RESEARCH ARTICLE

Courts, Clans and Companies: Mobile Money and Dispute Resolution in Somaliland

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One of the world's most ambitious experiments in mobile money is underway in the Somali territories. In the absence of a strong central government and internationally recognized banking institutions, remittance companies and the telecoms industry have been innovating to provide services unique to the Somali context, which is making the economy increasingly 'cashless'. Mobile money has posed new regulatory and legal challenges, particularly when disputes involving consumers are involved. This article focuses on a case study from Somaliland (the northern, self-declared independent region of Somalia) and examines Zaad, the dominant mobile money platform. Given the weak state institutions, there are a variety of actors, including private companies, government police and courts, sharia courts and traditional elders that play an active role in resolving conflicts that result from mobile money transactions, forging a hybrid judicial approach. We examine how these different actors intervene and create an enabling environment to allow innovation and foster trust in a region of the world that is frequently characterized as violent and lawless.

Introduction

Despite continued violence and instability, there has been a fascinating experiment underway in mobile banking in Africa, and especially in the Somali territories. Many countries in the region face crumbling infrastructure and weak government, yet even in the absence of strong legal and regulatory frameworks, Information and Communications Technology (ICT) companies, including mobile phone and Internet companies, are investing and innovating

in unprecedented ways. Some of the most pioneering platforms to emerge have facilitated the use of mobile money, a system that allows users to transfer money to accounts, pay for goods and services, and store money in e-wallets, all through the mobile phone.[1]

Eastern Africa is leading the world in the use and penetration of mobile money. In Kenya, where mobile money originated with Safaricom's M-PESA, an estimated 70 per cent of adults use their mobiles for payments; neighboring Uganda and Somalia are close behind (Penicaud and McGrath 2013). While much has been written about M-PESA in Kenya (Hughes and Lonie 2007; Morawczynski 2009), far less attention has been given to the Somali territories where the world's most ambitious experiment in mobile money is taking place, filling a gap in the banking sector

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and reducing a reliance on cash. This growth is driven by telecoms companies, some of the territories' most powerful and wealthy businesses, and it is closely intertwined with the profitable remittance sector that is estimated to account for up to 40 per cent of Somalia's GDP (Orozco and Yansura 2014).

Our focus in this article is on Somaliland, the self-declared independent region of northwestern Somalia, which is a fascinating case not only for mobile money but also for its unique process of state-building. Despite thwarted efforts to gain international recognition, Somaliland has adeptly crafted a relatively peaceful and democratic society (Lewis 2008; Bradbury 2008; Harper 2012). After declaring independence from the volatile south-central regions of Somalia in 1991, Somaliland has held competitive elections several times, even electing an opposition party over an incumbent by a small margin and subsequently effecting a peaceful transfer of power. Somaliland has established its own government institutions that issue passports and currency (the Somaliland Shilling [SlSh]) and provide some services such as education and policing. Despite these successes, Somaliland's lack of international recognition imposes significant constraints, particularly when it comes to participation in the global economy. Without easy access to international banking, large lenders, or the ability to integrate with international financial institutions, the government and the people of Somaliland have been further marginalized.

The adoption of mobile money in Somaliland has helped to mediate this isolation. At the same time, it has raised a number of social and legal questions, particularly in regards to handling disputes. Arguably one of the reasons that mobile money has thrived in places such as Somaliland is because of the lack of government intervention and regulations. In contrast, in countries such as India and Nigeria, both of which impose more regulations on mobile money—with significant involvement of a powerful banking sector in crafting the regulations—mobile

money has been slow to take off (Oyebode 2014). Banks have generally been skeptical of mobile money, seeing the involvement of telecoms operators as an infringement on their business.

This article focuses on the puzzle of the success of mobile banking in Somaliland, and in the Somali territories more generally: in areas where the state is weak, does not exist, or has limited capacity to enforce formal banking and consumer protections, how are disputes resolved, by which entities, and according to which laws or regulations? We also ask questions about trust in such contexts: why are mobile money users willing to trust both the companies and the technologies to the extent that they will even leave significant sums of money in e-wallets?

Our research is centred around Somaliland's dominant mobile money service, Zaad, which is part of Telesom, the largest mobile phone company. Our findings are based on extensive interviews with key individuals at mobile money companies, religious leaders, government officials, judges and elders that mediate cases. We also interviewed informants who have been involved in disputes, including business owners.[2] Furthermore, in an effort to gain a more nuanced understanding of the level and pattern of trust that users have in the service, we interviewed Zaad users in Hargeysa and Borama, two major cities in Somaliland.[3] The majority of users had both business accounts (known as Merchant Number accounts) and personal accounts, with a majority of their financial transactions, both personal and business, taking place through Zaad. The extent to which they used Zaad for particular transactions varied—some users reported using Zaad for a higher proportion of their business transactions (for example, 75 or 80 per cent) than for their personal transactions (which were used for less than 50 per cent of transactions); for others, this proportion was reversed. It is also notable that despite the heavy usage reported by most of the interviewees, few of them reported problems

in using the service. In cases where there were problems, the majority of them were resolved quickly.

