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How constitutional arrangements for the exercise of self-determination by the territory of Somaliland may impact Somaliland's engagement with the international human rights system?

Jonathan Whittle

A dissertation to the University of Bristol in accordance with the requirements for award of the degree of PhD in the faculty of Social Sciences and Law

Word Count 72,125

Abstract

Through its exploration the thesis highlights that although Somaliland is an unrecognised de facto state there is a legal system in Somaliland with which the international human rights system can engage which has both strengths and weaknesses. The thesis also considers what the debates are around the exercise of self-determination in Somaliland. Having established this, the thesis goes on to establish there is an inconsistent and contradictory approach to the international community's engagement with Somaliland and the status it gives to the self-determination Somaliland currently exercises. The inconsistent legal status of relations with Somaliland is then shown to impact the responsibility for human rights obligations authorities in Somaliland are considered to have and engagement the international human rights system has in Somaliland in relation to those responsibilities and obligations. The thesis concludes that an arrangement that allows a level of external self-determination and which is agreed by the parent state of Somalia is required for greater engagement between Somaliland and the international human rights system.

Acknowledgments

Thank you for the essential and patient guidance to my supervisor Rachel Murray and my sister Genevieve.

Author's Declaration

I declare that the work in this dissertation was carried out in accordance with the requirements of the University's Regulations and Code of Practice for Research Degree Programmes and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the dissertation are those of the author.

SIGNED: DATE:.....

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Abbreviations

AMISOM – African Mission to Somalia
APEC – Asia Pacific Economic Cooperation
ARS – Alliance for the Re-Liberation of Somalia
AU – African Union
EU – European Union
FGM – Female Genital Mutilation
HLACF – High Level Aid Coordination Forum
ICCPR – International Covenant for Civil and Political Rights
ICJ – International Court of Justice
IDP – Internally Displaced Person
IGAD – International Governmental Authority on Development
IJA – Interim Jubba Administration
IMF – International Monetary fund
KDF – Kenyan Defence Force
OECD – Organisation for Economic Co-ordination and Development
OHCHR – Office of the High Commissioner for Human Rights
OIC – Organisation of the Islamic Conference
PRC – People’s Republic of China
PSG – Peace and Stability Goals
SARC – Special Assistant to UN Resident Coordinator
SDRF – Somali Development and Reconstruction Facility
SEMG – United Nations Monitoring Group on Somalia Eritrea
SNM – Somali National Movement
SRSG – United Nations Secretary General’s Special Representative
TFG – Transitional Federal Government
TRNC – Turkish Republic of Northern Cyprus
UAE – United Arab Emirates
UDHR – Universal Declaration of Human Rights
UK – United Kingdom
UN – United Nations
UNGA – United Nations General Assembly
UNPOS – United Nations Political Office Somalia
UPR – Universal Periodic Review
UNSC – United Nations Security Council

UNSOM – UN Assistance Mission in Somalia

WTO – World Trade Organisation

Chapter 1

Introduction and Background

1.1 Introduction

In 1991 the northwest territory of Somalia declared independence as the Republic of Somaliland. Since the declaration of independence a government based in Hargeisa, the capital of Somaliland, has administered the territory without administrative control or input from the government of the Somali Republic in Mogadishu. Although the authorities in Hargeisa have administered the territory for 28 years no state or international organisation has recognised Somaliland as an independent state.

Although there have been negotiations between the administrations in Hargeisa and Mogadishu no agreement has been reached regarding the administration of the territory of Somaliland. Political and academic debates regarding a settlement have considered the legality of Somaliland's declaration as an independent state¹ and the impact an agreement on the exercise of authority in Somaliland may have on the prospects for peace in the wider conflicts in Somalia.²

1.2 Research Question

This thesis considers the unexplored question of how constitutional arrangements for the exercise of self-determination by the peoples within the territory of Somaliland may impact Somaliland's engagement with the international human rights system. This question is explored through an analysis of how self-determination is exercised in Somaliland and on what basis the international community engages with that exercise of self-determination in Somaliland more broadly as well as how the international human rights system engages in Somaliland. The term 'engages or 'engagement' means broadly interaction between the international community or the international human rights system and authority resulting from the exercise of self-determination by peoples in Somaliland.

¹ Alexis Arieff, 'De facto Statehood? The Strange Case of Somaliland' [2008] Yale Journal of International Affairs 60; AK Eggers, 'When is a State a State? The Case for Recognition of Somaliland' (2007) 30 Boston College International and Comparative Law Review 211; M Bryden, 'Somalia and Somaliland: Envisioning a dialogue on the question of Somali unity' (2004) 13(2) African Security Review 24.

² M Wallis & S Kibble, 'Beyond Polarity: Negotiating a Hybrid State in Somaliland' (2010) 1 African Spectrum 31; I Jhazbay, 'Somaliland: Africa's best kept secret, A Challenge to the international community?' (2003) 12(4) African Security Review 77.

In answering the research question of how the exercise of self-determination in Somaliland may impact engagement with the international human rights system, the thesis identifies that there is a human rights system in Somaliland with which the international human rights system could engage if the peoples of Somaliland exercised a form of self-determination that was agreed with by the Somali Republic. This human rights system in Somaliland is a consequence of the political ‘stability’ in Somaliland which has resulted in an identifiably functioning authority. This idea of Somaliland stability and the functional authority that is engaged with in different capacities and could be engaged with in more official capacities if the basis of the exercise of self-determination in Somaliland were agreed, will be returned to throughout the thesis. The debates around self-determination in Somaliland are shown to focus on the two opposing positions of a sovereign Somaliland and federal Somalia as a result of Somalia’s recent history. This is shown to have resulted in an inconsistent approach from the international community to the exercise of self-determination in Somaliland due to the international community’s diplomatic concerns regarding the weakening of Somalia’s territorial integrity and broader political interests. The thesis will demonstrate that this inconsistent approach of the international community to engagement with Somaliland has had the impact of increasing uncertainty as to responsibility for international human rights in Somaliland. It is demonstrated that this in turn has resulted in engagement between the international human rights system and Somaliland that is not always consistent with Somaliland being a de jure part of Somalia. Consideration of the exercise of self-determination by Somaliland beyond the views of a federal Somalia and a sovereign Somaliland to include a level of self-determination that enabled a degree of external self-determination that took advantage of the stability of governance in Somaliland and which, was agreed by the government of the Somali Republic, as the recognised government of Somalia, may enable greater engagement between Somaliland and the international human rights system.

