam”, women must also wear socks in different colors according to their marriage status, at least in Kismayo.<sup>256</sup> Moreover, the Ḥisbah also makes sure that men and women are separated when using public transport, and that a woman must always be accompanied by her husband, or brother if unmarried, when leaving the house. Furthermore, as already mentioned, music, watching of TV and dancing is forbidden, and men are not allowed to have a fluffy haircut, wear trousers, having a moustache or being clean shaven, probably because all these are perceived as innovations, *bi'da*, and automatically forbidden because it lacks a basis in the sacred texts (Qu'rān and *Ḥadīth*). In addition, the Ḥisbah makes sure that religious duties are upheld, for example that people observe the prescribed prayers.

When the Ḥisbah officials become aware of someone violating any of these rules it seems that they, like the *muḥtasib*, have jurisdiction to deal with minor offences on the spot,

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<sup>253</sup> Vikør, *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, pp. 186-187.

<sup>254</sup> Global Islamic Media Front, *The forgotten Obligation: A Call to the Most Important Obligation After Iman*, p. 4.

<sup>255</sup> Human Rights Watch, *Somalia: Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*, (April 2010), [http://reliefweb.int/sites/reliefweb.int/files/resources/49BC35FD9F0434CF4925770B0004D609-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/49BC35FD9F0434CF4925770B0004D609-Full_Report.pdf), [21.09.11], p. 28.

<sup>256</sup> Interview with “Muhtar Adam” conducted by the author in Nairobi, October 2010.

while more grave violations are treated by the *qāḍī* courts. According to most of my informants, the most applied punishment employed by the Ḥisbah is lashing. However, several other punishments are also enforced, for example confiscation of property, cutting of the hair if deviating from the norm etc. Also, fining or imprisonment is applied. It is difficult to get a more precise picture of the enforcement practice, but it seems that punishments are applied quite arbitrary, perhaps contingent on the individual official dealing with the case. This is seen in some cases in my material regarding women who have been punished for not wearing the prescribed *abāyah*. “Aisha”, an informant from Mogadishu, tells for example about one of her neighbors who went out to fetch her small child who had run out into the street. Unfortunately, she was seen by a Ḥisbah official when running after the boy. Because she was in a public place without wearing the *abāyah*, she was immediately arrested and imprisoned for five days. The little boy was just left alone in the house, but he was luckily taken care of by the neighbors.<sup>257</sup> In mid-2009 a woman was also caught in Kismayo for not wearing the heavy *abāyah*. However, she was reported to “only” have been imprisoned overnight. But, before she was put in jail she received punishment from the al-Shabaab patrol that caught her and she was severely beaten with the butts of the officials’ guns.<sup>258</sup>

In my material there are other cases with similar traits, for example cases related to the commandment that everybody must perform the five daily prayers in a mosque, a prescription which includes everyone, even the infirm and the elderly. Thus there is no excuse for appearing in public or keeping a shop open during prayer time. In Kismayo, a woman of about the age of 70 was whipped in the street by a young al-Shabaab member,<sup>259</sup> while in Merka, “Muhtab” asserts, a man who was sitting outside his shop was killed on the spot for not attending one of the prayers at the mosque.<sup>260</sup> In a third case, from the Medina district of Mogadishu, a man was imprisoned for three days in a shipping container, had his head shaven, was lashed with a whip made of tire rubber and fined with 300 000 Somali shilling, equivalent to 10 USD, for not attending the Friday morning prayer at the mosque. In addition, he got his trousers cut as the al-Shabaab officials perceived them to be too long.<sup>261</sup>

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<sup>257</sup> Interview with “Aisha” conducted by the author in Nairobi, October 2010.

<sup>258</sup> Human Rights Watch, *Somalia: Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*, p. 28.

<sup>259</sup> *Ibid*, p. 25.

<sup>260</sup> Interview with “Muhtab” conducted by the author in Nairobi, October 2010.

<sup>261</sup> Human Rights Watch, *Somalia: Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*, p. 26.

In addition to these seemingly arbitrary accounts of harsh enforcements, the jurisdiction of the Ḥisbah seems to overlap with the *qāḍīs*, perhaps not in principle, but at least in practice. Although the trend seems to be that the Ḥisbah deals with minor *ta'zīr* cases, there are several examples indicating that a violation of the law may be treated by the Ḥisbah as well as in a *qāḍī* court. For example, while the *qāḍī* court in Buaale tried the above-mentioned “Ahmad” case where “Ahmad” was convicted for watching a sex video on his mobile phone, some of my informants report about similar cases where the offender has been handled by the Ḥisbah and punished with lashing on the spot.

However, when it comes to more serious crimes it seems that they are primarily treated in *qāḍī* courts, while the Ḥisbah functions mere as an equivalent to the *shurṭa*, or a modern police in terms of investigating suspected crimes and by conducting initial interrogations, where they, as many of the described court cases show, do not hesitate to use torture, mostly by beating the suspects. However, the *qāḍī* court and Ḥisbah are closely interconnected and may be seen as two aspects of al-Shabaab’s legal system: the Ḥisbah do not only make the arrest and bring the accused to court but also functions as prosecutor in the *qāḍī* courts. There is, however, no information suggesting that the Ḥisbah possesses own courts of any sort.

### **7.3 Arbitrary enforcement, many actors**

It is apparent that the rule and administration of al-Shabaab, including the Ḥisbah and the *qāḍī* courts, has left large parts of South and Central Somalia more stable the last couple of years than it has experienced for the past twenty years. However, according to Hansen, the impact of the al-Shabaab administration may vary considerably from region to region.<sup>262</sup> In Mogadishu, for example, al-Shabaab has never exerted total control, and the city has witnessed numerous clashes between al-Shabaab forces and the AMISOM (the African Union Mission in Somalia) and the TFG (the Transitional Federal Government) forces, sometimes turning the city into a combat zone. There is also a lack of internal control within al-Shabaab as the group has attracted a great variety of people with different ideological and personal trajectories. The al-Shabaab controlled areas increased rapidly in 2008-2009 and the expanding administration and armed forces needed fresh recruits. Many of the recruits, a majority being young men, joined al-Shabaab in order to have a regular income or due to forced recruitment. There were also recruits with a violent and bloody record, for example,

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<sup>262</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, pp. 81-83.

the former warlord Abdiraham Nuur Fiilo, from Kismayo, who changed side after the increasing success of al-Shabaab. Shortly after joining up, he was appointed a local deputy commander of the *Hisbah*, took the title of Sheikh, and started enforcing *sharī'a* at a low level.<sup>263</sup> It is apparent that many figures now gained power and position and got judicial responsibilities despite not having any formal education or knowledge about *sharī'a*.

Another important point with regards to arbitrary judicial enforcement is that *Hisbah* is not the only agency which takes the responsibility of upholding law and order in al-Shabaab controlled territories. Although many of my informants describe the *Hisbah* units as an equivalent to ordinary police, several informants also claim that al-Shabaab militiamen, like soldiers or other affiliates, sometimes punish Somali citizens for what they see as illegal or un-Islamic behavior. Other informants do not separate between *Hisbah* officials and other al-Shabaab militiamen, but perceive all low-level al-Shabaabs who carry guns as the same. Therefore, in my material, it may in some cases be difficult to separate between the acts of the *Hisbah* and residual militiamen.

Whether it is the *Hisbah* or other militiamen who are responsible for arbitrary violence and killings are not what worries most informants, but the unpredictability of the law enforcement of low-level al-Shabaab affiliates in general. Even in Kismayo where al-Shabaab has had control for quite a long period, and according to “Mohamed Ahmed” “has become more relaxed”, there still occurs extra-judicial and arbitrary violations against the citizens, such as shooting.<sup>264</sup> The case of Ahmad Ali Shuuke is a characteristic incident. “Farouk”, an informant still living in Mogadishu, tells a story about how al-Shabaab affiliates have taken the law into their own hands: Ahmed Ali Shuuke’s job was to deliver goods to the businesses at the Bakara market. One day in August 2010 he was stopped by two young al-Shabaab militiamen who asked him what he thought about al-Shabaab. Ahmed Ali answered something like: “I don’t care about either al-Shabaab or the TFG”. But as he didn’t explicitly express his support, they brought him to the corner of the street and cut off his tongue. The case never went to court.

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<sup>263</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, pp. 65-68, 79, 90

<sup>264</sup> Interview with “Mohamed Ahmad” conducted by the author in Nairobi, October 2010.



Ahmed Ali after the incident

Several similar episodes have been reported, for instance in the town of Ras Kamboni, Lower Jubba, in 2008, where two brothers allegedly bled to death in the street after al-Shabaab members had cut their throats for carrying a camera and were perceived by the al-Shabaab affiliates as potential spies. However, according to a close relative of the brothers they were all fishermen who intended to take photos of their catch in order to advertise it on the market.<sup>265</sup> Likewise, in “Adado, in Galguduud, “Muhtab” witnessed a case where harsh punishment was inflicted as instant punishment for a minor violation: an al-Shabaab official noticed a man nearby whose mobile phone had a music ring tone. Since this is illegal, the official told the man that he did not want to hear that ring tone again. Unluckily for the guy his phone rang again before he had managed to change it. As a response, the official shot and wounded him.<sup>266</sup>

#### **7.4 Apostasy – extra-judicial enforcement**

To renounce Islam publicly by word or conduct are deemed by most legal schools as a *ḥadd* crime, termed *ridḍa*, and is to be punished by death.<sup>267</sup> *Ridda* occurs when a Muslim explicitly abjures Islam or converts to another religion, or implicitly renounce Islam, for example by denying that Mohammed is God’s prophet, asserting that ritual prayer is not obligatory, or disrespects copies of the Qu’rān. In order to make sure that a convict is punished as an apostate, the execution must be delayed for three days,<sup>268</sup> to make sure that the convict has been able to reflect on the matter and has been given the opportunity to repent. If

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<sup>265</sup> Human Rights Watch, *Somalia: Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Government, and AMISOM in Somalia*, p. 46.

<sup>266</sup> Interview with “Muhtab” conducted by the author in Nairobi, October 2010.

<sup>267</sup> The Ḥanafites do not regard apostasy as a *ḥadd* crime. However, the violator will according to them still face death penalty but on the ground that he is regarded as a potential enemy combatant.

<sup>268</sup> This is only deemed recommended, not obligatory, by Ḥanafī doctrine

the convict does not return to Islam, he will be executed. In cases where the apostate has been found guilty of blasphemy by insulting the Prophet, he will, according to most schools, not be given the opportunity to repent, but will nevertheless be executed immediately after the sentencing. Although the *ḥaḍīth* which legitimizes punishment for apostasy<sup>269</sup> does not specify how the execution shall be performed; beheading by sword is normally the prescribed form.<sup>270</sup>

While the other *ḥadd* crimes primarily seem to be tried before the al-Shabaab *qāḍī* courts, the general trend in the al-Shabaab controlled areas when it comes to *riḍḍa* (the *ḥadd* crime of apostasy) seems to be that such cases are decided outside the court. It seems that people who are accused of apostasy are either killed immediately wherever they are found by al-Shabaab operatives or after a brief interrogation. However, these assumptions are entirely based on eyewitnesses' stories reported by journalists reports from NGOs/GOs, which do not put much emphasis on the process from arrest to execution. As my information on this issue is quite limited, I cannot, of course, rule out the possibility that some *riḍḍa* cases have also been tried by ordinary *qāḍī* courts.

In general there seems to be no tolerance for Muslims who have converted from Islam to Christianity, or for those who have uttered blasphemous statements. Reports claim that the Christian convert Abdirahman Hussein Roble, who was reported to have been killed by members of Al-Shabaab in Mogadishu on January 26, 2011, is the 24th convert killed by Somali Islamists since 2009.<sup>271</sup> Whether this is the correct number or not, the many incidents, also from spring of 2011, indicate that al-Shabaab perceives the execution of converts to be an important task and a way to administer *sharī'a*. For example, in July 2009, Mohammed Sheikh Abdiraman was executed by al-Shabaab militiamen in Mahadaay Weyne, Middle Shabelle. Eyewitnesses to the execution state that the militiamen had been searching for the convert, and when they found him early in the morning at 7 AM, they shot him dead on the spot.<sup>272</sup> Other reports give similar descriptions about al-Shabaab militiamen who have executed suspected Muslim converts shortly after their arrest. For example, Pastor Ali Hussein Weheliye, a leader of a Christian underground Church in Mogadishu, was on October

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<sup>269</sup> “The Prophet said: ‘If someone [a Muslim] changes his religion, then kill him’,” (Bukhari, 52:60).

<sup>270</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 36, 64-65; Center for Muslim-Jewish Engagement, *Translation of Sahih Bukhari, Book 52*, University of Southern California, <http://www.cmje.org/religious-texts/hadīth/bukhari/052-sbt.php>, [18.10.2011].

<sup>271</sup> The Christian Post, *Islamic Radicals Kill Christian Convert in Somalia*, (24 February 2011), <http://www.christianpost.com/news/islamic-radicals-kill-christian-convert-in-somalia-49143/>, [18.09.11].

<sup>272</sup> Compass Direct News, *Convert from Islam Shot Dead*, (20 July 2009), <http://www.compassdirect.org/english/country/somalia/4496/>, [18.09.11]



10, 2009 shot down in the street by two masked al-Shabaab members.<sup>273</sup> According to several reports, many Christian converts go regularly to mosque just to appear to be Muslims, as al-Shabaab reportedly is monitoring people's attendance at the prayers in the mosques.<sup>274</sup> Contrary to the norms of classical *fiqh*, the death penalty are in these cases applied without any form of trial or time for the convict to reconsider his belief.