The Emergence of Mobile Money in Somaliland

Similar to the rest of the Somali territories, internationally recognized financial institutions have not functioned in Somaliland since the dissolution of Somalia's central government in 1991. The disintegration of the state and ensuing civil war led to the collapse of the entire financial system, including both central and commercial banks, although some of these financial institutions were closed prior to the state's collapse as a result of bankruptcy.

After 1991, the lack of viable state or financial bodies forced the Somaliland economy to become entirely cash-based. This facilitated the emergence and evolution of informal financial institutions, most commonly remittance organizations, or *hawala*. While these hawala companies preceded the collapse of the state—they were established in the 1970s when a large number of Somali laborers went to the Gulf as a result of the economic boom in the region (Menkhaus 2001)—following the collapse of the state, remittance companies became significantly more powerful and profitable as they began assuming some of the responsibilities previously fulfilled by the state's financial bodies, such as the central bank and commercial banks. In addition, large-scale migration as a result of violent conflict, and the growth of diaspora communities desperate for much-needed aid for their families, made the role of remittance companies all the more central, establishing a legacy that continues today. The telecommunications market is closely intertwined with the transfer of funds, and has evolved to be as tightly competitive as the remittance industry, facilitating the development of some of the lowest mobile phone rates and fastest internet connections on the continent.

Given the complexity of operating in Somaliland's political environment, investment in the telecommunications sector is almost exclusively led by Somalis from the diaspora and from within the country; this is substantially different from elsewhere on the continent, where multi-national conglomerates such as India's Bharti Telecom or France's Orange dominate. This Somali-driven innovation has made mobile money products uniquely suited for the very difficult context in which they operate. While Zaad has taken inspiration from the M-PESA model (Telesom sent a delegation to Kenya and Tanzania to identify which aspects of the service were most relevant for the Somaliland context[4]), Zaad's system of mobile money is even more far-reaching and has taken on services that are normally the remit of banks. Users of Zaad, for example, are encouraged to keep their money in e-wallets rather than withdrawing the money once it arrives, as is typically the case for mobile money users in other parts of Africa (Penicaud and McGrath 2013). One of the unique features of Zaad is the Kaafi service, which enables customers to save and withdraw money directly from Dara-Salaam bank accounts, and to engage in financial transactions overseas.

Zaad's dominance in the mobile money sector has been achieved partly by facilitating an ecosystem of mobile money in which large employers such as Amoud University and Kaah Electric Power Company have been encouraged to use Zaad to pay monthly salaries. Coca-Cola's bottling plant in Somaliland, for example, is Africa's only branch that operates entirely using mobile money and online transfers; the CEO has claimed to 'never handle a single dollar in cash' (York 2013).

The emergence of Zaad also reflects the unique and complex politics of the region. Telesom has its origins in the breakup of Al Barakat, which was one of the largest money transfer companies in the region until its assets were frozen and was forced to close by the U.S. government after being accused of aiding terrorist activities in the aftermath of September 11, 2001. The company soon reinvented itself with a focus on telecoms, and emerged as several brands across the Somali

territories, including Gollis in Puntland and Hormuud in south-central Somalia, all of which have become some of the most successful telecoms companies in the region. With extensive coverage and popularity, Telesom was able to quickly dominate the telecoms market; the launch of Zaad also enabled Telesom and its partners to reclaim a leading role in money transfers in the region. While re-entering the remittance business was one factor that encouraged Telesom to launch mobile money, Zaad was also a way to retain the company's current mobile phone customer base. In fierce competition with Somtel, a telecom company owned by the powerful remittance company Dahabshiil, Telesom feared losing its subscribers when Dahabshiil launched e-Dahab, a mobile money platform similar to Zaad. This rivalry has encouraged Zaad to remain a free service, in contrast to other fee-based mobile money systems, including M-PESA. Although the service is free, the business has been highly profitable for Telesom; the company has not only retained its customers but has also expanded as the popularity of Zaad has forced others to join the network. In addition, the company has been able to save on the distribution of airtime voucher cards, as well as increase its sale of airtime through the introduction of mobile recharge services. Telesom also benefited from the less costly and easier options the service provided for the payment and receipt of money.

Trust and Dispute Resolution in the Somali Territories

Trust is an important aspect of Somali social structure and has been central to facilitating all aspects of social, political and financial interactions (Walls 2009). Before colonialism, nomadic pastoralism was the norm—and indeed, a substantial proportion of Somalis are still nomadic. Given that individuals and families were required to be on the move for most of the year, a complex arrangement of clan allegiances, alliances and networks emerged. As urbanization has accelerated

in recent decades, some have argued that traditional social arrangements have been an impediment to the formation of centralized bureaucratic organizations. The organizations and institutions that have emerged, including governmental entities, are often characterized by personal relationships that are rooted in clan affiliations and other social linkages (Abbink 2003; Menkhaus 2007, 2014; Leonard and Samantar 2011).