1.3 Background

In this section I provide the historical background to the formation of Somalia from the colonies of British Somaliland and Italian Somaliland, the Civil War in Somalia under the dictatorship of Mohammed Siad Barre and the declaration of Somaliland independence from Somalia. This historical background to Somaliland plays a part in understanding the social, political and legal dynamics that impact discussion of the issue of Somaliland independence

and the exercise of Somaliland self-determination both within the Somali Republic and Somaliland and within the international community. The historical background is important to the unclear status of Somaliland's exercise of self-determination³ as there are legal arguments for and against the recognition of the exercise of the self-determination of Somaliland and engagement with it. The historical background is also relevant to the differences in capacity of the governments in Somaliland and the Somali Republic and the issues that this raises in relation to the impact the exercise of self-determination by Somaliland could have on the protection of human rights in Somaliland.

1.3.1 Formation of Somalia

On 26 June 1960 the British protectorate British Somaliland gained independence as Somaliland.⁴ Notification of Somaliland's independence was registered with the United Nations ('UN') and 35 members of the UN recognised Somaliland as a new state.⁵

On 27 June 1960 the new Legislative Assembly of Somaliland passed the Union of Somaliland and Somalia Law⁶ but this was not signed by authorised southern representatives and remained without force.⁷ On 30 June 1960 the Somali legislature, of the Italian administered UN trust territory of Somalia approved in principal a law of union similar to that of the Somaliland legislature.⁸ However, the merger was poorly prepared and the parliaments of the two states approved different acts of union.⁹ A consequence of the disparity was that the Somaliland legislature subsequently insisted that an agreed single act of union be presented to the joint legislatures for approval.¹⁰ Despite the potential lack of an agreed act of union the President of the Legislative Assembly proclaimed the independence of a unified Somalia from British and Italian Somali colonies on 1 July 1960 and formed the

³ As discussed at chapter 4, 5 and 6.

⁴ International Crisis Group, 'Somaliland: Time for African Union Leadership' (Africa Report No 110, 23 May 2006) 4.

⁵ Egypt, Israel and the 5 permanent members of the UNSC recognised Somaliland, in addition to these states and the figure of 35 UN members; Knox Chitiyo and Anna Rader, 'Somalia 2012 – Ending the Transition' (2012) Brenthurst Foundation Discussion Paper 4/2012, 23 <<https://issat.dcaf.ch/download/9299/88472/Brenthurst%20paper%202012-04.pdf>> accessed 3 May 2018 also lists Ethiopia, Ghana and Libya and the figure of 35 UN members; Jhazbay (n 2) 79; Arieff (n 1) 65; DH Shinn, 'Somaliland: The Little Country that Could' (2002) 9 Africa Notes 1, 6.

⁶ Anthony J Carroll & B Rajagopal, 'The Case For the Independent Statehood of Somaliland' (1993) 8 American University International Law Review 653, 660.

⁷ Brad Poore, 'Somaliland: Shackled To A Failed State' (2009) 45 Stanford Journal of International Law 117, 124.

⁸ Carroll (n 6) 661.

⁹ International Crisis Group (n 4) 4.

¹⁰ Poore (n 7) 124.

united Somali Republic.¹¹ An attempt was made on 31 January 1961 to amend the issue of an absent act of union by passing a new act of union retroactive from 1 July 1961. However, the act repealing the Act of Union of Somaliland and Somalia Law was not effective in both of the former colonial territories that made up Somalia.¹²

Some legal scholars claim the disparities in legislation and the fact that Italian administered Somalia was technically under UN trusteeship, means that the act of union was invalidated.¹³ Therefore when considering Somaliland's claims for international recognition there is an argument that such claims cannot simply be dismissed due to a legally enforceable single act of union between (British) Somaliland and (Italian) Somalia¹⁴ having been passed.¹⁵ This is relevant to concerns the international community has, particularly the African community, regarding the impact of the status given to and the basis of engagement with a Somaliland exercising external self-determination, may have on the principle of *uti possidetis*.¹⁶ This in turn further impacts any discussion of the likelihood of Somaliland's recognition as a sovereign independent state.

1.3.2 Civil War and Independence

On 21 October 1969 Mohammad Siad Barre ("Siad Barre") seized power in Somalia in a bloodless coup and established a dictatorship around a power base of the Mareehaan, Ogaden and Dhulbahante clans. This clan basis of the Siad Barre regime has had an impact on different Somali communities' views of a centralised Somali government and in particular in Somaliland in which the Isaaq are the majority clan¹⁷ but who are a minority clan in Somalia as a whole. Somaliland is dominated by the Isaaq clan (one of the five or six large clan families in Somalia) which is itself divided into several sub-clans.¹⁸ There are also substantial groups of other clans in Somaliland, such as the Gadabuursi in the West and the Warsengheli and Dhulbahante in the East.¹⁹

¹¹ Ibid.

¹² Carroll (n 6) 661.

¹³ International Crisis Group (n 4) 4; Carroll (n 6) 662.

¹⁴ Poore (n 7) 124.

¹⁵ International Crisis Group (n 4) 4; Carroll (n 6) 662.

¹⁶ Discussed in more detail at chapter 3.6 and 4.2.

¹⁷ Poore (n 7) 126.

¹⁸ Scott Pegg and Pål Kolstø, 'Somaliland: Dynamics of internal legitimacy and (lack of) external sovereignty' (2015) 66 *Geoforum* 193, 195.

¹⁹ Ibid.

The Isaaq were persecuted by the larger clan dominated central government of the Siad Barre regime with deliberate targeting and bombing.²⁰ In response to the attacks the Isaaq clan established the Somaliland National Movement (“SNM”) in the early 1980s. The SNM entered into an all-out offensive against Siad Barre forces²¹ which ended in 1991 when the SNM captured all of the northern towns in Somalia.²²

The persecution of the Isaaq is a relevant consideration in assessing how the exercise of self-determination by Somaliland may impact Somaliland’s engagement with the international human rights system is a relevant consideration. Simply assuming a central Mogadishu based Somali Republic government will be accepted as being responsible for protecting human rights in the whole of Somalia is unrealistic. The history of the persecution of the Isaaq also demonstrates that there is an emotional basis for Somaliland’s declaration of independence that needs to be considered when discussing the exercise of self-determination in Somaliland

1.3.3 Somaliland independence

The political stability of Somaliland since the civil war has been hard won through traditional mediation after post-independence and inter-Somaliland conflict, as a consequence the emotional consequences of history cannot be ignored when considering the legal impact of potential agreements to the exercise of self-determination by Somaliland.