However, there are also examples of cases where the convert is given a chance to renounce Christianity. This is what happened, for example, in the case of the four Christian converts who were running an orphanage for a charity: Fatima Sultan, Ali Ma'ow, Sheik Mohammed Abdi and Maaddey Diil were beheaded by al-Shabaab in Merka, on August 11, 2009 after having reportedly been given "(...) an opportunity to return to Islam to be released but they all declined the generous offer".<sup>275</sup>

To my knowledge there are no reports which say anything about apostasy cases tried before a *qāḍī* court. Instead, it seems that the general trend is that converts are either hunted down and killed immediately, or executed by beheading after a short interrogation. Moreover, another characteristic feature about these cases is the fact that the execution takes place in front of a huge audience. For example, when Asha Mberwa (36), a Christian convert, was executed in Warbhigly in the outskirts of Mogadishu on January 7, 2011, her throat was cut in front of many of the villagers.<sup>276</sup> A similar public and violent execution took place in a blasphemy case at a soccer stadium in the Hudur district, in Bakool on July 1, 2010. Hundreds of people, including school children are reported to have been forced to watch when Muhammad Guul Hashim Idiris was executed after allegedly, according to Sheik Adan Yare, the Al-Shabaab governor of the Bakool region having "(...) insulted our beloved Prophet".<sup>277</sup>

One may naturally ask why al-Shabaab chooses to deal with *ridda* cases extra-judicially rather than in front of the *qāḍī* courts when this seems to be the rule in the other *ḥadd* cases? Although it may be difficult to come up with an adequate explanation, there are two special aspects of the *ridda* cases which might suggest a clue: firstly, in several of these cases, the converts have also been accused of espionage. For example, in September 23, 2008,

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<sup>273</sup> Christian Telegraph, *15th Christian leader killed in Somalia, says ICC*, <http://www.christiantelegraph.com/issue7664.html>, [18.09.11]

<sup>274</sup> Ibid.

<sup>275</sup> International Christian Concern, *Muslims Behead Four Christian Orphanage Workers in Somalia*, Assyrian International News Agency, (11 August 2009), <http://www.aina.org/news/20090811144715.htm>, [18.09.11].

<sup>276</sup> Charisma News, *You are here: World Muslims Behead Somali Convert to Christianity*, (14 September 2011), <http://www.charismanews.com/world/31975-muslims-behead-somali-convert-to-christianity>, [18.09.11]

<sup>277</sup> Jeremy Reynolds, *Somali Islamists Execute Christian Convert*, ASSIST News Service, (7 July 2010), <http://www.assistnews.net/Stories/2010/s10070036.htm>, [18.09.11]

Mansuur Mohammed was accused of apostasy and reportedly killed in front of terrified locals in Manyafulka village, Baidoa, by al-Shabaab militiamen, some hours after his arrest. According to reports his execution was due to accusations of being a *murtadd*, i.e. an apostate, and a spy for Ethiopia.<sup>278</sup> Given that al-Shabaab perceives its enemies to be “Christians”, i. e. Ethiopia, US and its allies, it is possible that any Christian, a Somali convert or a foreign Christian could be suspected of being in liaison with the enemy. Secondly, there are also reports which indicate that apostasy is perceived as a source of *fitna* (“chaos”), in terms of causing havoc to the Muslim community, *umma*. An al-Shabaab militiaman is reported to have said to the families of the four executed orphanage workers, mentioned above, that the accused had been killed because they as Christian converts were promoting *fitna*.<sup>279</sup> It may seem that an apostate is perceived as such a grave security threat to society because he/she is linked to the enemy, or perceived as someone causing such great havoc to the community or both that he/she must be eliminated at all costs.

## **Chapter 8: The law of the land – the state, *mufītīs* and the *qāḏī* court**

According to classical doctrine, lawmaking is to a great extent kept separate from the control of the state. In principle, legal provisions are formulated by the Islamic jurists, either as outlined in the *fiqh*-literature, particularly in the numerous legal manuals which constitute the *mukhtaṣarāt* literature, or as *fatwās*, i.e. the legal opinions of a *mufītī* (jurisconsult). The *fatwā* issued by a *mufītī*, who is ascribed to operate independently of the state, is not a legally binding verdict, but the *mufītī*'s own opinion about what he perceives to be the right interpretation of *sharī'a* concerning a specific question. However, *fatwās* issued by renowned *mufītīs* may have impact not only for ordinary Muslims, but also for *qāḏīs* when dealing with a particular difficult case and political decision makers.<sup>280</sup>

That the formulation of law (*fiqh*) is the prerogative of Islamic scholars, i.e. jurists and *mufītīs*, implies that parts of the repressive system of the state are conditioned by non-state (religious) actors. However, as Vikør points out, the state authorities started in practice to appoint their own *mufītīs* early on, and in course of the reign of the Ottomans, the *mufītī* was reduced to a state official, as the *qāḏī* always had been. Thus the Ottomans introduced a

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<sup>278</sup> Christian Persecution Info, Somalia: Christian Aid Workers Beheaded for Converting from Islam, Compass Direct News, (28 October 2008), <http://www.christianpersecution.info/news/somalia-christian-aid-workers-beheaded-for-converting-from-islam-16822/>, [22.09.11]

<sup>279</sup> International Christian Concern, *Muslims Behead Four Christian Orphanage Workers in Somalia*.

<sup>280</sup> Vikør, *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*, pp. 138-140, 145-146, 155-156, 177-179.

system whereby the *mufī* could be appointed and removed from his position according to the will of the sultan.<sup>281</sup> Although the idea that the *mufī* should be a legal scholar who operates independently of the state is still prevalent within the Muslim world,<sup>282</sup> close ties between the *mufī* and the state occur even today, not least in Saudi Arabia. In Saudi Arabia there are also different councils of scholars, for example the Board of Senior ‘Ulamā’, which issues *fatwās* on matters submitted to it by the government. However, neither the Grand Muftī nor the Board of Senior ‘Ulamā’ are directly governed by the state, nor are their *fatwās* in principle binding for the *qāḍīs* working in the courts although they may exercise great influence on the *qāḍīs*’ interpretation of the law.<sup>283</sup>

Although classical *fiqh* ascribes Islamic jurists the authority to outline positive law, the state authority is also recognized as a law maker sanctioned by the classical doctrine of *siyāsa shar’iyya* (“governance in accordance with the *sharī’a*”). This doctrine gives the ruler the prerogative to apply his own provisions within areas where one finds no basis in the sacred texts, and as long as these rules do not contradict the letters of *sharī’a*.<sup>284</sup>

### **8.1 Issuance of law – the Fatwā Council and political authority**

To outline al-Shabaab’s practice of lawmaking is no easy task as the information at hand is quite limited. However, my material may nevertheless give some indication of the underlying ideal of al-Shabaab’s religio-political regime.

As already mentioned, al-Shabaab has imposed numerous decrees, both prohibitions as well as commandments on the Somali public under their administration. For example, on March 24, 2009, trading and consumption of *khat*, mild narcotic leaves traditionally chewed by many Somalis, was banned in the Baidoa province,<sup>285</sup> as had previously happened in January the same year in Kismayo.<sup>286</sup> On May 18, the same year, an edict was released by the administration of the city of Merka and Bardhere which banned football. This prohibition followed an earlier edict banning movies and watching football on TV. And in June 13, 2009, the al-Shabaab administration in Kismayo outlawed the watching of movies on DVDs,

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<sup>281</sup> Ibid, pp. 177-180, 200-201.

<sup>282</sup> Ibid, p. 179.

<sup>283</sup> Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, pp. 5-8, 17, 83- 165, 252-276.

<sup>284</sup> Ibid, pp. 174-179, 249-252

<sup>285</sup> U.S. Department of State, *2009 Human Rights Reports: Somalia*, Human Rights Reports, Bureau of Democracy, Human Rights, and Labor, (11 March 2010), <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135976.htm>, [23.09.11]

<sup>286</sup> Ansar AlJiad Network, *Somalia: Islamists impose khat ban in Kismayo*, www.As-Ansar.com, (24 January 2009), <http://www.ansar1.info/showthread.php?t=823>, [27.09.11].

television, and to store pictures on cell phones. Al-Shabaab issued a stern warning that it would raid the homes of persons suspected of violating the ban.<sup>287</sup>

“Taban”, an informant from Kismayo explains that when a new edict is imposed it is announced through local FM radio stations,<sup>288</sup> many of which, as Hansen points out, al-Shabaab controls.<sup>289</sup> Many of the Somali informants claim that these edicts, or *fatwās*, the term which is mostly used by my informants, are issued by a Fatwā Council consisting of religious scholars. The council decides what should and should not be legal regarding specific issues, especially in religious matters, and according to “Fakir”, a local sheikh, who was critical of the Fatwā Council’s methods:

[They] act as *mujtahideen* [sg. *mujtahid*]. They make new *tafsīr* [“interpretation”, i. e. Qu’rān exegesis] which is not known to the community and wasn’t applicable to specific situation. For example, when they are doing *ijtihād*, one explains some verse of the Holy Qu’rān. They prefer to apply how it is to apply people who lived one thousand years ago.<sup>290</sup>

Several of the informants think the Fatwā Council is closely linked to the central decision making organs of al-Shabaab, and that it is headed by a sheikh and *amīr*. Fu’ad Shangole, one of the senior *amīrs* of al-Shabaab, is mentioned by some as an influential or even the leading member of the central Fatwā Council. In addition, there are Fatwā Councils on regional and local levels, according to some informants. In his newly released report Hansen supports the the information from my informants, asserting that the Fatwā Council is an integrated part of the Maktabatu Da’wah, which is headed by Fu’ad Shangole. In addition to political and religious issues, this department is, according to Hansen, responsible for the dissemination of al-Shabaab ideology and viewpoints regarding Islam, *sharī’a* and *jihād*. The Makatabatu Da’wah is also responsible for local justice, and is the closest al-Shabaab comes to a legal office. As such, according to Hansen, the Maktabatu Da’wah is superior to the *qāḍīs* courts, and if the Fatwā Council is asked for a legal opinion regarding a specific issue, the subsequent *fatwā* would overrule all other court decisions. The Fatwā Council is also, Hansen asserts, responsible for the implementation of justice on the military fronts, but seems to lack the capacity to fully do so.<sup>291</sup>

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<sup>287</sup> U.S. Department of State, *2009 Human Rights Reports: Somalia, Human Rights Reports*.

<sup>288</sup> Interview with “Taban” conducted by the author in Nairobi, October 2010.

<sup>289</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 85.

<sup>290</sup> Interview with “Fakir” conducted by the author in Nairobi, October 2010.

<sup>291</sup> *Ibid.*, pp. 77, 81.

The Fatwā Council of the Maktabatu Da'wah seems also to lack the capacity to control the issuance of *fatwās*/edicts locally, as several commandments are announced only in some of the al-Shabaab regions. For example, reports claim that the rules which order women to wear gloves and socks, a common supplement to the *abāyah* in conservative countries such as Saudi Arabia, were only implemented in some areas. Likewise, the ban on wearing a bra was reportedly announced only in Kismayo, Baardheere and some neighborhoods of Mogadishu.<sup>292</sup> Although this could imply some degree of (intentional) local independence, it seems more likely to be a sign of arbitrary power and impunity of local leaders, as extensive local variations could undermine the legitimacy of the central leadership, who strive for increased centralization, as Hansen indicates.<sup>293</sup>

As the Fatwā Council seems to be an integrated part of the Maktabatu Da'wah, one of the ministries of the central political organ, it means that it is closely linked with the political leadership. That Fu'ad Shangole, one of the top *amīrs* of the al-Shabaab leadership and a leading military commander, is associated with and probably the head of the Fatwā Council, supports this claim. The Fatwā Council may partly be seen as al-Shabaab's response to the religious attacks that became prevalent after January 2009 when the TFG got the support of influential religious clerics in the Arab world, such as the well-known Islamic Scholar and leader of the European Fatwā Council, Sheikh Yusuf Qaradawi, based in Qatar.<sup>294</sup> As such the Fatwā Council may function as a body that seeks to increase the religious authority of the movement, and further support al-Shabaab's claims of Islamic legitimacy.

The closeness, or supposed co-localization, of religious and political authority comes to the fore in regards to for example the *khat* issue. According to Marchal, the question of whether one should prohibit *khat* usage has divided al-Shabaab's leadership for years. One faction is willing to forbid the import of *khat* since it is perceived as a drug (its usage will thus be seen as the *ḥadd* crime of *khamr*). On the other hand, Marchal points out, many commanders have a pragmatic approach to the issue: distribution of *khat* provides jobs for the poorest people and taxes are collected (1000 USD by plane plus landing fees).<sup>295</sup> Another factor is the massive protests that al-Shabaab has experienced when trying to limit the trade of

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<sup>292</sup> Human Rights Watch, *Somalia: Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Government, and AMISOM in Somalia*, p. 46.

<sup>293</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, pp. 76-88.

<sup>294</sup> Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, p. 20.

<sup>295</sup> Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, p. 68.

*khat*.<sup>296</sup> Although, as Marchal points out, there have been several attempts to limit *khat* trade over the last years, the common solution to this problem seems to be a limited prohibition, where the *khat* traders are allowed to sell *khat* at dedicated markets in the outskirts of the towns. Moreover, *khat* usage is prohibited in the public sphere, but allowed at certain places. However, there seems to be different practices to this issue. While several informants as well as Marchal<sup>297</sup> assert *khat* usage to be allowed in private houses, the court ruling in the “Nadif” case indicates that *khat*, at least in Bardheere, in the Gedo province, has to be chewed at dedicated chewing zones, equivalent to the practice regarding smoking of tobacco as displayed in the “Abdow” case from Afgooye, in Lower Shabelle.<sup>298</sup>

A half hearted ban may seem odd. But, politically, it may be a clever decision. If they had totally legalized it, they may have lost legitimacy as a serious Islamic actor since it is quite obvious that *khat* could be categorized as a drug. Similarly, a total ban would have reduced much-needed taxes as well as considerable public dismay which would have made the group very unpopular.