Yet while this decentralized and horizontal social structure has been regarded at times, as hindering the development of a strong, centralized government, it has been a source of strength for fostering trust between groups as well as security, accountability and reciprocity. *Xeer* law, or customary law, has been central to this (Van Notten 2005; Le Sage 2005; Stremlau 2013). Xeer law is not codified; it is based on agreed arrangements between clans, rather than being uniformly applicable to all clans. In this context, trust and clan relationships play an important role in guiding personal and financial transactions even though the platforms they use may not have formal guarantees. Xeer law, with its preference for the more powerful (whether the more economically powerful businesses, more dominant clans or its bias towards men) does not necessarily provide 'justice' in the sense of offering all sides equal opportunities for a fair hearing and outcome (Schlee 2013). It does, however, have a role in regulating interactions and preventing disputes from escalating to violence. It also offers some security for investors as well as consumers that reputable and accessible dispute remedies are available (Stremlau 2012).

Given Telesom's experience with hawala systems in Somaliland and the Horn of Africa, Zaad was developed on the same trust-based social networks that have supported the hawala system. As documented by Cockayne and Shetret's (2012) study on Somali remittances, the industry emerged and was developed on pre-existing informal networks fueled by trust and supported by xeer as a way of guaranteeing agreements in

the event of any problems. To illustrate how trust operates for remittance companies, the authors argue:

> The key to how this system has developed and is organized turns out to be trust. Trust powers the entire SRO [Somali Remittance Organizations] business model, from the bottom to the top. SROs not only capitalize on trust, but in a very real sense, they capitalize trust. Trust provides security for moving large values over long distances through cooperation with people that an SRO agent may never meet. Trust allows SROs to undercut formal money transfer businesses and banks. SROs replace the formal system's expensive bureaucratic safeguards, designed for an open market populated by economic strangers, with a closed network constructed out of the social capital and safeguards provided by family and clan membership and the careful system of mutual surveillance that such a closed network allows…. SROs in a sense are a huge, transnational, informal self-regulating trust network (Cockayne and Shetret 2012: 4).

Trust, which has made it possible for the industry to survive and grow in such a harsh and volatile business environment, is deeply rooted in the interpersonal relationships that prevail among Somali society. This feature of informality in the network sustains trust in the industry and also gives regulators the impression that the industry is vulnerable to be used for illegal activities, such as money laundering and terrorist financing.

Zaad operates in the same ecosystem as the SROs, among the complexity of actors and agents who each have different intentions and purposes. As Carrier and Lochery (2013) argue in reference to Somalis in Kenya: '[They] speak so much of how their businesses rely on "trust" that the concept appears not

so much descriptive as prescriptive, perhaps allowing other aspects of these relationships, especially power asymmetries, to be hidden' (339). Thus while the core of the trust users are willing to place in Zaad likely comes from the long legacy of trust as the underlying basis of the remittance industry (Thompson 2011; Ballard 2004; Cockayne 2012), it is not necessarily static nor democratic. As the following sections in this article will discuss, while remarkably adaptable and effective at mediating disputes, mechanisms such as xeer law and relationships of trust operate within existing political and power relationships, as well as reflect and reproduce them.

Trusting Zaad

Despite the generalized sense of trust that pervades most business transactions in Somali society, there are factors that have fostered particular confidence in Zaad. Some of our informants indicated that they had no choice but to trust in Zaad, particularly in a business environment where the majority of the population uses Zaad and the alternative mobile money platforms are not as widely used. In such an environment, social pressure also plays a role, as does the network effect, whereby the more people use a service the more those within their network must use it. These factors have also been important in other countries for increasing adoption of a mobile money system, as seen with Safaricom's grasp of M-PESA's market in Kenya. As one businessman noted:

> Since almost everybody is using Zaad, you are pressured to use it too. You worry about losing business opportunities… You would think that you will not have means to receive money. You may also fear of being seen as backward, as being technologically unfriendly, which is not a good image for our business. Since everybody is using it, we can't afford the cost of leaving the network despite its potential risks (Interview 2014).

Some users also see Zaad as a more reliable means of money transfer than cash, particularly given Somaliland's volatile security situation. Since money is stored in mobile phones, which serve as 'mobile wallets', this is believed to minimize the risks of thefts and robbery. Individuals believe their money is more secure in the form of digital currency, rather than cash. As one interviewee noted:

> If your mobile gets lost, as happened to me few days ago when I left my mobile in the toilet and it was stolen, you will not lose your money. You just need report so that your Zaad account gets deactivated. Then, you can buy another phone and your money is still there (Interview 2014).

At the same time, given the lack of government or regulatory guarantees and the absolute liquidity of mobile money, there are significant concerns about the security of the funds, particularly those that are stored in e-wallets. Some of the interviewees described their trust for the service as being 'limited'. The more ambitious banking features of Zaad have encouraged skepticism and concern about how precarious the system as a whole may be. For example, most Somalis recall the rapid closure of Al Barakat after September 11, 2001, when the U.S. government accused it of supporting terrorism. While the accusation was later revealed to be unfounded, many Somalis not only lost an important path for remittances but they also lost significant sums of money that was being held with Al Barakat.[5]

Though the use of e-wallets is widespread, users show far less trust in the service when it comes to saving their money in their Zaad accounts, as compared with simply using the system to make transfers. As one interviewee noted:

> I don't have trust in Zaad when it comes to saving money in my account. I withdraw money from my Zaad account whenever the amount reaches US$500. One question that people ask themselves when talking about Zaad is who will you sue if something happens to your money? We believe there is nobody. When we were opening a Zaad account, they got us to sign other documents, such [as] those related to inheritance of money in case of death. But they did not show us any letter of guarantee. That does not exist with Zaad (Interview 2014).