The Isaaq clan was not the only clan within Somaliland that opposed the Siad Barre regime and when the war against the Siad Barre forces ended inter-clan conflict did occur in Somaliland.²³ After traditional leaders (“the Guurti”) met in 1991 through a series of reconciliation conferences, progress in achieving peace was made and this led to decisions being made in regard to reconciliation and independence. These decisions were upheld by the Committee of the SNM and the Republic of Somaliland declared independence on 18 May 1991.²⁴ As Peoples and populations are constantly moved throughout history²⁵ no instrument has defined Peoples in relation to the right to self-determination.²⁶ A rigid definition could

²⁰ International Crisis Group (n 4) 5.

²¹ Poore (n 7) 128-129; Shinn (n 5) 1.

²² International Crisis Group (n 4) 6.

²³ Poore (n 7)129.

²⁴ For details of conferences prior to independence see International Crisis Group (n 4) 6; Carroll (n 6) 655; Poore (n 7) 130.

²⁵ Eugene Kamenca, ‘Human Rights: Peoples Rights’ in James Crawford (ed), *The Rights of Peoples* (Clarendon Press 1988) 133.

²⁶ Alexandra Xanthaki, *Indigenous Rights and the United Nations Standards: Self-Determination, Culture and Land* (CUP 2007) 135.

also mean some groups are excluded from the protection that the exercise of self-determination allows.²⁷ The peace and reconciliation prior to the declaration of independence mean the Peoples that claim the right to self-determination on which the claims to independence are therefore the Peoples in the territory of Somaliland and not limited to the Isaaq clan which does satisfy some views that a Peoples require a common desire and are capable of creating a functional entity to provide it.²⁸

The land that the Somaliland authority claims makes up the territory of Somaliland is that of the former colony of British Somaliland.²⁹ Puntland, which is a self-declared autonomous federal state of Somalia,³⁰ disputes that the regions of Sool, Sanaag and Cayn should be part of Somaliland's territory.³¹ Puntland claims that these regions do not want to be part of an independent Somaliland but want to remain part of a federal Somalia.³² As a consequence of this dispute there have been violent disputes between the Somaliland armed forces and militias supported by the Puntland regional government.

Throughout the 1990s a number of other territories within Somalia declared independence or autonomy largely on the basis of clan but only Somaliland endured as a self-proclaimed independent state.³³ However, the first 6 years after the declaration of Somaliland independence were marked by inter-clan strife with conflicts between clans and between pro-Somaliland Government forces and groups opposed to the expansion of the new Somaliland government's power throughout Somaliland's territory.³⁴ This conflict in Somaliland led to another series of conferences the consequence of which was a national referendum in 2001.³⁵

At the Arta Conference in 2000 the government of the Somali Republic was established as the Somalian Transitional Federal Government ("TFG").³⁶ The TFG system of representation

²⁷ Ibid

²⁸ Hector Gros Espiell, 'Implementation of United Nations Resolutions Relating to the Right of Peoples under Colonial or Alien Domination to Self-Determination' (1980) UN Doc E/CN.4/Sub.2/405/Rev.1, para 56.

²⁹ International Crisis Group (n 4); Rudolf Beate, 'Non-State Actors in Areas of Limited Statehood as Addressees of Public International Law Norms on Governance' (2010) 4(1) Human Rights & International Legal Discourse 127.

³⁰ Shinn (n 5) 3.

³¹ Scott Pegg, 'De Facto States in the International System, Institute of International Relation' (1998) The University of British Columbia Working Paper No 21, 9

<www.liu.xplorex.com/sites/liu/files/Publications/webwp21.pdf> accessed 22 April 2017.

³² Ibid.

³³ Arieff (n 1) 61.

³⁴ Ibid 66.

³⁵ For details on conferences prior to the referendum see Shinn (n 5) 2; International Crisis Group (n 4) 6, and Jhazbay (n 2) 79.

³⁶ Shinn (n 5) 1.

rewarded communities that formed local or regional administrations. The intention was to expand participation and recognise and reward local governments in Somalia. The unintended consequence of this was to encourage proliferation of regional political entities with their own power base which thereby increased instability.³⁷ These self-proclaimed sub-state administrations proliferated to the point that Somalia was “subject to 30 separate claims by ‘statelets’ and ‘regional presidencies’”.³⁸ Although governments of the Somali Republic have attempted to reach agreements with regional authorities, they have not settled on a clear inclusive strategy that accommodates regional administrations, which has led to some regional authorities to cut ties with the government of the Somali Republic unilaterally.³⁹

The Somaliland authority and Somaliland civil society groups boycotted the Arta Conference in 2000, the result of which was the issue of Somaliland entering into discussions to re-join a unified federal Somalia was not addressed.⁴⁰ An illustration of the strength of feeling even in those early days is that some Somaliland delegates, who opposed Somaliland independence, did attend the Arta Conference and became members of the TFG, and as a result were unable to return safely to Somaliland.⁴¹

The government of the Somali Republic and regional authorities in the Somali Republic which do not claim independence from a government of Somalia, dispute Somaliland’s claim of independence.⁴² Despite this, there have been regular talks between the government of the Somali Republic and the Somaliland authority⁴³ to resolve the dispute but no agreements have resulted from these talks.

The 28 years of governance by the Somaliland authority, separate from the governments of the Somali Republic and the resulting political stability of administrations in Somaliland compared to central and southern Somalia, has led to confirmation of a sense of separation and youth in Somaliland identifying as Somalilanders. This has resulted in a strong call for

³⁷ Brenthurst (n 5) 10.

³⁸ Ibid 8.

³⁹ Abdihakim Ainte, ‘Somalia: Government Must Downsize Its Vision Over Democracy Project and Vision2016’, *AllAfrica* (16 September 2013) <<http://allafrica.com/stories/201309161965.html?viewall=1>> accessed 1 June 2018.

⁴⁰ Amnesty International, ‘Amnesty International Report 2005 – Somalia’ (25 May 2005) 7 <www.refworld.org/docid/429b27f616.html> accessed 13 June 2018.

⁴¹ Ibid.

⁴² Pegg (n 31) 9.