## **8.2 Application of law – the Fatwā Council and the *qāḍī* court**

The decrees or *fatwās* issued by al-Shabaab tend to be binding from the moment they are announced publicly and is rapidly enforced locally by the Ḥisbah. This could be seen for example on April 9 2009, a couple of weeks after the *khat* prohibition, when al-Shabaab officials are reported to have opened fire on *khat* traders in Dinsor town, Bakol, and killed one person and wounded three others. Likewise, in Merka on May 19, 2009, the day after the banning of football, al-Shabaab is reported to have arrested several young boys playing football inside the town.<sup>299</sup> Also, in Merka, some time during 2009, “Muhtab” remembers that a man was shot dead by the Ḥisbah because he had not closed his shop during one of the obligatory prayers, which had been commanded by a decree some time in advance. When the man was asked why he did not follow the commandment, “Muhtab” claims that the shop

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<sup>296</sup> Garoweonline, *Somalia: Baidoa protests against Al Shabaab khat order*, (25 March 2009), [http://www.garoweonline.com/artman2/publish/Somalia\\_27/Somalia\\_Baidoa\\_protests\\_against\\_Al\\_Shabaab\\_s\\_khat\\_order.shtml](http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Baidoa_protests_against_Al_Shabaab_s_khat_order.shtml), [23.09.11].

<sup>297</sup> Marchal, *The Rise of a Jihadi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*, p. 68.

<sup>298</sup> See Appendix 1.

<sup>299</sup> U.S. Department of State, *2009 Human Rights Reports: Somalia, Human Rights Reports*.

keeper said “I do praise my Allāh! I’m not doing it for you!” As a result, he was killed on the spot.<sup>300</sup>

It also seems that the *qāḍīs* are implementing the decrees issued by the Fatwā Council. For example, shortly after the issuance of a decree by the administration of Kismayo which prohibits the watching of movies on DVD and TV as well as the storing of pictures on mobile phones,<sup>301</sup> “Ahmad” was sentenced to 50 lashes and to pay a fine of 2000 USD by a court in Bu’ale, a city not far from Kismayo, for watching sex videos on his mobile phone. Likewise, “Haliima” was sentenced to 40 lashes and two weeks in jail by the residential court in Kismayo for selling *khat* leaves inside her house, instead of going to the market outside the city where such trade was allowed according to the limited ban previously issued.<sup>302</sup>

Although it seems that the *qāḍī* courts implement decrees issued by the Fatwā Council, it is not clear to what extent they are regulated by the Council when it comes to actual application of the law. In other words, do the *qāḍīs* take orders directly from the Council, or are they to some extent able to exercise *ijtihād*, i.e. individual reasoning, in each case? Are there any difference in this regards between the provincial courts and residential courts? Some informants assert that the Fatwā Council controls the courts quite strictly, while others say that it only gives guidelines and suggests how to interpret a certain case, without being binding upon the *qāḍī*’s decision. Likewise, some respondents claim that the provincial courts assert control over the residential courts, while others claim that every court is independent and that a court case being tried in one court is final and may not be heard again in another court. However, contrary to this last claim, Hansen asserts that there is some opportunity to appeal within the *qāḍī* court system, although he does not elaborate on this point except from claiming that the Fatwā Council may issue *fatwās* which overrule all other court rulings.<sup>303</sup>

Although the available information about al-Shabaab’s relation to the court system does not suggest anything certain, cases like “Roble’s” mentioned above, where the trial and sentencing probably served as punishment for his refusal to join the ranks of al-Shabaab, could indicate that the central leadership may use the *qāḍīs* and their courts as tools in order to achieve certain political goals. This assertion also finds support in the fact that leading al-

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<sup>300</sup> Interview with “Muhtab” conducted by the author in Nairobi, October 2010.

<sup>301</sup> U.S. Department of State, *2009 Human Rights Reports: Somalia, Human Rights Reports*.

<sup>302</sup> Interviews with “Ahmad” and “Haliima” were conducted by Mohamed and Abdow in Nairobi, November 2010 and February 2011.

<sup>303</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 80.

Shabaab officials like Mukhtar Robow, Fuad Shangole and Abu Mansoor Al-Amriki were present alongside the chief *qāḍī* at the “trial” of “Roble” and the following execution.

## **Chapter 9: *Sharī’a* as a means or an end?**

The legal and law enforcement system of al-Shabaab is a mixed blessing. On the one hand it has considerably improved the general security of common citizens: it has reduced the level of serious crimes, and for the first time in many years Somalis have experienced a system that investigates, prosecutes and adjudicates violators, sometimes even state officials. On the other hand, the introduction of strict prescriptions regulating social conduct as well as the application of harsh and often seemingly arbitrary punishment has caused much fear and suffering, and therefore overshadowed the relative security brought by the al-Shabaab regime.

Indeed, the fact that infringements and extra-judicial killings are committed by state representatives is hardly surprising taken into consideration the anarchic situation that has been prevalent in South Central Somalia for the last decade, the militaristic and rough nature of al-Shabaab, and the lack of legal education and training of al-Shabaab’s officials. Although such factors may explain the legal reality on the ground in the al-Shabaab controlled areas, some traits displayed in the analysis deserve further explanation. For example, why do the al-Shabaab *qāḍīs* in many respects seem to follow the procedure and rules of evidence as outlined in classical *fiqh* when it comes to cases of murder and bodily harm, while it seems that they clearly diverge from *fiqh* rules in *ḥadd* cases? Why does al-Shabaab conduct extra-judicial executions of Muslims who have converted to Christianity while most other serious cases are tried by the courts? Why does al-Shabaab prescribe strict regulations of social and religious conduct and punish violations thereof so harshly?

In order to answer these questions, I shall turn to al-Shabaab ideology and its indebtedness to the Jihadi-Salafi discourse.

### **9.1 The utopian society of *al-salaf al-ṣāliḥ***

As already argued, al-Shabaab fits well into Wictorowicz’s Jihadi category of the Salafi trend both in terms of propaganda and actual practice as exemplified by the demolition of Sufi shrines, suicide bombers and the willingness to kill fellow Muslims deemed to be *kuffār* (sg. *kāfir*), i.e. unbelievers. Through the prism of the absolute unity of God (*tawḥīd*) al-Shabaab strives to ban all behavior which in their view lacks a basis in the Qu’rān or the *ḥadīth*, understood to constitute the blueprint for a righteous, Muslim society. Al-Shabaab’s law



enforcement may therefore be viewed as a part of a strategy applied to create this pristine society. When “un-Islamic” practices are defined as *shirk* (“polytheism”), e.g. veneration of Sufi Sheikhs, or *bid’a* (“innovation”), e.g. music, dance, TV or Western clothing, they must be purged from the Islamic society. By making use of prevalent notions and symbols from the the Salafi discourse as well as classical theological-legal concepts such as *hisbah*, al-Shabaab seeks to construct a framework in which its actions are sanctioned and its regime is legitimized as a true representative of Islam. As an al-Shabaab propaganda pamphlet propagates: “Allāh has opened us a wide door to carry out this responsibility in order to protect this society from immorality and guide it towards loftiness.”<sup>304</sup>

As previously mentioned, Salafis maintain that God is the sole legislator and that God’s laws are materialized in the *sharī’a*. Therefore any form of human legislation which deviates from *sharī’a* is regarded as an un-Islamic innovation, and to follow such laws amount to unbelief. A regime like al-Shabaab which propagates Salafi ideology will necessarily emphasize *sharī’a* as one of its most important goals. It is therefore no surprise that Sheikh Muqtar Robow, al-Shabaab’s spokesman at that time, on January 4, 2009 stated that al-Shabaab “wants to implement *sharī’a* completely – every single element of it. That’s what the movement stands for.”<sup>305</sup>

Historical and contemporary studies of Muslim majority states show that they differ considerably when it comes to how to organize their legal systems as well as how to apply and enforce the law.<sup>306</sup> Nevertheless, the case of al-Shabaab is in many respects striking as *sharī’a* seems to be the only recognized source of law. In contrast, most contemporary and historic Muslim states recognize and have recognized additional secular constitutions or sultan’s (state) laws that operate outside the jurisdiction of *sharī’a*. As Vogel points out, even the traditionalistic Saudi Arabia recognizes *nizāms*, i.e sultan’s decrees, within certain areas.<sup>307</sup> However, taken into consideration the al-Shabaab’s Jihadi-Salafi appearance it may not be surprising to find that it emphasizes *sharī’a* as the only law, as any non-*sharī’a* laws or regulations easily would have been understood as *bid’a*, and thus un-Islamic.

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<sup>304</sup> Global Islamic Media Front, *The forgotten Obligation: A Call to the Most Important Obligation After Iman*, p.4.

<sup>305</sup> MEMRI: Middle East Media Research Institute, *In-Depth Report on Shabab Al-Mujahideen in Somalia - Activists Demolish Churches: "We Will Establish Islamic Rule From Alaska & Chile to South Africa, & From Japan to Russia – Beware, We Are Coming"*.

<sup>306</sup> See for example: Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*.

<sup>307</sup> Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, p. 175.

Al-Shabaab's Jihadi-Salafi standpoint may also explain the many strict and often seemingly odd prohibitions and commandments issued by al-Shabaab to regulate all sorts of social and religious behavior. If one is to take seriously the message displayed in an al-Shabaab propaganda pamphlet, namely to “achieve the Pleasure of Allah by establishing the Tawheed”, “demolish the framework of apostasy and topple the system of secularism”, purge “the apparent symbols of polytheism and idolatry, such as tombs and domes” and advocate “Obedience [to God], not Innovation”,<sup>308</sup> many of the al-Shabaab regulations may be understood as efforts to force the Somali society into a right track and to purify it from any un-Islamic elements, be it music, dancing, modern and western clothes, saint's worship etc. The execution of Christian converts without trial makes sense when seen within such a perspective, as any apostate from Islam constitutes an obvious un-Islamic element within a righteous society.

In the al-Shabaab pamphlet cited above, the “Implementation of the Hudood, through which Allah granted us the ability to keep roads secure and ensure peace in a way unseen in Somalia for decades”,<sup>309</sup> is listed as one of al-Shabaab's goals. However, in addition to having practical effects in terms of increasing the level of security and creating law and order, application of Islamic criminal law, especially enforcement of the *hudūd* punishments, plays an important symbolic role. As Peters argues, *hudūd* punishments have in a sense been the litmus test to decide whether or not a Muslim governance could be termed Islamic.<sup>310</sup> As such, public executions of alleged thieves, adulterers and robbers, apostates, murderers and spies are important to al-Shabaab not only as means to punish offenders and to discourage future violations, but as a sign that al-Shabaab is a true guardian of *sharī'a* and hence a legitimate Islamic government.

But there is a problem to this: when al-Shabaab or more precisely the al-Shabaab *qāḍīs* try criminal cases, they face similar problems as their predecessors have faced before them, namely the strict *fiqh* requirements of evidence and procedure, especially in *ḥadd* cases. Motivated, as previously mentioned, by a *ḥadīth* stating that the *hudūd* punishments should be averted by the presence of the slightest doubt, the classical legal scholars outlined provisions which made it difficult to apply the *hudūd* punishments.<sup>311</sup> Consequently, as previously noted,

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<sup>308</sup> Global Islamic Media Front, *The forgotten Obligation: A Call to the Most Important Obligation After Iman*, pp. 3-4.

<sup>309</sup> Ibid, p. 5.

<sup>310</sup> Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, pp. 144-145.

<sup>311</sup> Hallaq, *Sharī'a: Theory, Practice, Transformations*, pp. 311-312

*hadd* punishment for adultery, theft and robbery have seldom been applied throughout history. But as my material suggests, the *qāḍīs* seem to resolve this “problem” in two ways: either they overlook the strict rules of evidence and the requirements that have to be fulfilled, for example, the number of male eyewitnesses who actually saw the criminal act. Alternatively, the *qāḍīs* just announce that the accused has confessed the crime, or they display “evidence” that “proves” the accusations, e.g. allegedly stolen objects. Therefore, the fact that corporal punishments and executions are frequently enforced in public is in many respects more important than whether the legal proceedings are in accordance with the strict requirements outlined in classical *fiqh*.

## **9.2 Jihadi-Salafi ideology – the pragmatic side**

As already indicated al-Shabaab’s actions have not surprisingly more to it than mere idealism. Al-Shabaab’s judicial practice, enforcement of law and strict social regulations, as well as extensive use of Jihadi-Salafi rhetoric cannot be understood properly without taking into consideration its pragmatic prerogatives. Firstly, there is clearly a political aspect to some of the court rulings and public punishments, for example in the “Roble” case and in the case of the Ibrahim brothers. In both cases the convicts asserted their innocence and believe they were punished for political reasons. If this is true, the punishment of “Roble”, for example, would be a serious reminder for other boys not to follow his example. The fact that Fu’ad Shangole, one of the leading al-Shabaab leaders came back to “Roble” and the other convicts after a few days and made new amputations (three more fingerbreadths up from of the stumps) could support such a claim.

Another aspect worth mentioning is al-Shabaab’s Salafi statements and flirtation with al-Qa’ida. Although this rethoric most likely says something about the group’s world view and values, it must also be seen as an attempt to draw support from other radical Islamists, particularly in terms of financial support and foreign recruits.<sup>312</sup> However, while some al-Shabaab statements may be directed at the Middle East and global Jihadi movements, other statements may, as Hansen points out, be directed at a local audience.<sup>313</sup> Examples of the latter could be statements targeting clanism or tribalism, as the one Abu Mukhtar Robow is reported to have given: “’from now on it is prohibited to say that so-and-so clan cannot control over there, or so-and-so clan cannot govern so-and-so region’. He made it clear that

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<sup>312</sup> See for example Ali, “The Anathomy of al-Shabaab”, pp. 3-10.