A related concern expressed by informants was that the reliance on digital records and the lack of hard copies of one's transactions makes it particularly easy for records to be lost and errors made that would be difficult to correct without documentation. Thus, drawing on their experience of documenting financial transactions on paper, some users indicated that the lack of printed receipts for Zaad transactions makes them cautious of having their business solely dependent on Zaad.[6]

There are also significant privacy concerns that affect the relationship users have with Zaad, including who has access to users' accounts and transactions. For one user, wariness about the security of Zaad is rooted in concerns that some members of Zaad staff may have access to accounts and be able to share information with third parties or 'may withdraw money from our accounts without our knowledge' (Interview 2014). These privacy concerns are not ungrounded. Companies in the Somali territories clearly have fewer privacy regulations, particularly when it comes to digital technologies, and money transfer companies have, in the past, shared data with security services. For example, money transfer companies have been under increasing pressure since September 11, 2001 to ensure that their funds are not 'aiding and abetting terrorists'. In 2013, money transfer Dahabshiil proposed to 'set up third-party monitoring and certification inside Somalia, helping the Somali government to introduce biometric scanning

to remove uncertainty about the identity of recipients' in response to concerns over the source of funds flowing through the system (Popham 2013).[7] International regulations are certainly becoming more restrictive and there are growing pressures on telecoms and remittance companies to collect and share more data from users with international government and intelligence organizations.

Remittance companies have also been targeted by hackers, suggesting that similar actions could be taken against mobile money providers in the future. In July 2012, for example, Dahabshiil was attacked and the accounts were published online (Staff writer 2012). While this experience made many users nervous, and caused tensions within families and communities who now knew how much money was in individual accounts, there has appeared to be little major impact on the industry. There was no great migration on the part of users away from Dahabshiil (there are few other options); many users appeared to simply accept this as part of the challenge of doing business in the region.

Despite the privacy and security concerns, one factor that informants noted to be crucial in maintaining customers, is the company's reputation and its ability to restore trust. Interviewees cited their willingness to trust Zaad because the company has been prudent in responding to the problems that users encounter and the company's willingness to resolve disputes. As one interviewee noted, Zaad addresses problems with a 'high level of efficiency' (Interview 2014). Users credited their belief that their money could be recovered, even if something happened to the network, to their strong confidence in Telesom (Interview 2014).

What Can Go Wrong? Potential Sources of Dispute

As a mobile money platform, Zaad is liable to experience a diverse range of technical and non-technical problems that can lead to disputes between the company and users of the service, as well as between users themselves. While there are always criminal

entrepreneurs seeking innovative ways to exploit the system, there are roughly three main forms of disputes that arise: fraud or theft; mistaken transfers; and disagreements on payments between parties.

Fraud and theft

Schemes for exploiting Zaad to commit fraud have been as innovative as the technology itself. There are the usual fraud practices that may be found with electronic banking arrangements around the world, such as theft of a password or security code and unapproved transfers. However, the electronic nature of the system and the weak traditions of documenting commerce in the Somali territories, including the receipt of goods or services, have created a gap that some have attempted to exploit. With a limited taxation system, receipts for products or services are rarely issued. Zaad's management may retain a record of financial transactions, but it is not able to verify that goods or services have been actually received.

Examples of this type of fraud abound; most commonly, the sender has claimed to provide goods or services that they do not deliver. An example cited by our informants involved a man who offered religious counseling to individuals over the phone. Individuals who sent money to that person complained to Zaad's management that they did not receive the agreed-upon service and the accused person was later arrested for committing fraud. Other cases involve individuals sending fake SMS messages with the same content as the notification Zaad sends to its members when they receive money. The sender of the fraudulent SMS then claims to have accidentally sent money to the recipient, and the latter 'reimburses' the sender in good faith.

Mistaken transfers

Another common problem that leads to disputes and complaints from Zaad users involves sending money to the wrong number. Zaad's management has developed a clearly defined, though evolving, mechanism to address this problem. When individuals

send money to the wrong number, users are advised to report the incident to Zaad. Soon after receiving such a complaint, Zaad's customer support staff is instructed to take immediate action by first freezing the money in the recipient's account and then informing the recipient to send the money back to the initial sender. Zaad management then waits for the person to send the money back. If it is not forthcoming, the money is removed from the recipient's account and returned to the sender, even without the recipient's consent. If the case is particularly contentious, or if both parties claim they are the rightful owners of the money and that the transfer of money took place as part of an agreed business transaction, Zaad management instructs the two parties to go to the police, the court or to their respective clan elders. If the case is transferred to one of these authorities, Zaad management is often called upon to verify the claims of each party.

Disagreements on payments

Parties may deny the existence of a transaction or disagree on the amount of money involved in a specific transaction. Given the lack of printed statements or receipts of transactions, this type of dispute is relatively common. It is, however, typically resolved in person by Zaad management who are able to access records and provide statements verifying the transactions between the two parties. If the two sides are not satisfied with such information—according to the interviewees, a rare occurrence—then Zaad management refers the case to a relevant and agreed-upon authority to resolve the dispute.