⁴³ ‘Turkey hosts talks between Somalia and Somaliland’ (Today’s Zaman, 2015) <www.todayszaman.com/news-337133-turkey-hosts-talks-between-somalia-and-somaliland.html> accessed 1 November 2014.

statehood which contrasts with the historic ‘Greater Somalia’ view that was the driving force for unification after decolonisation and is a view that plays a strong part in the Somaliland Somalia dispute now. This disparity in the ability of the governing administration to function, between the less stable recognised parent state of the Somali Republic and the more stable unrecognised administration of Somaliland authorities resulting from the exercise of self-determination in Somaliland is what distinguishes Somaliland from other entities such as Wales or Catalonia where the parent state has a functioning administration that can exercise external self-determination in the international community and enable internal self-determination in the sub-state entity. Somaliland is in a position where the exercise of self-determination has enabled an authority of the sub-state can more effectively exercise external self-determination and engage with the international community than the parent state.

1.3.4 Negotiations between Somalia and Somaliland

Authorities in the Somali Republic have consistently opposed any formal dismantling of Somalia.⁴⁴ The current government of the Somali Republic, the Federal Government of Somalia, is firmly wedded to a united Somalia as was its predecessor, the Transitional Federal Government of Somalia (“TFG”) and as are the Islamist groups in the south.⁴⁵ The Transitional Federal Government Charter stated that territorial integrity and sovereignty of the Somali Republic as per the 1960 union “shall be inviolable and indivisible”.⁴⁶ Therefore any negotiation by the Transitional Federal Government regarding any form of secession by Somaliland would have been politically sensitive and as interim governments the administrations prior to the current government arguably had no legal authority to take such a decision. Governments of the Somali Republic have also had problems in negotiating as some unionist see dialogue with Somaliland as being tantamount to recognition which may have a knock-on effect of upsetting the delicate power sharing balance amongst southern groups.⁴⁷ Although attempts are still made to reach a settlement with the President of the Somali Republic announcing preparedness to enter into a dialogue with Somaliland in June 2019.⁴⁸

⁴⁴ Human Rights Watch, ‘Hostages to Peace’: Threats to Human Rights and Democracy in Somaliland’ (July 2009) 51 <www.hrw.org/sites/default/files/reports/somaliland0709web.pdf> accessed 4 December 2016.

⁴⁵ Wallis (n 2) 51.

⁴⁶ International Crisis Group (n 4) 19.

⁴⁷ International Crisis Group (n 4) 25.

⁴⁸ UNSC, ‘Report of the Secretary-General on Somalia’ (20 August 2019) UN Doc S/2019/661 para 10.

The view of Somaliland separatists is also increasingly entrenched as the growing number of youth which now includes those of military age,⁴⁹ have no memory of a united Somalia and identify themselves as Somalilanders and thus are unlikely to be persuaded to support reunification with Somalia,⁵⁰ those that do remember unification associate it with war.⁵¹ As a consequence “Somaliland’s desire for international recognition generates so much pressure to be seen as successful that it stifles rigorous debate over the respective merits of independence vs. reunification with Somalia”.⁵² Any Somaliland authority entering into negotiations with the Somali Republic must therefore be prepared for strong opposition and being labelled as a ‘sell out’.⁵³ However, the Somaliland authority has previously indicated a willingness to negotiate⁵⁴ and to talk to the government of the Somali Republic such as in 2010-2011 when Somaliland Ministers were sent to Mogadishu to provide emergency aid⁵⁵ after the near failure of two rainy seasons led to deepening drought.⁵⁶ The Somaliland authority has continued to indicate a willingness to enter into a dialogue with the Government of the Somali Republic but always rejecting the federal Somalia basis.⁵⁷ The respective political positions of Somaliland and the Somali Republic are expressed as legal restraints in their respective constitutions.⁵⁸ Whilst the Provisional Federal Constitution views Somaliland as a regional member state,⁵⁹ the Somaliland Constitution considers Somaliland as an independent state.⁶⁰ As such, the two constitutions and the different status they accord to Somaliland are incompatible. However, if Somaliland were to join the federal Somali Republic, the political structure set out in the Somaliland Constitution could be compatible with the Provisional

⁴⁹ Ibid 6; HRC, ‘Report of the Independent Expert on the situation of human rights in Somalia’ (19 July 2018) UN Doc A/HRC/39/72 para 72.

⁵⁰ Christopher Clapham and others, ‘African Game Changer? The Consequences of Somaliland’s International (Non) Recognition: A Study Report’ (2011) The Brenthurst Foundation Discussion Paper 2011/05, 2011) 10 <www.somalilandlaw.com/Brenthurst_paper_2011-05_african_game_changer_SL_recognition.pdf> accessed 13 June 2018.

⁵¹ International Crisis Group (n 4) 6.

⁵² Pegg (n 18) 196.

⁵³ Bryden (n 1) 25.

⁵⁴ Poore (n 7) 144.

⁵⁵ HRC, ‘Report of the Independent Expert on the Situation of Human rights in Somalia’ (22 August 2012) UN Doc A/HRC/21/61, 12.

⁵⁶ OCHA Somalia, ‘Somalia Humanitarian Fund – Annual Report 2016’ 2 <www.unocha.org/somalia/shf> accessed 17 April 2015.

⁵⁷ UNSC (n 48); UNSC, ‘Report of the Secretary-General on Somalia’ (21 May 2019) UN Doc S/2019/393 para 27.

⁵⁸ Nanako Tamaru and others, ‘Cultivating Consensus: Exploring Options for Political Accommodation and Promoting All Somali Voices’ (2014) Governance and Peacebuilding Series – Briefing Paper No 6, 13 <www.cdint.org/documents/CDI-Cultivating_Consensus_full_report_English.pdf> 22 January 2018.

⁵⁹ Provisional Constitution of the Federal Republic of Somalia (adopted 1 August 2012) <<http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf>> accessed 16 October 2016.

⁶⁰ The Constitution of the Republic of Somaliland <www.somalilandlaw.com/somaliland_constitution.htm#Heading> accessed 14 November 2015.

Federal Constitution as it does not specify how authority should be exercised within regional units and allows them autonomy to decide⁶¹ and how to organize their own institutions⁶² and governance structures.⁶³ Therefore, Somaliland could retain its presidency⁶⁴ and political structures⁶⁵ as expressed in its constitution.