<sup>313</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 11.

this land belongs to Allāh and anyone who imposes the Islamic law in it can govern it.”<sup>314</sup> Likewise, the senior al-Shabaab official Abu Mansoor al-Amriki emphasizes al-Shabaab’s pan-Islamism in opposition to the clan-backed politics of the former Islamic Court Union, stating that “the Courts [ICU] used to judge over each individual tribe”, whereas “Al-Shabaab were made up of many different tribes.”<sup>315</sup> Such statements, which emphasize al-Shabaab’s Islamist nature and similarly denounce the traditional clan system, could be understood to constitute a strategy applied in order to depict itself as an alternative to a clan based regime which historically has led to division rather than unity.

As the historical sketch in chapter 3 displays, the clan has played a decisive role in Somali politics, not least during the 1990s and early 2000s when they stemmed the tide of Islamic actors who strived to get political influence through the many locally based *sharī’a* courts. In many respects the real power remained with the clans and sub-clans and its warlords. However, the unwritten rule that Islamic identity should compliment rather than challenge “the primacy of clanism”,<sup>316</sup> has been widely challenged by al-Shabaab: First, it has as mentioned used anti-clan rethoric and propagated Islamist and Salafi values and symbols in order to construct an alternative Somali identity. Secondly, al-Shabaab has been quick to apply *sharī’a* rules as soon as it has gained control over a new territories. For example in Baidoa, the interim al-Shabaab administration, according to Hansen, implemented the first death penalty only four days after the takeover. Many poor Somali girls were soon arrested because they could not afford the veils that al-Shabaab had ordered all females to wear.<sup>317</sup> By stressing the application of Islamic criminal law, al-Shabaab not only managed to create fear and improve law and order locally, it also opposed traditional *xeer* and the authority of the elders.<sup>318</sup> The Islamic inspired punishments now being inflicted radically diverges from traditional conflict resolution previously described where an offence would be treated collectively: the case will be thoroughly discussed by the elders from the sides of both parties, and, subsequently, they will make a decision which mostly results in payment of *diya* by the offender’s *diya*-paying group.

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<sup>314</sup> Daveed Garstein-Ross, “The Strategic Challenge of Somalia’s Al-Shabaab Dimensions of Jihad”, *Middle East Quarterly*, (Fall 2009), <http://www.meforum.org/2486/somalia-al-shabaab-strategic-challenge?gclid=CLT-geawsKMCFYxi2godo0-W3w>, [24.10.11], p. 6.

<sup>315</sup> *Ibid*, 5-6.

<sup>316</sup> Ali, “The Anatomy of al-Shabaab”, p. 19.

<sup>317</sup> Hansen, *Report for the Norwegian Defence Research Establishment*, p. 69.

<sup>318</sup> According to “Farouk”, a Somali informant from Mogadishu, al-Shabaab primarily controls the main urban centers, while throughout the countryside traditional authority and *xeer* is still widely applied.

In addition to the Salafi rhetoric and application of *sharī'a* as a means of combating traditional clan power, al-Shabaab has also managed to establish militias with weak clan-ties. According to Ali, one of their strategies is to aggressively recruit very young fighters who are not yet too deeply involved in the clan's practice, and to indoctrinate them with global Jihadi ideology. Al-Shabaab also upsets the existing clan order systematically by empowering persons from weak and minor clans and gives them senior positions within the organization. In some cases they are even encouraged to use their newfound powers against clans that have traditionally been superior in strength.<sup>319</sup> As such, al-Shabaab clearly demonstrates that traditional clan logic is no longer prevalent. However, while striving to oppose and transcend clan structures, al-Shabaab simultaneously makes extensive use of the "clan-card" whenever it suits their goals. For example, it has suited them to give all the major clans positions within al-Shabaab's senior leadership, and have at times chosen to support one sub-clan against another sub-clan in local conflicts.<sup>320</sup>

Although al-Shabaab has been relatively successful in overcoming clan boundaries, it has grappled with the Somali public. According to Ali, the extensive use of non-Somali, Jihadi symbols and identities, for example the use of a black flag with the *shahāda* (the declaration of faith) emblazoned on it (a slight variation from al-Qa'ida's flag) instead of the Somali flag, and the use of propaganda videos showing al-Shabaab militia singing Arabic songs that glorify suicide bombings, have unnerved many Somalis and cast doubt on al-Shabaab's purported goal of liberating Somalia.<sup>321</sup> Another contested issue is al-Shabaab's application of *sharī'a*. Despite the fact that several of my informants appreciate the generally improved security situation in al-Shabaab dominated areas, and some of them even sympathetic to their aim of strengthening the Islamic public moral, almost all interviewees explicitly criticized al-Shabaab's harsh and brutal punishment of alleged offenders. Several informants explained to me that this brutal enforcement was not "the right" *sharī'a*, even though they recognized that corporal punishments is explicitly stated in the sacred texts and the Islamic scholarly tradition. These informants were well acquainted with the requirements of traditional *fiqh* and pointed out to me the many requirements that must be fulfilled and the strict rules of evidence that should be taken into consideration. The fact that al-Shabaab for example punishes theft with amputation while a high percentage of the population suffer from poverty, and punishes adulterers by stoning without having four witnesses to the actual

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<sup>319</sup> Ali, "The Anatomy of al-Shabaab", p. 19-20.

<sup>320</sup> Ibid, pp. 20-22; Hansen, *Report for the Norwegian Defence Research Establishment*, p. 68.

<sup>321</sup> Ali, "The Anatomy of Al-Shabaab", p. 22.

penetration, demonstrates, in their view, that al-Shabaab fails to apply the “proper” *sharī’a*. Nobody seemed to believe that the convicts of these cases, who often were said by al-Shabaab to have admitted to the accusations, actually were guilty.

As rulers of large parts of Somalia, al-Shabaab faces a dilemma: they have used Jihadi-Salafi rhetoric and symbols such as *sharī’a* to arrive where they are. To keep the political power is another matter. So far, it seems that al-Shabaab has tried to gain legitimacy by enforcing harsh corporal punishments and banning “un-Islamic” behavior. Their willingness to use violence conforms well to Jihadi-Salafi ideology, but may reduce the legitimacy of the regime if its judicial practice diverges too much from traditional Somali norms and values.

## Bibliography

### 1. Primary sources

- Al-Misri, Ahmed ibn. *Reliance of the Traveller: Revised Edition: The Classical Manual of Islamic Sacred Law 'Umdat al-Salik' by Ahmad ibn Naqib al-Misri (d. 769/1368)*. Nuh Ha Mim Keller (ed.). Beltsville: Amana Publications, 1994.
- Amnesty International. *Somalia: Girl stoned was a child of 13*, (13 October 2008), <http://www.amnesty.org/en/for-media/press-releases/somalia-girl-stoned-was-child-13-20081031>, [14.09.2011]
- Ansar AlJiad Network. *Somalia: Islamists impose khat ban in Kismayo*. www.As-Ansar.com, (24 January 2009), <http://www.ansar1.info/showthread.php?t=823>, [27.09.11].
- Australian Government: Refugee Review Tribunal. *Country Advice Somalia: Somalia – SOM37002 –Amputations – Al-Shabaab – Clans – Recruitment*. (9 July 2010), [www.mrt-rrt.gov.au/ArticleDocuments/177/som37002.pdf.aspx](http://www.mrt-rrt.gov.au/ArticleDocuments/177/som37002.pdf.aspx), [12.09.2011].
- BBC News. *Somalis grow fearful of Islamists*. BBC, (12 November 2008), <http://news.bbc.co.uk/2/hi/7722701.stm>, [14.09.2011].
- \_\_\_\_\_. *Somalis watch double amputations*. BBC, (25 June 2009), <http://news.bbc.co.uk/2/hi/africa/8118306.stm>, [14.09.2011].
- Center for Muslim-Jewish Engagement. *Translation of Sahih Bukhari, Book 52*. University of Southern California, <http://www.cmje.org/religious-texts/haḍīth/bukhari/052-sbt.php>, [18.10.2011].
- Charisma News. *You are here: World Muslims Behead Somali Convert to Christianity*, (14 September 2011), <http://www.charismanews.com/world/31975-muslims-behead-somali-convert-to-christianity>, [18.09.11]
- Christian Persecution Info. *Somalia: Christian Aid Workers Beheaded for Converting from Islam*. Compass Direct News, (28 October 2008), <http://www.christianpersecution.info/news/somalia-christian-aid-workers-beheaded-for-converting-from-islam-16822/>, [22.09.11]
- Christian Telegraph. *15th Christian leader killed in Somalia, says ICC*, <http://www.christiantelegraph.com/issue7664.html>, [18.09.11]
- Compass Direct News. *Convert from Islam Shot Dead*, (20 July 2009), <http://www.compassdirect.org/english/country/somalia/4496/>, [18.09.2011]
- Garowe Online, *Somalia: Al Shabaab fighters 'destroy graves' in Kismayo*, (9 December 2008), [http://www.garoweonline.com/artman2/publish/Somalia\\_27/Somalia\\_Al\\_Shabaab\\_fighters\\_destroy\\_graves\\_in\\_Kismayo.shtml](http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Al_Shabaab_fighters_destroy_graves_in_Kismayo.shtml), [23.06.2011].

- \_\_\_\_\_ *Somalia: Baidoa protests against Al Shabaab khat order*, (25 March 2009), [http://www.garoweonline.com/artman2/publish/Somalia\\_27/Somalia\\_Baidoa\\_protests\\_against\\_Al\\_Shabaab\\_s\\_khat\\_order.shtml](http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Baidoa_protests_against_Al_Shabaab_s_khat_order.shtml), [23.09.2011].
- Guled, Abdi. *Somali Islamists name new administration for key southern port city*, Mareeg Online, <http://www.mareeg.com/fidsan.php?sid=7723&tirsan=3>, [30.09.2011].
- Global Islamic Media Front. *Allāh's death penalty applied to two spies who committed the crime of spying for the crusader enemy and their apostate minions*. Sada al-Jihād Media Center, (16 October 2009), <http://www.alqimmah.net/archive/index.php/t-6158.html>, [24.09.2011].
- \_\_\_\_\_ *Translated official reports: from youth mujahiden movement*. Sada al-Jihād Media Center, (22 May 2009-23 December 2009), <http://www.alqimmah.net/archive/index.php/t-6158.html>, [02.09.2011].
- \_\_\_\_\_ *The forgotten Obligation: A Call to the Most Important Obligation After Iman*. Forgottenobligation. (29 April 2010), <http://forgottenobligation.wordpress.com/2010/04/29/mujahideen-youth-movement-al-shabaab-%E2%80%9Cand-on-that-day-the-believers-will-rejoice%E2%80%9D/>, [14.06.2010] (URL not longer available).
- \_\_\_\_\_ *Youth Mujahideen Movement: Graduation Ceremony at the Abdullah Azzam Training Center*. Sada al-Jihād Media Center, (5 May 2010), <http://www.aussiemuslims.com/forums/showthread.php?37267-Youth-Mujahideen-Movement-Graduation-Ceremony-at-the-Abdullah-Azzam-Training-Center>, [02.09.2011].
- \_\_\_\_\_ Youth mujahideen movement: The graduation of 130 Islamic preachers in banadir province. Al-qimmah Media, (16 January 2011), <http://alqimmah.net/showthread.php?t=21766>, [05.09.11]. Translated from Arabic to English by Adiam Tesfamariam.
- \_\_\_\_\_ *Youth Mujahideen Movement: Execution of two men square "maslax" north of the capital Mogadishu 01/04/1432*. Sada al-Jihād Media Center, (9 March 2011), <http://www.alqimmah.net/archive/index.php/t-22215.html>, [09.09.11].
- Human Rights Watch. *Somalia: Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*, (April 2010), [http://reliefweb.int/sites/reliefweb.int/files/resources/49BC35FD9F0434CF4925770B0004D609-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/49BC35FD9F0434CF4925770B0004D609-Full_Report.pdf), [21.09.2011].
- \_\_\_\_\_ *World Report 2011: Somalia*, <http://www.hrw.org/world-report-2011/somalia>, [14.09.11].
- Hussein, Mohammed Omar. *Somalia: Al-Shabab chops off ones hand, takes another's life*. Somaliweyn Media Center, (26 April 2010), [http://www.somaliweyn.org/pages/news/Apr\\_10/26Apr27.html](http://www.somaliweyn.org/pages/news/Apr_10/26Apr27.html), [14.09.11].