Resolving Disputes

In the absence of strong formal dispute resolution procedures, there are a variety of actors, including Zaad management, government police and courts, sharia courts and traditional elders, who play an active role in resolving conflicts that result from Zaad transactions.

First and foremost is the Zaad management. Effectively resolving disputes is essential to maintaining trust in the service and retaining its customer base. Zaad management has the unchallenged authority to freeze money in a customer's account, block accounts and return money from recipients to original senders even without the recipient's consent. Zaad management also has access to a variety of information including the account owner's identity, call history (provided by the parent company, Telesom), and contacts. Such extensive information enables Zaad management to investigate disputes and locate individuals who are accused of committing fraud or theft with more efficiency than the government's law enforcement agencies. However, since Zaad and Telesom have no direct role in dispensing justice or enforcing legislation, their role in resolving disputes is limited to investigation and the gathering of evidence, as well as intermediate steps such as blocking accounts and freezing money. There is no oversight or limit on their powers to access and manipulate accounts—or to inform customers that they are doing so—apart from any reputational damage or erosion of trust that overly aggressive or unprovoked interventions might cause.

In other cases, Zaad management and its parent company Telesom rely on other authorities, such as the police, judiciary institutions, traditional elders and religious leaders. Cases that Zaad management cannot successfully resolve are referred to these as a matter of procedure. State institutions such as the police and courts, however, are seen as corrupt and it is not always considered cost-effective to go through such lengthy procedures, particularly when the expense of doing so would exceed the amount of the transaction in question. Furthermore, as the capacity of state institutions to resolve disputes is often limited, particularly with serious cases, a hybrid approach involving traditional and religious leaders is often used.

The extent of clan leaders' involvement is partly dependent on the parties involved. Ideally, xeer and traditional elders should represent all clan members who need such representation equally; however, their role

is often politicized. Our research found that clan elders tend to intervene most vigorously for individuals involved in mobile banking disputes who are either wealthy, have powerful relatives who can mobilize the elders, or who are directly connected to the elders, a finding that reflects broader literature on the contemporary application of xeer law more generally (Schlee 2013).

There is also a clear reluctance on the part of clan elders to become involved in mediating disputes involving individuals who are serial offenders or who are perceived by clan elders to be damaging the reputation of the clan. Cases concerning individuals who do not have close connections and those with poor reputations are often the ones who must deal with the courts and police, and it is they who most frequently serve prison time or pay fines. Sometimes such penalties are avoided if the guilty party is poor and the accusers forgive the person after it becomes clear that they will not be paid back. This forgiveness may also be bestowed at the request of the prosecutor and/or judge.

Customary actors and formal legal actors often interact, encouraging a 'hybrid judicial process'. As described by a prosecutor:

> When the elders intervene and they reach a settlement over the issue, they go to a public notary office, where they write their agreement and sign. After they sign, they submit the settlement they reached to the court. Then, the court files this agreement and puts it into effect' (Interview 2014).

To further illustrate the hybrid judicial process and the role of customary law, we turn to a dispute between Abdi, a businessman from Hargeysa, the capital city of Somaliland, and Muna, a widow and housewife living in Borama, a city close to the border with Ethiopia.[8]

Muna vs Abdi: A case of theft

Abdi was a partner with Muna's brother in a business that involved selling flour supplied by the World Food Programme (WFP) on the black market. After determining that their business was not as profitable as expected, Muna suggested that the business be closed.

Abdi later called Muna and told her that there was cheap flour in the market and that she would make a good profit if she bought some and resold it. She told him she was not interested as she was not familiar with that particular market. He called many times in an effort to convince her to buy the product and, after many calls, Muna eventually went to the market to enquire about its profitability. She was told that flour supplied by NGOs was very profitable at that time. During this process, her neighbor heard about the opportunity and offered to contribute some money. Together, they raised US$ 195. Muna sent the money to Abdi through his Zaad number and they agreed that he would send her the flour on the same day.

Muna waited for the flour to come for two days. After several days of not answering Muna's telephone calls, Abdi shut his phone off. Muna tried to locate him through personal connections to no avail. After two weeks, she went to his house in Hargeysa. When she found him there and asked him for the money, he denied that she had sent him any money. Muna initially sought to reach a compromise but after determining that Abdi was not going to return her money and was not ready to make a deal with her, a fierce argument ensued. Some people intervened, including Abdi's wife, and convinced Muna to leave and wait for Abdi to come up with a solution. Muna left with no money and no settlement. When she returned to Borama, the neighbor who also contributed to the business transaction demanded to be reimbursed. Muna was accountable to her neighbor, especially since Muna and Abdi were from the same sub-clan. Unable to repay her neighbor, Muna complained to Abdi's brother, who agreed to pay the US$ 50 that Muna's neighbor contributed to the business since he could not afford to pay the entire US$ 195.

Muna waited several more months to receive the rest of the money or reach a deal

with Abdi. During that period, she went to Hargeysa several times. Eventually, she decided to raise the issue with one of their clan elders living in Hargeysa. The clan elder, Jama Farah, was also closely related to Abdi and knew him to be a corrupt person and a serial offender.