The status of the two parties in negotiations would be an issue in any negotiations.⁶⁶ From Somaliland's point of view "renegotiation of the 1960 merger between two sovereign equals would probably be the only admissible way of preserving some trace of union" as anything else would put Somaliland in a less favourable position than its de jure status as part of Somalia.⁶⁷ Mogadishu sees Somaliland as a breakaway secessionist state. These positions reflect the political and legal restraints on the situation as the same proportion of those in Somaliland seek independence as those in the Somali Republic reject it⁶⁸ and any "integration of two largely incompatible systems" could destabilise both.⁶⁹

Any resolution regarding the external self-determination of Peoples in Somaliland would need to reach an agreement on separation of the national debt and border management.⁷⁰ These are contentious issues and alteration of the Somaliland borders would require a popular mandate under its constitution.⁷¹ The previous President of Somaliland stated that "the borders are not something that can be negotiated that is a matter of state security".⁷² It would therefore appear that a Hargeisa government can no more secede sovereignty as a Mogadishu Government can accept independence.⁷³ However he did go on to say "[b]ut there is nothing to stop us holding talks with the elders and we are optimistic about these".⁷⁴ As many Somalilanders view dialogue with the Somali Republic purely as a requirement for international recognition Somaliland leaders are likely to "seek reasonable assurances of international recognition if unity proves unworkable"⁷⁵ in order to justify the

⁶¹ Tamaru (n 58) 13.

⁶² Tamaru (n 58) 21.

⁶³ Tamaru (n 58) 13.

⁶⁴ Tamaru (n 58) 21.

⁶⁵ Tamaru (n 58) 13.

⁶⁶ Tamaru (n 58) 26.

⁶⁷ International Crisis Group (n 4) 18.

⁶⁸ Bryden (n 1) 26.

⁶⁹ Bryden (n 1) 28.

⁷⁰ International Crisis Group (n 4) 20.

⁷¹ Poore (n 7) 144.

⁷² CH, 'Another country-in-waiting' The Economist (London, 10 January 2011)

<www.economist.com/blogs/baobab/2011/01/somaliland> accessed 22 November 2017.

⁷³ Bryden (n 1) 26.

⁷⁴ CH (n 72).

⁷⁵ Bryden (n 1) 29.

political risk of talks.⁷⁶ The positions of the two Somali parties in any negotiations link back to the emotional consequences of the recent history of Somalia⁷⁷ and demonstrate that discussions regarding the exercise of self-determination are impacted by more issues than strictly practical considerations.

1.4 Research area and original contribution

The focus of this thesis is on the impact the exercise of self-determination in Somaliland could have on engagement with the international human rights system? The focus is therefore limited to identifying how Peoples in Somaliland exercise self-determination and the impact this has on international engagement. Due to the issues that arise as a consequence of these two aspects of the research question, which will now be elaborated upon, the thesis does not analyse what the consequences that engagement with the international human rights system may be as this is a wide area of research that could be the focus of a thesis in its own right.

1.4.1 Self-determination in Somaliland

This thesis is placed within the literature on self-determination. As discussed above a People that exercises the right to self-determination has not been defined. The varying success of self-determination movements creating states has added to the confusion.⁷⁸ However, the idea of a Peoples cannot be limited to a colonial context⁷⁹ and does encompass aspects relevant to statehood regarding an identifiable population and territory, and factors regarding history⁸⁰ and a collective will which is being subordinated,⁸¹ which the People of Somaliland appear to satisfy. Much of the literature on self-determination focusses on an analysis of issues around when self-determination should be exercised and not the impact that exercising self-determination may have. Kirgis considers the legitimacy of exercising different degrees of self-determination,⁸² McCorquodale considers what the appropriate framework is for determining claims concerning the right of self-

⁷⁶ Ibid.

⁷⁷ As discussed at chapter 1.

⁷⁸ Richard A Falk, *Human Rights Horizons: The Pursuit of Justice in a Globalising World* (Routledge 2000) 98.

⁷⁹ James Crawford, "The Right of Self-Determination in International Law: Its Development and Future" in Philip Alston (ed) *People's Rights* (OUP 2002) 27.

⁸⁰ Xanthaki (n 26) 136.

⁸¹ Ibid 137.

⁸² F Kirgis, 'The Degrees of Self-Determination In The United Nations Era' (1994) 88 *The American Journal of International Law* 304, 304.

determination⁸³ and Klabbers assesses what the right of self-determination is.⁸⁴ There has also been analysis of self-determination in Somaliland but the discussions have again focussed on similar discussions of self-determination as a right in itself and how it applies to Somaliland such as consideration of self-determination as a right of Somaliland⁸⁵ and the legality of Somaliland's self-determination as a sovereign state.⁸⁶ There has also been research on how different political models for the exercise of internal self-determination would fit into the cultural and political dynamics of Somalia and Somaliland.⁸⁷ What the literature on Somaliland and self-determination, has not done is analysed the impact the exercise of self-determination in Somaliland may have. More specifically the impact self-determination has on Somaliland's international engagement and even more specifically the impact on engagement between the international human rights system and the human rights structures and systems in Somaliland.

Somaliland independent statehood and being part of a federal Somalia are the two dominant sides of the debate regarding the relationship between Somaliland and the Somali Republic. Other arrangements for the exercise of self-determination in Somaliland other than independent statehood and Somaliland being part of a federal Somalia have been proposed but the debates relating to other models for the exercise of self-determination have focussed on how different constitutional models would provide stable government in Somalia in view of the historical background of the Civil War.⁸⁸ These discussions do not consider how the form the exercise of self-determination in Somaliland takes, may impact engagement with the international human rights system.

1.4.2 Through its analysis of what impact the exercise of self-determination may have, the thesis assesses the unexplored next step beyond that of other literature on self-determination and other analysis of self-determination in the context of Somaliland. This thesis therefore takes a new approach to the analysis of the right to self-determination by analysing self-determination as a means to an end through the assessment of what the subsequent impact of exercising self-determination maybe. This is different from the

⁸³ R McCorquodale, 'Self Determination: A Human Rights Approach' (1994) 43 *International and Comparative Law Quarterly* 857, 869.

⁸⁴ J Klabbers, 'The Right to be Taken Seriously: Self-Determination in International Law' (2006) 28 *Human Rights Quarterly* 186, 189.

⁸⁵ *Ibid*; Eggers (n 1); McCorquodale (n 83); Carroll (n 6).