- International Christian Concern. *Muslims Behead Four Christian Orphanage Workers in Somalia*. Assyrian International News Agency, (11 August 2009), <http://www.aina.org/news/20090811144715.htm>, [18.09.11].
- MEMRI: Middle East Media Research Institute. *In-Depth Report on Shabab Al-Mujahideen in Somalia - Activists Demolish Churches: "We Will Establish Islamic Rule From Alaska & Chile to South Africa, & From Japan to Russia – Beware, We Are Coming"*. Special Dispatch no. 2181, (9 January 2009), <http://www.memri.org/report/en/0/0/0/0/0/3004.htm>, [03.09.2011].
- Mohamed, Mohamed, *Somali rage at grave desecration*, BBC, (8 June 2009), <http://news.bbc.co.uk/2/hi/africa/8077725.stm>, [23.06.11].
- Selander, Torbjörn. *Svenske medborgaren ger order om stympning*. Expressen, 10.01.2011, <http://www.expressen.se/nyheter/1.2284722/svenske-medborgaren-ger-order-om-stympning>, [12.10.2011].
- Shabelle News, *Al Shabaab executes two teenagers for allegedly spying for Somali govt*, Shabelle Media Network, <http://www.shabelle.net/article.php?id=7754>, [22.09.11].
- Strand, Tormod, Runar Henriksen Jørstad and Jørund Hessevik. - *Dere kommer ikke til paradis*. NRK, 26.03.2011, <http://www.nrk.no/nyheter/norge/1.7566251>, [12.10.11].
- The Christian Post. *Islamic Radicals Kill Christian Convert in Somalia*, (24 February 2011), <http://www.christianpost.com/news/islamic-radicals-kill-christian-convert-in-somalia-49143/>, [18.09.11].
- SVT.se. *Asho, 13 år, stenades till döds*. Rapport, (16 March 2009), [http://svt.se/2.106391/1.1481487/asho\\_13\\_ar\\_stenades\\_till\\_dods&queryArt1451716=al-Shabaab+&sortOrder1451716=0&doneSearch=true&sd=105671&from=siteSearch&pageArt1451716=2](http://svt.se/2.106391/1.1481487/asho_13_ar_stenades_till_dods&queryArt1451716=al-Shabaab+&sortOrder1451716=0&doneSearch=true&sd=105671&from=siteSearch&pageArt1451716=2), [16.09.2011].
- Reynalds, Jeremy. *Somali Islamists Execute Christian Convert*. ASSIST News Service, (7 July 2010), <http://www.assistnews.net/Stories/2010/s10070036.htm>, [18.09.11]
- Rice, Xan. *Somali schoolboy tells of how Islamists cut off his leg and hand*. The Guardian, 20.10.2010, <http://www.guardian.co.uk/world/2010/oct/20/somali-islamists-schoolboy-amputation-ordeal>, [12.10.2011]
- U.S. Department of State. *2009 Human Rights Reports: Somalia*. Human Rights Reports, Bureau of Democracy, Human Rights, and Labor, (11 March 2010), <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135976.htm>, [23.09.11]
- Xurmo.nett. *Mugadishu (Xurmo) Al-shabab insurgents made a great punishment*. Xurmo Radio, (25 June 2009), <http://xurmo.net/view.php?id=520>, [30.09.2011]

## 2. Secondary sources

- Abdullahi, Mohamed Diriye. *Culture and Customs of Somalia*. Westport: Greenwood Press, 2001.
- Adam, Hussein M. "Islam and Politics in Somalia". *Journal of Islamic Studies* 6, 2, (1995): 189-221.
- Ali, Abdirahman "Aynte". "The anatomy of Somalia's Al-Shabaab Jihādists", *Horn of Africa* 27, (2009), <http://www.scribd.com/doc/34053611/The-Anatomy-of-Al-Shabaab-by-Abdi-Aynte>, [14.10.2011].
- Anderson, J. N. D. *Islamic Law in Africa*. London: Frank Cass & Co., 1970 (1955).
- Aukrust, Knut. "Det informerte samtykke og andre kategoriske imperative: Om feltarbeidets etikk". In Anders Gustavsson (ed.). *Kulturvitenskap i felt: Metodiske og pedagogiske erfaringer*, 219-242. Kristiansand: Høyskoleforlaget AS, 2005.
- Brown, Jonathan A. C. *Hadīth: Muhammad's Legacy in the Medieval and Modern World*. Oxford: Oneworld Publications, 2009.
- Burr, Vivien. *Social Constructionism*. 2nd ed. London: Routledge, 2003.
- Creswell, John W. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. 3rd ed. Los Angeles: Sage Publications, 2009.
- El-Awa, Mohamed S. *Punishment in Islamic Law: A Comparative Study*. Plainfield: American Trust Publications, 2000.
- Eriksen, Anne and Anne Stensvold. *Maria-kult og helgendyrkelse i moderne katolisisme*. Oslo: Pax Forlag, 2002.
- Fonneland, Trude A. "Kvalitative metoder: Intervju og observasjon". In Siv Ellen Kraft and Richard J. Natvig (eds.). *Metode i religionsvitenskap*, 222-242. Oslo: Pax Forlag, 2006.
- Gartenstein-Ross, Daveed. "The Strategic Challenge of Somalia's Al-Shabaab Dimensions of Jihād". *Middle East Quarterly*, (Fall 2009), <http://www.meforum.org/2486/somalia-al-shabaab-strategic-challenge>, [30.09.11], 25-36.
- Gundel, Joakim and Ahmed A. Omar Dharbaxo. *The predicament of the 'Oday': The role and structures in security, rights, law and development in Somalia*. Nairobi: Danish Refugee Council & Novib/Oxfam, November 2006, [http://www.logcluster.org/ops/som/infrastructure-communication-various/Gundel\\_The%20role%20of%20traditional%20structures.pdf](http://www.logcluster.org/ops/som/infrastructure-communication-various/Gundel_The%20role%20of%20traditional%20structures.pdf), [03.08.2011].
- Hallaq, Wael. *Sharī'a: Theory, Practice, Transformations*. Cambridge: Cambridge University Press, 2009.

- Hansen, Stig J. "Misspent youth: Somalia's Shabab insurgents". *Jane's Intelligence Review* 20, 10, (2008): 16-21.
- \_\_\_\_\_. "Somalia: Grievance, Religion, Clan, and Profit". In Stig J. Hansen, Atle Mesøy and Uncay Kardas (eds.), *The Borders of Islam: Exploring Huntington's Faultlines, from al-Andalus to the Virtual Ummah*, 127-138. London: Hurst&Co, 2009.
- \_\_\_\_\_. *Report for the Norwegian Defence Research Establishment*. 2011(forthcoming).
- Haykel, Bernard. "On the Nature of Salafī Thought and Action". In Roel Meijer (ed.), *Global Salafism: Islam's New Religious Movement*, 33-57. New York: Columbia University Press, 2009.
- International Crisis Group, "Somalia's Divided Islamists", Africa Briefing no.74 (18 May 2010), [http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/somalia/B74%20Somalias%20Divided%20Islamists.pdf](http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/somalia/B74%20Somalias%20Divided%20Islamists.pdf), [01.09.2011].
- Khosrokhavar, Farhad. *Inside Jihādism: Understanding Jihādi Movements Worldwide*. Boulder: Paradigm Publisher, 2009.
- Le Sage, Andre. *July 2005 Report: Stateless Justice in Somalia. Formal and informal Rule of Law initiatives*. Geneva: Centre for Humanitarian Dialogue, July 2005, [http://www.ssrnetwork.net/uploaded\\_files/4397.pdf](http://www.ssrnetwork.net/uploaded_files/4397.pdf), [04.08.2011].
- Lewis, Ioan M. *Blood and Bone: The Call of Kinship in Somali Society*. Lawrenceville: The Red Sea Press, 1994.
- \_\_\_\_\_. *Saints and Somalis: Popular Islam in A Clan-based Society*. Asmara: The Red Sea Press, 1998.
- \_\_\_\_\_. *A pastoral democracy: A study of pastoralism and politics among the Northern Somali of the Horn of Africa / I.M. Lewis ; new introduction by Said Samatar and new afterword by I.M. Lewis*. Oxford: LIT and James Currey, 1999 (1961).
- \_\_\_\_\_. *Understanding Somalia and Somaliland: Culture, History, Society*. London: Hurst&Company, 2009.
- Marchal, Roland. "A tentative assessment of the Somali Harakat Al-Shabaab". *Journal of Eastern African Studies*, 3, 3, (2009): 381-404.
- Marchal, Roland. *The Rise of a Jihādi Movement in a Country at War: Harakat al-Shabaab al-Mujaheddin in Somalia*. Paris: SciencesPo, March 2011, <http://www.ceri-sciencespo.com/ressource/shabaab.pdf>, [19.08.2011].
- Meijer, Roel. "Introduction". In Meijer, Roel (ed.). *Global Salafism: Islam's New Religious Movement*. London: Hurst & Company, 2009.
- Mehdi, Rubya. *The Islamization of the Law in Pakistan*, London: Curzon Press, 1994.

- Neuman, Iver B. *Mening, materialitet, makt: En innføring I diskursanalyse*. 2nd ed. Bergen: Fagbokforlaget, 2002.
- Olsen, Torjer A. "Diskursanalyse i religionsvitenskapen". In Kraft, Siv Ellen and Richard J. Natvig (eds.). *Metode i religionsvitenskapen*, 51-71. Oslo: Pax Forlag, 2006.
- Paz, Reuven, "The Youth are Older: The Iraqization of the Somali Mujahidin Youth Movement", *Global Research in International Affaris Center: The Project for the Research of Islamist Movements (PRISM) Occational Papers* 6, 2, (December 2008), [http://www.e-prism.org/images/PRISM\\_no\\_2\\_vol\\_6\\_-\\_Millat\\_Ibrahim\\_-\\_Dec08.pdf](http://www.e-prism.org/images/PRISM_no_2_vol_6_-_Millat_Ibrahim_-_Dec08.pdf), [02.09.11].
- Peters, Rudolph. *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*. Cambridge: Cambridge University Press, 2007.
- Taarnby, Michael and Lars Hallunbaek. *Al-Shabaab: The Internationalization of Militant Islamism in Somalia and the Implications for Radicalisation Processes in Europe*. Report for the Danish Ministry of Justice: February 2010, [http://www.justitsministeriet.dk/fileadmin/downloads/Forskning\\_og\\_dokumentation/Forskningspulje/Taarnby-rapport.pdf](http://www.justitsministeriet.dk/fileadmin/downloads/Forskning_og_dokumentation/Forskningspulje/Taarnby-rapport.pdf), [06.09.2011].
- Wagemakers, Joas. "The Transformation of a Radical Concept: *Al-wala' wa-l-bara'* in the Ideology of Abu Muhammad al-Maqdisi". In Roel Meijer (ed.). *Global Salafism: Islam's New Religious Movement*. New York: Columbia University Press, 2009.
- Van Notten, Michael. *The Law of the Somalis: A Stable Foundation for Economic Development in the Horn of Africa*. Spencer Heath MacCallum (ed.). Asmara: The Red Sea Press, 2005.
- Vikør, Knut S. *Mellom Gud og stat: Ei historie om islamsk lov og rettsvesen*. Oslo: Spartacus Forlag, 2003.
- Vogel, Frank E. *Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden: Brill, 2000.
- Wasti, Tahir. *The Application of Islamic Criminal Law in Pakistan: Sharia in Practice*. Leiden: Brill, 2009.
- Wiktorowicz, Quintan. "Anatomy of the Salafi Movement", *Studies in Conflict & Terrorism* 29, 3, (2006): 207-239.
- Ziadeh, Farhat J. "Compelling Defendant's Appearance at Court in Islamic Law", *Islamic Law and Society* 3, 3, (1996): 305-315.
- Zubaida, Sami. *Law and Power in the Islamic World*, New York: I. B. Tauris, 2005.
- Öhlander, Magnus. "Utgangspunkter". In Lars Kaijser and Magnus Öhlander (eds.). *Etnologisk fältarbete*, 9-23. Lund: Studentlitteratur AB, 1999.

## Appendix 1

### Court cases tried in al-Shabaab courts where my informants have been directly involved:

#### *Diyalqiṣāṣ cases:*

1. “Shankar” was brought before the regional court in Baidoa, Bay, accused of murder. He had admitted to the accusations during torture in prison, but retracted the admission in court. “Shankar” told the *qāḍīs* that he had shot the victim accidentally after a quarrel about unpaid debt. To support his claim, “Shankar” brought several eyewitnesses to the quarrel that confirmed this. Thereafter, the elders on both sides, who were present during the trial, asked the *qāḍīs* to solve the issue outside the court. They were allowed to do this, and suggested that the accused should pay a *diya* of 7000 USD. The *qāḍīs* agreed.
2. “Ayah” was brought to a court in Bardere, Gedo, accused of assault and of injuring the forehead of the complainant. The Ḥisbah brought the complainant to testify about the incident, and “Ayah” subsequently accepted the allegations. After a discussion whether to compensate or retaliate, the *qāḍīs* sentenced the accused to pay 300 USD as *diya* to the victim.
3. “Mahmod” was brought before a court in Bal’ad, Middle Shabelle, accused of assault with a knife. The injured victim and some other witnesses who had been present during the assault were brought to testify. “Mahmod” claimed that he had acted in self-defense as the victim had turned violent after a quarrel. The elders of both parties were allowed to discuss the incident outside the court, and suggested ten camels, valued at 2000 USD, to be paid to the injured man.
4. “Kora” went to the regional administration in Kismayo to complain about a Ḥisbah official who she accused of killing her boyfriend whom she had intended to marry. She claimed that the official had killed her boyfriend because he had wanted to have her. As evidence of this, “Kora” brought an audio recording with the official threatening her boyfriend. “Kora” was then granted protection, and the official was arrested and executed.
5. “Shamsa’s” husband had been killed by al-Shabaab militia in Baldeweyne, Hiiran, due to suspicions of espionage. After one month of investigation, the Ḥisbah had

established that he had not been a spy. Therefore, the al-Shabaab administration on the city summoned “Shamsa” and some elderly relatives to discuss the matter. They agreed to al-Shabaab’s offer to pay 15000 USD as *diya* to “Shamsa”.

6. “Mohamad Ahmad’s” son, an al-Shabaab militiaman, was brought before the provincial court in Kismayo accused of wounding an innocent man by shooting him in his thigh during a patrol in the city. Four of the militiamen who had been present during the incident were brought to testify. The accused militiaman then admitted the crime, and the victim was given the opportunity to choose between retaliation and *diya*. He chose *diya*, and the accused was sentenced to pay five camels.