First, Jama told Muna to go back to Borama since she would not be able to get her money back from Abdi directly. Jama would take up the case on her behalf. Taking his advice, Muna returned to Borama. Jama then went to Abdi to enquire about the issue. Abdi denied Muna's claim and said that she sent the money so they could improve their failing business. Jama told Abdi that he was accountable for this money as long he was the one who received it through his Zaad account. After an intense exchange, Jama became angry and decided to withdraw from the issue since he believed he could not do anything to make Abdi repay his debt.

After several days, Abdi called Muna and told her to come to Hargeysa and collect her money. When she came, she found him chewing khat (a mild narcotic) at a teashop in the center of the town. When she asked him for the money, he tried to escape but Muna shouted and policemen on the street caught Abdi and arrested him. The prosecutor in the regional court of Hargeysa accused Abdi of committing fraud against Muna. The following is an excerpt of the charges against Abdi that the public prosecutor submitted to the regional court in Hargeysa:

> Accusation: the crime you are accused of is fraud, because on 23/01/2014 you talked to Muna on the phone and told her that you have flour for her, then she told you she needs 20 sacs. You told her that the cost of the flour will be US$ 160 while the cost of transport will be US$ 35. Therefore, she sent you a total of US$ 195 through your Zaad account. You were arrested after you failed to pay her. Therefore,

you have violated article 496 of the Criminal Procedure Code.

The prosecutor requested the court to set a date for the hearing of the case following appropriate procedures. Soon after Abdi was arrested, the information reached Jama, who was then called on to intervene and represent both sides since Muna and Abdi were from the same sub-clan. Due to his involvement in the case, Jama took on the primary responsibility to reach a settlement on the issue, this time with the support of the Somaliland judiciary.

By the time Jama became involved in the case for the second time, he had already reached the decision that Abdi was guilty. His judgment was based on his previous knowledge about Abdi as 'a corrupt person and a serial offender' (Interview, Jama Farah 2014). This absolved him of the need to conduct extensive interrogations of the parties or determine the involvement of other observers. With the knowledge that Abdi had livestock and other assets in the countryside, Jama visited him in prison and offered to help recover the money to resolve the issue. Abdi did not accept the offer but insisted on defending himself in court.

Jama realized that he would not be able to reach a negotiated settlement and would have to act unilaterally. He confirmed to the police that Abdi was guilty of taking the money from Muna. He instructed Muna to go back to Boroma and wait until he managed to raise some money from clan members. He also instructed her to cease all communications with Abdi.

Given her trust and confidence in Jama's word as a clan elder, Muna suggested that Abdi could be released. Jama, however, was reluctant to order Abdi's release because of his unwillingness to cooperate.

Jama then sought to collect the money from the closest members of the clan who could afford to contribute. In deciding who to contact and how much money to ask for, Jama did not use any pre-set criteria for the

clan; instead, his decisions were based on his personal knowledge about clan members and their financial position. He succeeded in raising US$110 and told Muna to forgive the remaining US$35, which she did.

Reflecting his frustrations with Abdi, Jama allowed him to remain in prison even after the case was resolved. The public prosecutor at Hargeysa's regional court sought out Muna through the regional court in Borama and informed her that she should immediately go to the regional court in Hargeysa. Upon arriving at the court she said that her clan elder represented her and the case had been satisfactorily resolved. Jama was then called to confirm this to the court. For Abdi to be released, the court required Jama and Muna to sign an agreement confirming that a settlement had been reached and requesting the release of Abdi.

'Maslaha': principle and precedence in property disputes

In the above case, Jama drew on xeer law, and particularly the principle of *maslaha*, which refers to the immediate and peaceful resolution of disputes and is the basis for conflict resolution. Traditionally, Somali elders have used maslaha for cases involving injury, death, robbery of livestock, the 'taking' of women, and unfulfilled business transactions, among other things. It has been adapted and applied in different contexts and in conjunction with a variety of other legal tools from the pre-colonial era, when the only primary mode of governance in Somali society was xeer. Other actors, such as courts, police and government institutions joined the field of judiciary and governance in the post-colonial period.

In applying maslaha to property transactions between two people, where one of them fails to fulfill the conditions of the transaction, maslaha requires that the creditor should leave part of his or her rightful property, while the debtor should pay part of what he or she owes. As in this case, if the debtor fails to pay what he/she is required to

pay, the responsibility lies on his or her *xidhe*, or closest and binding clan elder, to take the responsibility to pay the debt or convince the victim to forgive it. In general, the essence of maslaha is to avoid further conflict that may lead to a continued cycle of revenge in the form of robbery, fraud, physical violence or a lengthy legal battle. When Jama was asked why he rejected Abdi's preference to have his case resolved through the government's court system, Jama argued:

> The reason why we rejected his preference is that things will get worse. Remember, the two people are not living in the same town and we can't afford to go back to the court every day. Things that go through the court procedure do not end quickly. The cases that started in the court when the civil war ended in the country are still ongoing. It will also lead to corruption, bribery and other dirty acts (Interview, Jama Farah 2014).

In resolving this case, the clan elder drew on three concepts that are at the core of maslaha.