⁸⁶ Pegg (n 31) 19; Shinn (n 5); Clapham (n 50).

⁸⁷ Jaon Lewis and James Mayall, *A Study of Decentralized Political Structures for Somalia: A Menu of Options* (European Union, 1995); Bryden (n 1) 24-33.

⁸⁸ Discussed further at chapter 1, background and chapter 3.

assessment of self-determination as an end in itself in which the focus is on how self-determination can be exercised in the most stable way or in the form most acceptable to relevant parties or actors with little assessment of what the exercise of self-determination may facilitate, such as engagement with the international human rights system. In doing this the thesis contributes to an assessment of wider aims that may result from exercising self-determination by Somaliland. The assessment of the purposes of exercising self-determination rather than the means of attaining self-determination may broaden the options to achieving an agreed settlement in Somalia for the exercise of self-determination in Somaliland beyond those of a federal Somalia or a sovereign Somaliland as self-determination should not be limited to viewing it as an end result but a process also.⁸⁹

1.4.2 Developments in International governance and self-determination

The premise of the relevance of the research question to self-determination can be seen in an observation by Weller:

“[T]he increasing willingness to engage with self-determination issues [is] further evidence of the emergence of one international system of multi-level governance, where national and international constitutional law come into direct contact and become at times difficult to distinguish. In such a universal system of public law, the state is only one of many possible layers of public authority. Sovereign powers can be assigned at various levels, ranging from local municipalities to regions, federal entities, the state, sub-regional and regional integration organizations and global institutions.”⁹⁰

Using this observation of an emerging ‘international system of multi-level governance’ where ‘the state is only one of many possible layers of public authority’.⁹¹ Chapter three of this thesis will demonstrate that the reduction of the debate about the exercise of self-determination in Somaliland to the two sides of a sovereign state of Somaliland and a sub-state unit within a federal Somalia under the government of the Somali Republic unnecessarily restricts the parameters for negotiating an agreement in Somalia. As Weller

⁸⁹ Xanthaki (n 26) 149.

⁹⁰ M Weller, ‘Settling Self-determination Conflicts: Recent Developments’ (2009) 20(1) European Journal of International Law 111, 163-164.

⁹¹ Ibid.

also inferred a broad spectrum for the exercise of self-determination, when he added that a manifestation of the process of developing a multi-level system of authority is the renegotiation of “the constitutional assignment of powers to the state”.⁹²

Kingsbury observed that a consequence of the relationship between the process of an emerging international legal system with many possible layers of public authority, governance and human rights is that;

“the far-reaching argument that self-determination in [the] strong form of statehood or almost complete autonomy is essential as a general precondition for human rights does not establish which groups or territories are the units of self-determination for the purposes of human rights enhancement”.⁹³

The unclear status of the exercise of self-determination in Somaliland through the international community’s engagement there, discussed in chapter four and the effect this has on applicable human rights obligations and responsibility for them and engagement regarding those obligations as explored in chapter six demonstrates that ‘units of self-determination for the purposes of human rights enhancement’⁹⁴ have not been established.

Through consideration of the role of self-determination in the process of an emerging international system of multi-level governance described by Weller and the observation of Kingsbury, regarding the relationship between self-determination and human rights in the context of Somaliland, the thesis aims to contribute to the specific debate regarding how the exercise of self-determination, by Somaliland, may affect international engagement in relation to human rights in Somaliland. This is with the view that such a debate will contribute to wider discussions regarding the exercise of self-determination by territorial entities and international engagement.

1.4.3 International Human Rights Law in Somaliland

Assessing the impact of self-determination on the full spectrum of international engagement is too broad an area for an effective analysis of the international impact of self-determination.

⁹² Weller (n 90) 164.

⁹³ Joshua Castellino, ‘Territorial Integrity and the “Right” to Self-Determination: An Examination of the Conceptual Tools’ (2007-2008) 33 *Brooklyn Journal of International Law* 503, 565; citing B Kingsbury, ‘Reconstructing Self-Determination: A Relational Approach’ in P Aikio & M Scheinin (eds), *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Brill, 2000) 23.

⁹⁴ *Ibid.*

International human rights is a suitable focus for assessing what impact the exercise of self-determination by a territory may have because it has been recognised maintaining common international standards requires international engagement with internal affairs.⁹⁵ The focus on engagement in relation to international human rights is because “[f]or the most part, international law operates amongst states: [but] in exceptional areas, such as human rights and commercial transactions, is it grudgingly accorded a transnational character”.⁹⁶ The external self-determination aspect of international commercial transactions and trade have been explored and used by many sub-state entities such as Hong Kong, Taiwan, UK overseas territories but the transnational character of human rights less so. As a consequence of the international nature of human rights, McCorquodale has observed;

“a State’s internal protection of the right to self-determination is now of international concern, which is consistent with the development of international human rights law so that human rights are now a matter not solely within a State’s domestic jurisdiction”.⁹⁷

The international concern for self-determination and human rights means the focus on the international human rights system on the basis that its purpose is to provide “a common standard of achievement for all peoples and nations”.⁹⁸ Therefore, the impact differences in the exercise of self-determination in Somaliland may have on Somaliland’s engagement with the international human rights system may increase Somaliland’s connection to “international co-operation...in promoting and encouraging respect for fundamental freedoms for all”.⁹⁹ However, this thesis does not assess whether increased engagement with the international human rights system improves human rights protection or not, because this could be and is, an area of research in its own right.¹⁰⁰ This thesis is restricted to an analysis of how the exercise of self-determination could impact the ability of Somaliland to engage with the international human rights system and not the consequences of such engagement.

⁹⁵ Xanthaki (n 26)

⁹⁶ B Kingsbury, ‘Whose International Law? Sovereignty and Non-State Groups’ (1994) 88 American Society of International Law Proceedings 1, 4.

⁹⁷ McCorquodale (n 83) 865.

⁹⁸ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), Preamble.

⁹⁹ OHCHR, ‘International Human Rights Law’

www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx accessed 15 May 2017.

¹⁰⁰ Christof Heyns & F Viljoen, ‘The Impact of the United Nations Human Rights Treaties on the Domestic Level’ (2001) 23(3) Human Rights Quarterly 483; James Raymond Vreeland, ‘Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture’ (2008) 62(1) International Organization 65; E Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49(6) The Journal of Conflict Resolution 925; OA Hathaway, ‘Do Human Rights Treaties Make a Difference?’ (2001-2002) 111 Yale Law Journal 1935.