#### ***Hadd* cases:**

7. “Fuad” and a woman were brought to a court in Mogadishu accused of *zinā* as they had been caught by al-Shabaab militia while sitting in the same car. Two men who had been present at the time of the arrest gave testimonies in the court. “Fuad” claimed that the woman was his relative whom he planned to marry. However, he was then sentenced to 100 lashes.
8. “Aisha” was brought before a court in Baladweyne, Hiiran, accused of *zinā* with a military officer of the AMISOM forces. As evidence, the *Hisbah* presented three persons who had seen her go to the military camp several times. “Aisha” defended her actions by claiming that she did not have an affair with the officer, but rather that he was helping her with money to pay the medical bill for her sick father. Moreover, she told that she already was married to another man, and that during her initial arrest, lasting for one week, she had lost her unborn baby due to torture inflicted by the *Hisbah* officials. The *qāḍīs* told her that they would not sentence her as she already had faced serious torture and lost her baby, but warned her not to go to the military camp anymore.
9. “Elmi” and his girlfriend were brought before a court in Jowhar, Middle Shabelle, accused of *zinā*. As witnesses the *Hisbah* brought “Elmi’s” uncle and some neighbors. The couple admitted to the crime, and the *qāḍīs* sentenced them to 100 lashes each as they were previously unmarried.
10. “Kadra” went to a court in Mogadishu to complain about a *Hisbah* official who she told had raped her. This happened when she refused to accept his attempts to convince her to marry him. Due to his refusal, the official threatened her, beat her with his

pistol and raped her. When the man was leaving, she screamed, and some of the neighbors recognized the man. However, none of them dared to support “Kora’s” claims in the court as they were afraid of reprisals from al-Shabaab, and the court case was subsequently dismissed due to lack of evidence.

11. “Ayan” was brought before the regional court in Mogadishu accused of *zinā*/prostitution. The only evidence presented by the prosecutor was the accusations of the complainant, who was a Ḥisbah official. However, “Ayan” defended herself by claiming that she was not a prostitute, but a wife and a mother of six children, and that her husband was frequently absent as he was working abroad. The most decisive fact was nevertheless, she claims, that the Ḥisbah official accusing her had wanted to force her to divorce her husband and marry him. “Ayan” told the *qāḍīs* that this was likely the explanation to the accusations brought against her. To support her claims, she brought some of her neighbors and relatives as witnesses and they could confirm her story. They also said that if “Ayan” or some of them were killed, they would hold the *qāḍīs* responsible. The *qāḍīs* then released her and transferred the Ḥisbah official to another town.
12. “Farah” was brought before a court in Baidoa, Bay, accused by his neighbors to have consumed alcohol. As evidence the prosecutor presented five bottles of alcohol which the Ḥisbah had found in his house. However, “Farah” claimed that the bottles were not his, but the *qāḍīs* did not believe him and sentenced him to 80 lashes and to pay a fine of 3 million Somali shillings.
13. “Omar” was brought before a court in Merka, Lower Shabelle, accused of smoking hashish on the beach. As evidence the Ḥisbah brought the hashish he had allegedly been smoking at the time when the Ḥisbah caught him. “Omar” then admitted to the crime, and the *qāḍīs* sentenced him to 80 lashes and to pay a fine of 3 millions Somali shillings.
14. On June 22 2009 “Roble” and three other young men were brought before an outdoor court in Maslaha, at the outskirts of the Animal market in the district of Huriwa, Mogadishu, accused of robbery and espionage. As evidence the *qāḍīs* showed some allegedly stolen mobile phones and pistols to the huge crowd who was ordered to watch the session. In addition, the *qāḍīs* claimed the accused had confessed to their crimes. “Roble” however stressed that he never admitted to any crime. Anyway, the *qāḍīs* sentenced all four to cross-amputation. Three days later, on June 25, the

sentences were carried out at the same place, this time also in front of a huge crowd. Four days after the cross-amputation, Fuad Shangole, a leading al-Shabaab figure, visited the four boys and cut another three fingerbreadths of the stumps as he asserted that the first amputations had been too low.

***Ta'zīr/siyāsa cases:***

15. “Aisha Adan” was brought before a court in Kismayo, Lower Jubba, accused of using a *Thuraya* satellite phone which had previously been prohibited by the al-Shabaab administration. As evidence the prosecutor brought the phone she had allegedly been using. “Aisha Aden” admitted that she had been using it, but told the *qāḍīs* that she had had to use it due to poor network that day. The *qāḍīs* sentenced her to stop working for the NGO where she was an employee, and to pay a fine of 3000 USD.
16. “Ali” was brought before a court in Kismayo, Lower Jubba, accused of assault and for threatening another man. As evidence the Ḥisbah brought the complainant and some neighbors who had witnessed the incident to testify, and they confirmed the accusations. “Ali” admitted to have fought and threatened the complainant, but defended this by referring to a dispute regarding a house which his brother had sold without his consent. The *qāḍīs* sided with the complainant and decided that the house rightfully belonged to the complainant, who was the buyer, and ordered “Ali” not to threaten the man again.
17. “Ahmad” was brought before a court in Bu’ale, Middle Jubba, accused of watching sex videos on his mobile phone. As evidence the Ḥisbah presented the confiscated mobile which still contained the pornographic material. “Ahmad” admitted to the crime, and was sentenced to 50 lashes in a public place and to pay a fine of 2000 USD.
18. “Abdow” was brought before a court in Afgoye, Lower Shabelle, accused of smoking tobacco in his car and resisting the arrest. The Ḥisbah brought two witnesses who were present at the incident to support the accusations. “Abdow” explained that he had not been smoking in public, which was forbidden, but in his own car, which he thought was legal. He explained that he had not been fighting back before the Ḥisbah officials had started beating him. The *qāḍīs*, however, told him that smoking was only allowed in special smoking zones, and that he had no rights to resist his arrest. For these crimes “Ali” was sentenced to six months in jail.



19. “Kadra Ahlo” was brought before a court in Mogadishu accused of hiding a small bag that was thrown into her shop by some al-Shabaab militiamen. The *Hisbah* did not bring any evidence before the *qāḍīs*, only claimed that they were sure that the bag had been thrown into her shop and that they therefore did not need any witnesses. “Kadra Ahlo” admitted that a bag had been thrown into the shop, but explained that since there was fighting in the area at the time of the incident, she was afraid that the bag had contained explosives, and had thrown the bag away. The *qāḍīs* understood “Kadra Ahlo’s” fears, the situation taken into consideration, and decided to release her as the militiamen had not told her that the bag was their property.
20. “Haliima” was brought before the residential court in Kismayo, Lower Jubba, accused of selling *khat* inside her house. The *Hisbah* presented as evidence the *khat* they had found in her possession at the time of the arrest. “Haliima” admitted to selling *khat*, but explained that she had not been able to go to the market where this business is allowed as she is a widow and have five children who she has to take care of. The *qāḍīs* did not take this into consideration, and sentenced her to 40 lashes and two weeks in jail.
21. “Hirsi” was brought before a court in Koryoley, Lower Shabelle, accused of watching a football match at his home, which had been prohibited by the al-Shabaab administration. As evidence the *Hisbah* brought the TV and the decoder. “Hirsi” admitted to the fact, but denied that this should be perceived as a crime. The *qāḍī*, stressing that it was illegal to watch football and movies, sentenced him to 40 lashes and to pay a fine of two million Somali shillings.
22. “Yusuf” was brought before a court in Baladweyn, Hiiran, accused of selling hashish in his shop. As evidence the *Hisbah* brought the hashish that they found in a bag in his shop at the time of his arrest. “Yusuf” denied the accusations, claiming that the bag belonged to his brother-in-law, and that he did not know what it contained. The *qāḍīs* did not believe this, and sentenced him to 80 lashes, five months in jail, and to hand over his shop to the al-Shabaab administration.
23. “Abdullahi Ali” was brought before a court in Mogadishu accused of selling hashish. As evidence the *Hisbah* brought the hashish that they found in his house. “Abdullahi Ali” claimed that the hashish was not his, but belonged to a friend who had previously visited him. The *qāḍīs* did not believe in this, and sentenced him to 40 lashes and three months in jail.

24. “Ali Mohamed” was brought before the residential court in Kismayo, Lower Jubba, accused of selling hashish. As evidence the Ḥisbah brought some witnesses who claimed that they had seen the accused selling hashish to youths in his house. “Ali Mohamed” denied the accusations, but was nevertheless sentenced by the *qāḍīs* to 40 lashes and four months in jail.
25. “Abdikarim” was brought before the residential court in Afgoye, Lower Shabelle, accused of speeding and careless driving. As evidence the Ḥisbah brought three witnesses, a Ḥisbah official and two other persons, who had been passengers in the car, all supporting the accusation. Although “Abdikarim” did not admit to have done anything unlawful, the *qāḍīs* sentenced him to 30 lashes and to be banned from future driving.
26. “Abu Mahmud” was brought before the provincial court at the Bakara market, Mogadishu, accused of speaking to some of his students which were foreign al-Shabaab fighters, even though he had been strictly ordered not to do so. As evidence the prosecutor brought one of the foreign fighters who had been present during the class as a witness. “Abu Mahmud” claimed that his intention was not to break the rules, but he had had to find out whether the students understood his teaching. The *qāḍīs* ordered him not to tell anybody what had taken place during the trial and to continue as a teacher. He was also ordered to bring back the unmarried girls of a group of refugees he had previously helped to escape from Mogadishu, as they were to be married to young al-Shabaab militiamen.
27. “Hassan” was brought before the residential court in Kismayo, Lower Jubba, accused of releasing information, deemed by the al-Shabaab administration to be sensitive, and thus of exposing Muslims to danger. The *qāḍīs* presented as evidence an audio recording of “Hassan’s” news report. “Hassan” admitted to the accusations, but claimed that he had been forced to do so by some unknown militiamen. The *qāḍīs* believed him on this point and told him that they therefore would be more lenient than originally intended, hence “only” giving him an ultimatum leaving the region within 36 hours or be killed.
28. “Haji” was brought before the regional court in Mogadishu accused by his wife of espionage. As evidence the prosecutor brought the complainant, i.e. his wife, as a witness. She claimed that “Haji” was a spy due to the fact that his brother was a major in the TFG forces. “Haji” however denied the accusation brought against him and

claimed that his wife had accused him because she was jealous of his second wife. The *qāḍīs* decided to suspend the case for two weeks in order to conduct further investigations. Instead of being sent back to prison as intended, “Haji” was released when two of his relatives, one al-Shabaab member and a business man, promised to that he would meet before the court when the trial was to continue. However, “Haji” fled the country. Consequently, both his relatives were executed.

29. “Asad” was brought before the regional court in Mogadishu accused of espionage due to the fact that he had made a contract with the TFG to renovate the parliament building. As evidence the Ḥisbah presented documents that they had found in his shop which details about the contract. “Asad” confirmed these facts, but explained that it was only a job he did as a business man, and that he had entered into no other contracts with the TFG. In addition, he pointed out that he supported al-Shabaab by giving them money. The *qāḍīs* told him that everybody found dealing with the TFG was to be perceived as an enemy of al-Shabaab. However, as he had given them money, they “only” sentenced him to transfer all his wealth to the al-Shabaab administration.
30. “Nadifa” was brought before the provincial court of Merka, Lower Shabelle, accused by her neighbor, a Ḥisbah official, of possessing illegal firearms in her house. As evidence the Ḥisbah brought two firearms and some bullets found in her house. “Nadifa” admitted that they belonged to her, but explained that the firearms had been used to guard her small farm during the time before the Islamic Court Union, when there was little control in the area. The *qāḍīs*, however, said that she had violated an official commandment, stating that any illegal weapons should have been handed over to the al-Shabaab administration. “Nadifa” was thus sentenced to one year in prison or to pay a fine of 3000 USD. After seven days her relatives raised the amount, and she was released.
31. “Korfa” was brought before the lower court of Bualle, Middle Jubba, accused of not attending prayers at the local mosque. In order to support the accusations, the Ḥisbah officials who caught him staying in his shop at the time of prayer gave their witness testimonies. “Korfa” then admitted to the fact, but defended his act by pointing out that the mosque was located far away from his shop, and that he prays the five daily prayers at home. As is it obligatory to attend the prayers at the mosque, the *qāḍī* sentenced him to 10 lashes.

32. “Nadif” was brought before the residential court of Bardheere, Gedo, accused of chewing *khat* with his wife in their house. In addition, “Nadif” was in addition accused of storing pornographic content on his mobile phone which the Ḥisbah detected after his initial arrest. As evidence the Ḥisbah presented the *khat* found in his house as well as the confiscated mobile phone with the pornographic content. “Nadif” admitted to the allegations, while the wife said she had chewed *khat* to keep her husband with company. The *qāḍīs* released the wife, citing that “Nadif” was responsible for her behavior, while “Nadif” was sentenced to 30 lashes and to swallow the memory card of his mobile phone.
33. “Laban” was brought before a court in Beledweyne, Hiiran, accused of selling alcohol. As evidence the Ḥisbah brought two crates of alcohol which were found in his vehicle. He defended himself by claiming that he had been asked by one of his passengers to keep some goods for him, and that he gladly had done so, but without knowing the content. The *qāḍīs* sentenced him to hand over his vehicle to the administration of Bulla Barde, Hiiran.
34. “Nadifa” was brought before a court in Jowhar, Middle Shabelle, accused of espionage. However, the prosecutor didn’t bring any evidence in order to support the serious allegations. “Nadifa” told the *qāḍīs* that she believed the accusations rested at the fact that her youngest boy, who had been forcefully recruited to al-Shabaab, had managed to escape, and that some al-Shabaab members suspected her of helping him flee. However, she said that she didn’t have anything to do with his escape, and emphasized that she already had lost one son while fighting for al-Shabaab in Mogadishu. The *qāḍī* dismissed the cases due to insufficient evidence.
35. “Amina”, an elderly woman, was brought before the residential court in Baidoa, Bay, accused of leaving her house without the prescribed allcovering *abāyah*. As evidence the court heard the witness testimonies of the members of the Ḥisbah patrol who caught her three blocks away from her house. She admitted to the fact, but claimed that she had no intention to break the law as she was only saying goodbye to her cousin’s sister. The *qāḍīs* sentenced her to 15 lashes.
36. “Ali Hussein” was brought before the provincial court of Merka, Lower Shabelle, accused of growing tobacco (which is illegal). As evidence the prosecutor displayed the tobacco found in his car at the time of his arrest, as well as additional tobacco found after a subsequent raid at his farm. “Ali Hussein” admitted to the accusations

and was sentenced to pay a fine of 5000 USD and that his tobacco crop would be burned. In addition, his farm would be supervised in the future.