The first concept is rooted in the Somali proverb '*talo nin laa u gal gasha, tolna waa u irkiyaa*' ['the owners of an issue struggle for its solution, while kinsmen only support him']. This means that the primary responsibility to resolve a dispute lies with the individual or individuals involved, but clan members and clan elders have a duty to supplement them or extend support when the need arises. The proverb also suggests that the closest relatives of the parties involved are expected to come to the fore and play a central role in resolving the case. In the case of Muna and Abdi, the first person that Muna went to ask for money was Abdi's brother, who gave her US$50. Jama then pressured Abdi to pay his debt, and used all possible means to mobilize available resources.

The second concept is rooted in another Somali proverb, '*gacmo geel jire hoos baa*

loo dhaqaa' ['the hands of camel herders are washed in privacy']. The proverb implies that disputes between individuals who are related, either through blood or marriage, should be resolved in 'privacy'. External actors are excluded from involvement as the process should be as private as possible. Following this principle, clan elders work to avoid cases becoming public or ending up in court, and they make all efforts to resolve them as quickly and smoothly as possible.

The third concept emphasizes the importance of compromise. A Somali proverb says 'nin geeliisii la qaaday, fara madhnaana ogol, falidhna ogol,' which means 'a man who was robbed of his camel has no choice other than to go empty handed or take whatever share he is offered'. Given the constraints in enforcing Somaliland's Civil Code, which calls for full compensation, victims such as Muna have little choice but to accept whatever they are offered. As Jama described:

> If you study the transactions we are talking about from modern legal perspective, since the people have willingly entered into the transaction, they are civil cases, not criminal cases. So if the cases are resolved in modern courts, the debtor will be obliged to pay the creditor according to this capacity. What we tell the creditor is to forgive part of his asset, like one third, and the case will be closed (Interview 2014).

The alternative is a cycle of revenge and retaliation whose prevention is the main agenda of maslaha.

Conclusion
Mobile banking poses many challenges for regulators, particularly as Somalia and Somaliland seek to establish more state institutions. Do government regulations, for example, have to regulate every shop that sells airtime, a challenge for Kenya's government, let alone Somaliland or Somalia's? And

what kinds of responsibilities do regulators have for monitoring flows of cash, particularly given the region's concerns with potential terrorist financing?

In a context where there is limited government regulation and state institutions are often seen as ineffective or corrupt, traditional dispute resolution mechanisms, such as xeer law, as well as existing networks of trust, have been central in fostering an environment for the deployment of one of, if not the most, ambitious mobile money systems in the world. While mobile money may be at the forefront of technology and innovation, the socio-legal context in which these technologies are rooted draws on traditional Somali norms and values, creatively fusing the 'modern' with the 'traditional'.

The example of Zaad, as well as the mechanisms for resolving disputes that arise in the absence of strong government regulations and institutions, has broader implications for technology and innovation in Africa, as well as in other countries with limited government capacity such as Yemen or Afghanistan. Zaad is very much an ingenious response to a critical need for banking services, but much older traditions and social structures, such as xeer law, have been important in providing the grounding and framework for such innovation to occur. Thus when considering the need for governance and oversight of the sector, it is important to look beyond formal state structures and regulations. There are lessons for broader law-making efforts in the region as well. As the Federal Government of Somalia seeks to introduce new legislation for the communications sector and looks to international examples of 'best practices', approaches that build on the ways mobile money and the telecoms industry is already regulated (including the role of various forms of dispute resolution) is likely to not only be the most practical but also the most effective.

Competing Interests
The authors declare that they have no competing interests

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Notes

[1] Mobile money is also sometimes referred to as mobile payments. It differs from mobile banking, which uses mobile devices to conduct financial transactions with a financial institution but does not involve the use of a mobile device to pay for goods, as mobile money does.

[2] The interviewees had a wide variety of backgrounds. For example, the businesswomen were involved in selling khat, clothing, jewelry, and beauty products. The male participants were managers of construction companies, managers and/or accountants of small shops (selling electronics, such as mobile phones, or exchanging money) and restaurants. Finally, some interviewees were involved in providing services, such as telecommunications and remittance services, or in education.

[3] 25 regular users were interviewed and approximately half were women.

[4] The primary services that Zaad offers include domestic money transfers (the transfer of money among individuals and businesses); international money transfer (the transfer of money through hawala companies); P2B, for customer to business purchases and services such as school fees, health services and utility providers; B2B, in which businesses pay for services and purchases; B2P, which allows for businesses to pay salaries and other personnel expenses; airtime and internet data recharge; and 'cash-in and cash-outs,' which allow customers to withdraw money in both Somaliland Shillings and USD.

[5] The owners of Hormuud telecom, which owns Telesom in Somaliland, are the founders of Al Barakat.

[6] As one interviewee noted: 'Zaad does not enable one to receive receipts in hard copies for every transaction. If the system fails at some point or becomes slow, business will be very difficult for us' (Interview 2014).

[7] This proposal came after the decision of Barclays Bank to cut off all arrangements with money transfer companies such as Dahabshiil. Dahabshiil later won a temporary injunction against Barclays to prevent what it called an illegal attempt to close its account, but in April 2014 the companies came to a settlement that will end the banking relationship.

[8] The names in the case study are pseudonyms.

References

Abbink, G J 2003 Dervishes, 'moryaan' and freedom fighters: Cycles of rebellion and the fragmentation of Somali society. In: Abbink, G J, de Bruijn, M E & van Walraven, K (Eds.) *Rethinking Resistance: Revolt and Violence in African History*. Brill, pp. 328–65.