1.5 Methodology

The research has been desk based doctrinal research. My analysis has considered primary sources from international and regional organisations, international statutes and case law and reports from international non-governmental organisations and non-governmental organisations, the media and other sources.

1.6 Terms of Use

Somaliland administration

‘Somaliland’ is reference to the territory that declared independence in 1991 and claims to be the territory of the state of the Republic of Somaliland and is geographically within the same borders as the former colony of British Somaliland. In order to consistently maintain that the status of the government in Somaliland, which claims independence, is that of an unrecognised state, the central government of Somaliland is referred to throughout the thesis as the ‘Somaliland authority’ and the broader ‘Somaliland authorities’ when including the public authorities beyond the Somaliland authority, such as local authorities, within Somaliland that are not part of the structures of the Somali Republic. Continuing the territorial and political basis of the terms used, the ‘Somaliland legal system’ is reference to the legal structures within the territory of Somaliland and ‘Somaliland civil society’ is reference to the network of non-governmental organisations within the territory of Somaliland. Therefore, both terms are references to structures within the territory of Somaliland as administered by the Somaliland authority separate from the Somali Republic.

Somali Republic Administration

Reference to ‘Somalia’ is a geographical reference to the whole de jure territory that makes up the State of the Somali Republic. Thus, reference to ‘Somalia’ includes the territory of Somaliland, whereas, reference to the ‘Somali Republic’ is a reference to the territory of South, Central Somalia excluding Somaliland. Although, the Somali Republic is referred to as ‘Somalia’ more frequently than it is the ‘Somali Republic’ in primary and secondary sources due to the frequency with which reference is made in this thesis to Somalia excluding Somaliland, it is considered the use of ‘the Somali Republic’ for such a reference is more convenient. Therefore, in order to avoid confusion, the internationally recognised government

of the de jure territory of the State of ‘Somalia’ is referred to throughout this thesis as the ‘government of the Somali Republic’.

Due to the different forms the government of the Somali Republic has taken since the civil war in Somalia and the declaration of independence by Somaliland, when discussing issues which are relevant to the different forms the government of the Somali Republic has taken the term ‘governments of the Somali Republic’ is used and is therefore not a reference to sub-state administrations within the territory of the Somali Republic. Reference to issues or public structures within the Somali Republic such as the ‘legal system in the Somali Republic’ is therefore a reference to issues or public structures that are geographically limited to the Somali Republic and thus exclude Somaliland in their application or relevance whether or not they legally apply to Somaliland as a de jure part of Somalia under the government of the Somali Republic.

Engagement

‘Engagement’ is a broad term used throughout this thesis which can include interaction in Somaliland with the Somaliland authority or civil society organisations. Engagement can also include reference to Somaliland by international actors such as States or international organisations. Therefore, when ‘interaction’ or the issue of non-Somali organisations referencing Somaliland in documents is discussed, it is a discussion of a specific type of the ‘engagement’ with which this thesis is concerned. ‘Direct engagement’ or ‘interaction’ is therefore a reference to interaction with ‘Somaliland authorities or civil society’ rather than a reference to organisations within Somalia which have de jure responsibility for Somaliland but no presence.

Other Terms

Reference to the ‘international community’ includes all international actors including States and international organisations regardless of the issues with which such actors are concerned. This in contrast to the ‘international human rights system’ which can be any actor in the international community engaging with the issue of international human rights although this thesis generally focuses on UN bodies due to their dominant role in the international human rights system. ‘International human rights’ includes international human rights ‘standards’ and ‘obligations’ under international law to maintain international human rights standards. To this end the ‘Somaliland human rights system’ is again a broad term that includes both the

‘Somaliland legal system’ and those parts of Somaliland civil society that are concerned with human rights issues.

‘Non-state actors’ include those that act separately from the state who perform acts of governance that were classically performed by the state.¹⁰¹ Although, minimum requirements for ‘de facto states’ have not been declared¹⁰² they are non-state actors, in that they are not accorded the status of ‘State’ under the rules of general international law”.¹⁰³ However, de facto states are entities which do at least exercise some effective authority “over a territory and determinable population”.¹⁰⁴ The terms non-state actors and de facto state are therefore used interchangeably if the issue being discussed is relevant more broadly.

1.7 Thesis Structure

The historical background to the formation of Somalia below contributes to an understanding of the reasons for the current exercise of self-determination by Somaliland and an understanding of the focus of the current debates on a federal Somalia and an independent Somaliland state. It also contributes to understanding some of the political issues around the approaches taken by the international community to engaging with the exercise of self-determination in Somaliland which are discussed throughout the thesis.

Chapter two discusses what the domestic legal system in Somaliland is, and what the role of international human rights is within it. This builds on the historical background in chapter one in establishing what issues impact Somaliland’s engagement with the international human rights system. The chapter demonstrates that there is a legal structure in place in Somaliland with which the international human rights system could engage. As such, the issues that impact the exercise of self-determination by Somaliland would impact engagement with the human rights system in Somaliland. This demonstrates the value of the research question because if there was not an identifiable human rights system in Somaliland then any impact of the exercise of self-determination in Somaliland on engagement with the international human rights system would be likely to be reduced. The chapter also demonstrates that there are problems with the Somaliland human rights system which are

¹⁰¹ Cedric Ryngaert and Math Noortmann, ‘New Actors in Global Governance and International Human Rights Law’ (2010) 4(1) Human Rights & International Legal Discourse 5, 6.

¹⁰² Rudolf (n 29) 134.

¹⁰³ Anthony Cullen and Steven Wheatley, ‘The Human Rights of Individuals in De Facto Regimes under the European Convention on Human Rights’ (2013) 13(4) Human Rights Law Review 691, 701.

¹⁰⁴ Rudolf (n 29) 134.

separate from a lack of engagement with the international human rights system, as well as problems that may impact such engagement.

As this thesis is placed within research on self-determination and its impact, chapter three focuses on the question of what the spectrum of self-determination is and aims to clarify the status of the self-determination which is claimed to be exercised in Somaliland. Classifications of constitutional arrangements are discussed in order to assess what exercise of self-determination may be possible. This discussion, builds on the understanding gained from the historical background in chapter one and the legal structures in Somaliland in chapter two, in order to establish what the situation is regarding human rights and self-determination in Somaliland, before moving on in later chapters to discuss what issues affect the exercise of self-determination and impact engagement with the international human rights system.