### **Espionage case tried in a military court:**

37. “Dalmar” was brought before an alleged military court somewhere in the wilderness of the al-Shabaab controlled area, accused of espionage. Eight months earlier he had been abducted and since held in arrest being frequently tortured and interrogated as he at that time was working for a Somali NGO, and had previously been working for international NGOs. The last interrogation took place in front of three officials (the presumed military court) who all wore masks. These men concluded that the arrest of “Dalmar” had been a mistake and that he had been suspected for another man. Therefore, he was transported back to civilization and released. It was the villagers that met him who told him that the persons who had abducted him were members of Amniyaat, and that the last interrogation had taken place in a military court.

### **Sources:**

1. Interview conducted by Mohamed and Abdow in Nairobi, August 2011
2. Interview conducted by Mohamed and Abdow in Nairobi, February 2011
3. Interview conducted by Mohamed and Abdow in Nairobi, April 2011
4. Interview conducted by Mohamed and Abdow in Nairobi, April 2011
5. Interview conducted by Mohamed and Abdow in Nairobi, April 2011
6. Interview conducted by the author in Nairobi, October 2010.
7. Interview conducted by Mohamed and Abdow in Nairobi, November 2010.
8. Interview conducted by Mohamed and Abdow in Nairobi, November 2010.
9. Interview conducted by Mohamed and Abdow in Nairobi, April 2011.
10. Interview conducted by Mohamed and Abdow in Nairobi, April 2011.
11. Interview conducted by Mohamed and Abdow in Nairobi, August 2011.
12. Interview conducted by Mohamed and Abdow in Nairobi, February 2011.
13. Interview conducted by Mohamed and Abdow in Nairobi, February 2011.
14. Interview conducted by the author in Norway, April 2011; BBC News. *Somalis watch double amputations*. BBC, (25 June 2009), <http://news.bbc.co.uk/2/hi/africa/8118306.stm>, [14.09.2011].
15. Interview conducted by Mohamed and Abdow in Nairobi, November 2010.
16. Interview conducted by Mohamed and Abdow in Nairobi, November 2010.
17. Interview conducted by Mohamed and Abdow in Nairobi, November 2010.
18. Interview conducted by Mohamed and Abdow in Nairobi, November 2010.
19. Interview conducted by Mohamed and Abdow in Nairobi, November 2010.
20. Interview conducted by Mohamed and Abdow in Nairobi, February 2011.
21. Interview conducted by Mohamed and Abdow in Nairobi, February 2011.
22. Interview conducted by Mohamed and Abdow in Nairobi, February 2011.
23. Interview conducted by Mohamed and Abdow in Nairobi, April 2011.
24. Interview conducted by Mohamed and Abdow in Nairobi, July 2011.
25. Interview conducted by Mohamed and Abdow in Nairobi, August 2011.
26. Interview conducted by the author in Nairobi, October 2010.
27. Interview conducted by the author in Nairobi, October 2010.
28. Interview conducted by Mohamed and Abdow in Nairobi, November 2010.
29. Interview conducted by Mohamed and Abdow in Nairobi, November 2010.

30. Interview conducted by Mohamed and Abdow in Nairobi, September 2011.
31. Interview conducted by Mohamed and Abdow in Nairobi, September 2011
32. Interview conducted by Mohamed and Abdow in Nairobi, September 2011
33. Interview conducted by Mohamed and Abdow in Nairobi, September 2011
34. Interview conducted by Mohamed and Abdow in Nairobi, September 2011
35. Interview conducted by Mohamed and Abdow in Nairobi, September 2011
36. Interview conducted by Mohamed and Abdow in Nairobi, September 2011
37. Interview conducted by Mohamed and Abdow in Nairobi, August 2011.

## Appendix 2

### Reported al-Shabaab stoning in adultery cases from October 2008 until June 2011<sup>322</sup>:

1. **October 27, 2008, Kismayo, Lower Jubba:** Stoning of Aisha Ibrahim Duhulowfor (13), accused of adultery. She is reported to have been raped at the beach in Kismayo by three al-Shabaab militiamen, and then to have gone to the police station with her aunt to report the offence and to point out the rapists. However, a few days later, two of the suspects were released and Aisha was instead imprisoned. Three days later she was stoned in front of a crowd. The *qāḍīs* are reported to have said that Aisha had chatted up these men, and that she had confessed to adultery. According to her aunt, the *qāḍīs* did not take into consideration on the local radio her reported history of mental illness.
2. **June 28, 2009, Wanla Weyn, Lower Shabelle:** Stoning of Mohammed Mahmud Ubeiydi (27), accused of rape and murder. The *qāḍī*, reported to be Abdul Basit, announced that the offender would face such punishment as he was already married.
3. **August, 2009, Kismayo, Lower Jubba:** Stoning of a woman and a man due to adultery. This is said to have happened after the woman came on her own initiative to the court to report the offence in order to make up for her sins in this life, so that she could escape condemnation in the afterlife. As the woman was a widow and the man was married, they both were sentenced to stoning.
4. **November 6, 2009, Merka, Middle Shabelle:** Stoning of Abas Hussein Abdirahman (33), accused of adultery. Abas's alleged pregnant lover will, according to al-Shabaab officials, be stoned when she has given birth. The *qāḍīs* claim that Abas had admitted to the crime in front of an Islamic court.

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<sup>322</sup> These cases are based on media reports, reports from NGOs and GOs, such as Amnesty International, UNHCR and The U.S. State Department as well as interviews with my own informants. Most of the cases are described in several sources. However, it may be that different reports are using the same source, and as such should be perceived as a single source. Therefore, all this information should be read with caution.

5. **November 17, 2009, El-Bon, Bakool:** Stoning of the woman Halima Ibrahim Abdurrahman (29), accused of adultery. Her presumed lover, Nanah Mohamed Maadey (20) an un-married man, got 100 lashes.
6. **January 17, 2010, Barawe, Lower Shabelle:** Stoning of Hussein Ibrahim Mohamed (25), accused of adultery. He was reported as already married and to have committed the alleged crimes with Khadija Abu Bakr Cabdul Qaadiir, the 17-year old daughter of his sister, who became pregnant. According to al-Shabaab officials he admitted to the crime.
7. **June 16, 2011, Mahas, Hiiran:** Stoning of Sharma'arke Abdullahi Mohamoud, accused of rape of Deqa Abdulle Nur. The alleged perpetrator, who was reported to being married, was said to have admitted to the crime.

**A total of 7 stoning cases and 8 executions.**

#### **Sources:**

1. BBC News. *Somalis grow fearful of Islamists*. BBC, (12 November 2008), <http://news.bbc.co.uk/2/hi/7722701.stm>, [14.09.2011].; Amnesty International. *Somalia: Girl stoned was a child of 13*, (31 October 2008), <http://www.amnesty.org/en/for-media/press-releases/somalia-girl-stoned-was-child-13-20081031>, [14.09.2011].
2. Global Islamic Media Front. *Sentence of stoning against a young man who raped a girl and killed her in a suburb of the city of Welweyn*. Sada al-Jihād Media Center, (1 July 2009), <http://www.alqimmah.net/archive/index.php/t-6158.html>, [14.09.2011]; BBC News. *Somali adulterer stoned to death*. BBC, (6 November 2009), <http://news.bbc.co.uk/2/hi/africa/8347216.stm>, [14.09.2011].
3. Interview with "Mohamed Ahmed" conducted by the author in Nairobi, October 2010.
4. BBC News. *Somali adulterer stoned to death*. BBC, (6 November 2009), <http://news.bbc.co.uk/2/hi/africa/8347216.stm>, [14.09.2011]; YouTube, *Stoning to Death by Somali Al-Shabaab Islamists*, (8 November 2009, <http://www.youtube.com/watch?v=88Pe00INC-M>, [14.09.2011].
5. VG Nett. *Somalisk kvinne steinet til døde*. VG, (18 November 2009), <http://www.vg.no/nyheter/utenriks/artikkel.php?artid=580725>, [14.09.2011]; Stone, Michael. *Al-Shabab stoning men, women, children in Somalia*. Examiner.com, (21 November 2009), <http://www.examiner.com/humanist-in-portland/al-shabab-stoning-men-women-children-somalia>, [14.09.2011]; Zamparutti, Elisabetha (ed.), *Hands Off Cain: The Death Penalty Worldwide: 2010 REPORT*. Hans Off Cain, (August 2010), [http://www.eidhr.eu/files/dmfile/the-death-penalty-worldwide-report-2010\\_en.pdf](http://www.eidhr.eu/files/dmfile/the-death-penalty-worldwide-report-2010_en.pdf), [14.09.2011], p. 80.
6. Global Islamic Media Front. *17-1 Youth Mujahiden Movement // The stoning of a formerly married man who committed the crime of Ziina in the Islamic State of lower Shabelle*. Al-qimmah Media, (28 April 2010), <http://www.alqimmah.net/showthread.php?t=16466>, [14.09.2011]; Zamparutti, Elisabetha (ed.), *Hands Off Cain: The Death Penalty Worldwide: 2010 REPORT*. Hans Off Cain, (August 2010), [http://www.eidhr.eu/files/dmfile/the-death-penalty-worldwide-report-2010\\_en.pdf](http://www.eidhr.eu/files/dmfile/the-death-penalty-worldwide-report-2010_en.pdf), [14.09.2011], p. 81.



7. AMISOM Daily Media Monitoring. *17 Jun 2011: Morning headlines*, (17 June 2011), <http://somaliamediamonitoring.org/?p=129>, [14.09.2011]; Shabelle Media Network. *Al Shabaab group stones man to death in central Somalia*, <http://www.shabelle.net/article.php?id=7667>, [14.09.11].

## Appendix 3

### Reported al-Shabaab theft cases from late 2008 until February 2011<sup>323</sup> :

1. **Late 2008, Mogadishu, Benadiir** : Amputation of the right hand of a boy (25) accused of stealing money and some other property in a shop.
2. **January 2009, Kismayo, Lower Jubba** : Amputation of the right hand of Yusuf Dhuhulow, a laundry owner, accused of stealing clothes from a customer, an al-Shabaab member, while he was using the laundry owner's services.
3. **January 28, 2009, Kismayo, Lower Jubba**: Amputation of the hand of a man accused of stealing three sacks containing fishing nets.
4. **May 8, 2009, Kismayo, Lower Jubba**: Amputation of the right hand of Mohamed Omar Ismael, accused of stealing 10 pairs of trousers, 10 shirts, eight other items and a bag. The value of all the items was estimated to be worth the equivalent of 90USD. He asserted his innocence.
5. **July 2, 2009, Merka, Lower Shabelle**: Amputation of the hand of Mohammed Souadi Siad (30), accused of stealing a cow.
6. **August 2009, Bu'ale, Middle Jubba**: Amputation of the right hand of Mohamed Gelle Yusuf, accused of stealing 100USD.

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<sup>323</sup> These cases are based on media reports, reports from NGOs and GOs, such as Amnesty International, UNHCR and The U.S. State Department as well as interviews with my own informants. Most of the cases are described in several sources. However, some cases are only based on information from a single source. There may also be that different reports stem from the same source, and should be perceived as a single source. Thus, all this information should be read with caution.

7. **September 9, 2009, Mogadishu, Benadiir:** Amputation of the hand of two teenagers accused of theft after allegedly having broken into a house. An eyewitness said kitchen knives were used to amputate one hand of the screaming men on a large table.
8. **September 30, 2009, Mogadishu, Benadiir:** Amputation of the hand of two men accused of theft.
9. **2009, Wanla Weyn, Lower Shabelle:** Amputation inflicted on at least one alleged thief.
10. **2009, Qansaxdhere, Bay:** Amputation of the hand of at least one alleged thief.
11. **2009/2010, Mogadishu, Benadiir:** Amputation of the right hand of a man that refused to pay back the money (7000USD) which he had loaned. The case was tried in the Bakara Market court.
12. **January 2010, Mogadishu, Benadiir:** Amputation of the hand of a man accused of stealing mobile phones.
13. **March 2010, Kismayo, Lower Jubba:** Amputation of the right hand of three boys convicted of stealing mobiles from a shop. They were reported to have admitted to the crime in front of the public before the amputation.
14. **April 26, 2010, Mogadishu, Benadiir:** Amputation of the hand of Shiine Abuukar Hersi accused of stealing mattresses and some other domestic items. According to the *qāḍī* the accused had admitted to the crime.
15. **June 16, 2010, Balad, Middle Shabelle:** Amputation of the right hand of Murshid Ahmed Adan (22) and Hassan Omar Mohamed (18) accused of theft. The *qāḍī* claimed that Aden and Mohamed had confessed to stealing 45 million Somali shillings (\$1,400) and two million Somali shillings (\$60) respectively, from several shops.

16. **December 12, 2010, Diinsor, Bay:** Amputation of the hand of a young man due to accusations of theft.
17. **February 19, 2011, Wanla Weyn, Lower Shabelle:** Amputation of the right hand of the teenager Abdirashid Saleban Hamud due to accusations of breaking into a house and stealing currency worth 30USD. He is reported to have admitted to the crime.
18. **February 19, 2011, Mogadishu, Benadiir:** Amputation of the hand of Ali Hashim due to accusations of theft.