Ballard, R 2004 Hawala Transformed: Remittance-Driven Transnational Networks in the Post-Imperial Economic Order. Available at http://www.casas.org.uk/papers/pdfpapers/transformed.pdf [Last accessed 17 December 2014].

Bradbury, M 2008 *Becoming Somaliland.* Oxford: James Currey.

Carrier, N and **Lochery, E** 2013 Missing states? Somali trade networks and the Eastleigh transformation. *Journal of Eastern African Studies, 7*(2): 334–52. DOI: http://dx.doi.org/10.1080/17531055.2013.776275

Cockayne, J and **Shetret, L** 2012 Capitalizing on Trust: Harnessing Somali Remittances for Counterterrorism, Human Rights and State Building. Centre on Global Counterterrorism Cooperation. Available at http://www.globalcenter.org/wp-content/uploads/2012/07/CapitalizingOnTrust.pdf [Last accessed 18 May 2015].

Harper, M 2012 *Getting Somalia Wrong? Faith, War and Hope in a Shattered State.* London: Zed.

Hughes, N and **Lonie, S** 2007 M-PESA: mobile money for the "unbanked" turning cellphones into 24-hour tellers in Kenya. *Innovations, 2*(1–2): 63–81. DOI: http://dx.doi.org/10.1162/itgg.2007.2.1-2.63

Leonard, D K and **Samantar, M S** 2011 What Does the Somali Experience Teach Us about the Social Contract and the State? *Development and Change, 42*: 559–84. DOI: http://dx.doi.org/10.1111/j.1467-7660.2011.01702.x

Le Sage, A 2005 *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives.* Geneva, Switzerland: Henry Dunant Centre for Humanitarian Dialogue. PMCid: PMC3217462.

Lewis, I 2008 *Understanding Somalia and Somaliland.* London: Hurst.

Menkhaus, K 2007 Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping. *International Security, 31*(3): 74–106. DOI: http://dx.doi.org/10.1162/isec.2007.31.3.74

Menkhaus, K 2014 State Failure, State-Building, and Prospects for a "Functional Failed State" in Somalia. *The Annals of the American Academy of Political and Social Science, 656*(1): 154–172. DOI: http://dx.doi.org/10.1177/0002716214547002

Morawczynski, O 2009 Exploring the usage and impact of "transformational" mobile financial services: The case of M-PESA in Kenya. *Journal of Eastern African Studies, 3*(3): 509–525. DOI: http://dx.doi.org/10.1080/17531050903273768

Oyebode, A 2014 M-Pesa and beyond – Why mobile money worked in Kenya and struggles in other markets. Venture Capital for Africa. Available at https://vc4africa.biz/blog/2014/01/15/m-pesa-and-beyond-why-mobile-money-worked-in-kenya-and-struggles-in-other-markets/ [Last accessed 18 May 2015].

Penicaud, C and **McGrath, F** 2013 Innovative Inclusion: How Telesom Zaad Brought Mobile Money to Somaliland. GSMA: Mobile Money for the Unbanked. Available at http://www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/07/Telesom-Somaliland.pdf [Last accessed 18 May 2015].

Popham, P 2013 Why Barclays wants to cut Somalia's 'money transfer' lifeline. *The Independent*, 15 September. Available at http://www.independent.co.uk/news/world/africa/why-barclays-wants-to-cut-somalias-money-transfer-lifeline-8818006.html [Last accessed 18 May 2015].

Schlee, G 2013 Customary law and the joys of statelessness: Idealised traditions versus Somali realities. *Journal of Eastern African Studies*, *7*(2): 258–71.

Staff writer 2012 Dahabashiil denies Anonymous behind cyber-attack. *News.com.au.* 25 July. Available at http://www.news.com.au/technology/war-on-terror-anonymous-hacks-middle-eastern-bank/story-e6frfro0-1226430985426 [Last accessed 18 May 2015].

Stremlau, N 2012 Somalia: Media law in the absence of a state. *International Journal of Media & Cultural Politics, 8*(2–3): 159–74. DOI: http://dx.doi.org/10.1386/macp.8.2-3.159_1

Stremlau, N 2013 Towards a diagnostic approach to media in fragile states: Examples from the Somali territories. *Media, War and Conflict, 6*: 279–293. DOI: http://dx.doi.org/10.1177/1750635213491175

Thompson, E 2011 *Trust Is the Coin of the Realm: Lessons From the Money Men in Afghanistan.* New York: Oxford University Press.

Van Notten, M 2005 *The Law of the Somalis: a Stable Foundation for Economic Development in the Horn of Africa.* Trenton, NJ: Red Sea Press. PMid: 15965004.

Walls, M 2009 The emergence of a Somali state: Building peace from civil war in Somaliland. *African Affairs, 108*(432): 371–89. DOI: http://dx.doi.org/10.1093/afraf/adp019

York, G 2013 How mobile phones are making cash obsolete in Africa. *The Globe and Mail*, 21 June. Available at http://www.theglobeandmail.com/ news/world/how-mobile-phones-are-making-cash-obsolete-in-africa/ article12756675/ [Last accessed 18 May 2015].