**A total of 18 cases and 23 amputations**

**Sources:**

1. Interview with "Yusuf Osman" conducted by the author in Nairobi, October 2010.
2. Interview with "Muhtar Adam" conducted by the author in Nairobi, October 2010; Hiiraan Online. *Al-Shabab Militia Court in Kismayo Enforce Sharia Law By Hand Amputation of an Alleged Thief*, (9 May 2009), [http://www.hiiraan.com/news2/2009/may/al\\_shabab\\_militia\\_court\\_in\\_kismayo\\_enforce\\_sharia\\_law\\_by\\_hand\\_amputation\\_of\\_an\\_alleged\\_thief.aspx](http://www.hiiraan.com/news2/2009/may/al_shabab_militia_court_in_kismayo_enforce_sharia_law_by_hand_amputation_of_an_alleged_thief.aspx), [12.09.2011].
3. Interview with "Muhtar" conducted by the author in Nairobi, October 2010; U.S. Department of State. *2009 Human Rights Reports: Somalia. Human Rights Reports*. Bureau of Democracy, Human Rights, and Labor, (11 March 2010), <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135976.htm>, [23.09.11].
4. Amnesty International. *Somalia: Amputations and public killings must stop*, (14 May 2009), <http://www.amnesty.org/en/for-media/press-releases/somalia-amputations-and-public-killings-must-stop-20090514>, [13.09.2011]; Mohamed, Mohamed, *Somali justice: Islamist-style*. BBC News, (20 May 2009), <http://news.bbc.co.uk/2/hi/africa/8057179.stm>, [13.09.2011].
5. Interview with "Muhtar" conducted by the author in Nairobi, October 2010; Global Islamic Media Front. *Sentence of amputation of the hand carried out against a man in the Shalambud area of the Islamic State of Lower Shabelle*. Sada al-Jihād Media Center, (7 July 2009), <http://www.alqimmah.net/archive/index.php/t-6158.html>, [13.09.2011].
6. Australian Government: Refugee Review Tribunal. *Country Advice Somalia: Somalia – SOM37002 – Amputations – Al-Shabaab – Clans – Recruitment*, (9 July 2010), [www.mrt-rrt.gov.au/ArticleDocuments/177/som37002.pdf.aspx](http://www.mrt-rrt.gov.au/ArticleDocuments/177/som37002.pdf.aspx), [12.09.2011], pp. 1-2.
7. Somalifans.net. *Somali Islamists chop off hands of Mogadishu 'thieves'*, (9 September 2009), <http://somalifans.net/2009/09/09/news-213/>, [12.09.11]; Geller, Pamela. *Somali Court Amputates Hands of 2 With Kitchen Knife*. Atlas Shrugs, (9 September 2009), [http://atlasshrugs2000.typepad.com/atlas\\_shrugs/2009/09/somalia-islamic-.html](http://atlasshrugs2000.typepad.com/atlas_shrugs/2009/09/somalia-islamic-.html), [12.09.2011].
8. Somaliswiss. *Al-Shabab Cut off Hands and Feet of 3 Suspected..*, (10 September 2009), <http://somaliswisstv.com/2009/10/10/al-shabab-cut-off-hands-and-feet-of-3-suspected/>, [13.09.2011]; Amnesty International, *No End in Sight: The Ongoing Suffering of Somalia's Civilians*, (March 2010), [http://reliefweb.int/sites/reliefweb.int/files/resources/ADFFF8C63DF5C405492576F400160071-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/ADFFF8C63DF5C405492576F400160071-Full_Report.pdf), [12.09.2011], p. 9.

9. Interview with "Muhtab" conducted by the author in Nairobi, October 2010; U.S. Department of State. *2009 Human Rights Reports: Somalia. Human Rights Reports*. Bureau of Democracy, Human Rights, and Labor, (11 March 2010), <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135976.htm>, [23.09.2011].
10. U.S. Department of State. *2009 Human Rights Reports: Somalia. Human Rights Reports*. Bureau of Democracy, Human Rights, and Labor, (11 March 2010), <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135976.htm>, [23.09.2011].
11. Interview with "Abu Mahmod" conducted by the author in Nairobi, October 2010.
12. Refworld: The Leader in Refugee Decision Support. *USCIRF Annual Report 2010: The Commission's Watch List: Somalia*. UNHCR: The UN Refugee Agency, (29 April 2009), <http://www.unhcr.org/refworld/country,,USCIRF,,SOM,,4be2840d1a,0.html>, [12.09.2011].
13. Interview with "Muhtar Adam" conducted by the author in Nairobi, October 2010.
14. Ecolnet. *Country Report on Human Rights Practices 2010*. European Country of Origin Information Network, (8 April 2011), [http://www.ecoi.net/local\\_link/158195/260629\\_en.html](http://www.ecoi.net/local_link/158195/260629_en.html), [12.09.2011]; Khalif, Abdulkhadir. *Somalia: Al Shabaab Cut Off Man's Hand over Mattress Theft*. AllAfrica.com, (27 April 2010), <http://allafrica.com/stories/201004271139.html>, [13.09.2011].
15. Ecolnet. *Country Report on Human Rights Practices 2010*. European Country of Origin Information Network, (8 April 2011), [http://www.ecoi.net/local\\_link/158195/260629\\_en.html](http://www.ecoi.net/local_link/158195/260629_en.html), [12.09.2011]; Reuterdahl, Anne-Cathrine. *Avstraffer med amputering*. NRK, (18 July 2010), <http://www.nrk.no/nyheter/verden/1.7214080>, [12.09.2011].
16. Shabelle News. *Al shabaab cuts off teenager's hand in Somalia*. Shabelle Media Network, (<http://www.shabelle.net/article.php?id=1019>, [12.09.2011]; AMISOM Daily Media Monitoring. *15 Dec: Morning headlines*. (15 December 2010), p. 2.
17. Somalia Report. *19 February 2011 News Roundup*. Daily Media Roundup, (19 February 2011), [http://www.somaliareport.com/index.php/subcategory/19/Media\\_MONITOR/Print\\_/022011///5?PHPSESSID=0fa8e1e5c3f94455a0b3e9e4aa7a4f0b](http://www.somaliareport.com/index.php/subcategory/19/Media_MONITOR/Print_/022011///5?PHPSESSID=0fa8e1e5c3f94455a0b3e9e4aa7a4f0b), [12.09.2011]; Bartamaha. *Hardline Somali militants amputate the hands of 2 accused thieves*, (19 February 2011), <http://www.bartamaha.com/?p=42726>, [14.09.2011].
18. Somalia Report. *19 February 2011 News Roundup*. Daily Media Roundup, (19 February 2011), [http://www.somaliareport.com/index.php/subcategory/19/Media\\_MONITOR/Print\\_/022011///5?PHPSESSID=0fa8e1e5c3f94455a0b3e9e4aa7a4f0b](http://www.somaliareport.com/index.php/subcategory/19/Media_MONITOR/Print_/022011///5?PHPSESSID=0fa8e1e5c3f94455a0b3e9e4aa7a4f0b), [12.09.2011]; AP News. *Somali fighters cut off hands of 2 accused thieves*. Town Hall Finance.com, [http://finance.townhall.com/news/world/2011/02/19/somali\\_fighters\\_cut\\_off\\_hands\\_of\\_2\\_accused\\_thieves](http://finance.townhall.com/news/world/2011/02/19/somali_fighters_cut_off_hands_of_2_accused_thieves), [13.09.2011].

## Appendix 4

### Reported al-Shabaab robbery cases from June 2009 until April 2011<sup>324</sup> :

1. **June 25, 2009, Mogadishu, Benadiir:** Cross amputation (right hand and left leg) of four teenagers, Aden Mohamud, Ismail Khalif Abdulle, Jeylani Mohamed and Abdulkadir Adow, due to accusations of robbery and espionage. They had allegedly stolen mobile phones and pistols. According to the chief *qāḍī*, they had admitted to the crimes.
2. **October 15, 2009, Mogadishu (Karan district), Benadiir:** Cross amputation of Nur Hassan Hussein due to accusations of blocking the way of Muslims and robbing them of their money and intimidating them. He is said to have confessed to the court, and reported to have died of the wounds some days after the amputation, according to Amnesty International.
3. **October 9, 2009, Kismayo, Lower Jubba:** Cross amputation of the brothers Sayeed and Osman Ibrahim, as well as another man in his early 20s. All were accused of robbing passengers on a truck. Osman only faced amputation of his left leg as he already had reduced mobility in one hand. The *qāḍīs* claimed that the accused had admitted to the crime.
4. **October 16, 2009, Jowhar, Middle Shabelle:** Cross amputation of Nur Hasan Huseyn, accused of robbery.
5. **October 4, 2010, Buulo Berde, Hiiran:** Cross amputation of a man accused of robbing passengers on mini busses which were traveling in the area. The accused is reported to have stolen several valuable objects, including mobile phones.

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<sup>324</sup> These cases are based on media reports, reports from NGOs and GOs, such as Amnesty International, UNHCR and The U.S. State Department as well as interviews with own informants. Most of the cases are described in several sources. However, it may be that different reports are using the same source and as such should be perceived as a single source. Thus, all this information should be read with caution.

6. **December 21, 2010, Buulo Berde, Hiiran:** Amputation of the hand (not leg) of a man accused of robbing cars and busses along the road, stealing money from the passengers.
7. **January 4, 2011, Baidoa, Bay:** Cross amputation of Nor Ahmed Noor (19) accused of robbery, allegedly having stolen money. According to the *qāḍī*s he had admitted to the crime.
8. **April 12, 2011, Jowhar, Middle Shabelle:** Cross amputation of three juveniles, Hassan Siyaad Mohamed (22), Abdullah Farah Barqad (31) and Hassan Mowlem Farey (18), accused of robbing a bus, allegedly stealing 3400 Somali Shilling and two cellphones. The *qāḍī* said they had admitted to the crime.

**A total of 9 cases and 15 (13) cross amputations.**

#### **Sources:**

1. Interview with “Roble” conducted by the author in Norway, April 2011; BBC News. *Somalis watch double amputations*. BBC, (25 June 2009), <http://news.bbc.co.uk/2/hi/africa/8118306.stm>, [05.05.2011]
2. Global Islamic Media Front. *The execution of the punishment for banditry against the brother Nur Hassan Hussein after his arrest for the crime of blocking the road and stealing money from Muslims while armed*. Sada al-Jihād Media Center, (30 October 2009): <http://www.alqimmah.net/archive/index.php/t-6158.html>, [13.09.2011]; Amnesty International. *No End in Sight: The Ongoing Suffering of Somalia’s Civilians*, (March 2010), [http://reliefweb.int/sites/reliefweb.int/files/resources/ADFFF8C63DF5C405492576F400160071-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/ADFFF8C63DF5C405492576F400160071-Full_Report.pdf), [13.09.11], pp. 9-10.
3. Australian Government: Refugee Review Tribunal. *Country Advice Somalia: Somalia – SOM37002 – Amputations – Al-Shabaab – Clans – Recruitment*, (9 July 2010), [www.mrt-rrt.gov.au/ArticleDocuments/177/som37002.pdf.aspx](http://www.mrt-rrt.gov.au/ArticleDocuments/177/som37002.pdf.aspx), [12.09.2011], pp. 1-2; Amnesty International. *No End in Sight: The Ongoing Suffering of Somalia’s Civilians*, (March 2010), [http://reliefweb.int/sites/reliefweb.int/files/resources/ADFFF8C63DF5C405492576F400160071-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/ADFFF8C63DF5C405492576F400160071-Full_Report.pdf), [12.09.2011], p. 9; The Washington Post. *Somali refugees tell of public amputations*, (5 April 2010), <http://www.washingtonpost.com/wp-dyn/content/video/2010/04/05/VI2010040504398.html>, [14.09.2011]
4. Amnesty International. *No End in Sight: The Ongoing Suffering of Somalia’s Civilians*, (March 2010), [http://reliefweb.int/sites/reliefweb.int/files/resources/ADFFF8C63DF5C405492576F400160071-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/ADFFF8C63DF5C405492576F400160071-Full_Report.pdf), [12.09.11], p. 10.
5. Topouzova, Stacy. *Somali Domestic Media Monitoring Report: October 4-10, 2010*, (October 2010), [http://migs.concordia.ca/documents/Somali\\_Domestic\\_Media\\_Monitoring\\_Report\\_4\\_10\\_October\\_2010.pdf](http://migs.concordia.ca/documents/Somali_Domestic_Media_Monitoring_Report_4_10_October_2010.pdf), [13.09.2011].
6. Global Terrorism Database. *Incident Summary*. University of Maryland, (21 December 2010), <http://www.start.umd.edu/gtd/search/IncidentSummary.aspx?gtdid=201012210001>, [13.09.2011].
7. Osman, Hassan. *Al-shabab fighters amputate limbs of 19 years old*. Allvoices, (4 January 2011), <http://www.allvoices.com/contributed-news/7791702-alshabab-fighters-amputate-limbs-of-19-years-oldhttp://www.shabelle.net/article.php?id=1662>, [13.09.2011].

8. Hussein, Mohammed Omar. *Somalia: Al-Shabab amputated 3 teen's legs and hands in Jowhar town*. Somaliweyn, (12 April 2011), [http://www.somaliweyn.org/pages/news/Apr\\_11/12Apr17.html](http://www.somaliweyn.org/pages/news/Apr_11/12Apr17.html), [13.09.2011]; Ahmed, Abdalle. *Somalia: Al Shabab amputates three teenagers in Jowhar*. RBC Radio, (12 April 2011), <http://www.raxanreeb.com/?p=91643>, [13.09.2011].