Chapter three analyses how the independent statehood which the Somaliland authority claims Somaliland exercises, relates to self-determination and moves on to address what the current constitutional arrangement is in Somalia between the central Somali Republic government in Mogadishu and the Somaliland authority in Hargeisa.

Chapter three then moves onto a discussion of the circumstances that may impact the way self-determination is exercised in Somaliland, to this end, the stability of the Somaliland authority's governance in Somaliland is considered and how this impacts the likelihood of Somaliland achieving recognised statehood, including an analysis of the example of Puntland.¹⁰⁵ By understanding how self-determination is exercised by Somaliland, an assessment can be made of the impact of exercising self-determination in subsequent chapters.

Chapter four analyses the basis upon which the international community engages with Somaliland and the impact this has on the status of self-determination in Somaliland. The chapter demonstrates that the conduct of the international community has led to a lack of clarity as to the status of the exercise of self-determination in Somaliland. It highlights the importance of political self-interest to the different approaches taken to self-determination in Somaliland by various actors within the international community. The contribution this makes to the research question is in demonstrating what is required of the exercise of self-

¹⁰⁵ Full explanation of the relevance of Puntland is at chapters 3.7.3 and 6.4.1.

determination in Somaliland in order for Somaliland's international engagement to be impacted. To this end the chapter demonstrates the importance of the parent state's agreement, in Somaliland's case the Somali Republic's agreement, to the exercise of self-determination in Somaliland for Somaliland's international engagement to be increased.

In order to analyse how the exercise of self-determination in Somaliland may impact engagement with the international human rights system, the human rights obligations that apply in Somaliland and responsibility for them, need to be understood. The discussion in chapter five, therefore, includes an assessment of the obligations and responsibilities that can be inferred from the conduct of the Somaliland authority, the Somali Republic and the international community. The chapter demonstrates that the lack of consistency in the status given to Somaliland by the international community, as illustrated in chapter four and the absence of an agreement from the Somali Republic, as the parent state, as to the exercise of self-determination by Somaliland,¹⁰⁶ has led to inconsistencies as to with whom it is considered responsibility for human rights in Somaliland rests.

Chapter six brings together the status given to the exercise of self-determination in Somaliland and the human rights obligations and responsibilities as discussed in earlier chapters, in order to analyse what engagement there is between the international human rights system and Somaliland. This enables an assessment to be made of how changes in the exercise of self-determination in Somaliland may impact engagement with the international human rights system. The chapter demonstrates that the inconsistent approach to Somaliland's self-determination by the international community and the lack of an agreement with the government of the Somali Republic as to the exercise of self-determination in Somaliland¹⁰⁷ has led to an inconsistent approach to engagement between the international human rights system and Somaliland.

The conclusion demonstrates that from the analysis in previous chapters the domestic legal system in Somaliland does have serious problems but there is a legal system which the international human rights system could engage with if the exercise of self-determination by Somaliland were agreed. The lack of an agreed exercise of self-determination by Somaliland arising from debate and negotiations on the issue which has focussed on the two opposing positions of a sovereign Somaliland and a federal Somalia, as a consequence of the recent

¹⁰⁶ As discussed in chapters 1-3.

¹⁰⁷ As discussed in chapters 1.3.4 and 4.9.

history of Somalia, has resulted in an inconsistent approach from the international community to the exercise of self-determination by Somaliland. This inconsistent approach has been reflected in an uncertainty regarding responsibility for international human rights in Somaliland. This in turn has resulted in engagement by the international human rights system with Somaliland that has inconsistencies.

1.8 Conclusion

The historical background to Somaliland's declaration of independence discussed in this chapter is essential to understanding the emotional context in Somalia around the legal issues that are raised around the possible arrangements for the exercise of self-determination by Somaliland which the research question focuses on and which are explored in subsequent chapters of the thesis. Understanding the impact of this history on constitutional arrangements is therefore essential to understanding the impact of those constitutional arrangements for self-determination in Somaliland on engagement by the international human rights system in Somaliland.

The history to the declaration of Somaliland's independence demonstrates that there are sensitive issues to the political situation in Somalia and relations between the Somali Republic and Somaliland that are not just geographical but clan based and cultural and which are based on historic experiences within the living memory of Somalilanders. A consequence of these different issues is a focus of negotiations, regarding constitutional arrangements for the exercise of self-determination in Somaliland, on a federal Somalia or an independent state of Somaliland. Therefore, the analysis of the research question in this thesis of the potential impact of self-determination in Somaliland that goes beyond a discussion of these two dominant approaches may expand on the possible options which may be considered in reaching an agreement.

Chapter 2

Somaliland Domestic Legal System

2.1 Introduction

The prevalent legal system is based on the Italian-English systems with aspects of Sharia Law.¹ Somaliland's constitution allows for different legal systems, based on Sharia law, statutory civil law, and customary law called Xeer.² However "only a small number of judges have appropriate legal qualifications in these fields"³ as a consequence of this judges frequently resort to a combination of legal systems.⁴ The jurisdiction of different legal systems is unclear because Somaliland adopted a constitution that determines that laws shall be based on Islamic principle in that 'the laws of the nation shall be grounded on and shall not be contrary to Islamic Al-Shari'ah'.⁵ Islamic Law is not, however, applied by separate courts, but is integrated into customary law through either lower court judges who are frequently not familiar with statutory laws or the affirmation and enforcement of judgments under Xeer, which is Sharia based, by local courts.⁶ A consequence of this is Sharia Law is both primary and subordinate to Xeer and statutory law as it is both "subsumed within customary law but respect for its principles are a central constitutional obligation".⁷ Reform has been suggested, with a Somaliland Presidential pledge to "strengthen the independence of the judiciary"⁸ and efforts by the Somaliland National Justice Strategy to harmonize Xeer, Sharia, statutory law and formal justice policy and dismantle Regional Security Committees.⁹

This chapter discusses how the legal systems in Somaliland work and how the implementation of international human rights obligations in Somaliland works. It explores human rights problems in Somaliland and the strengths and weaknesses of the role played by

¹ Committee on the Rights of the Child, 'Initial Report submitted by Somalia under article 44 of the Convention' (16 October 2019) UN Doc CRC/C/SOM/1 para 19.

² Freedom House, 'Somaliland' <<https://freedomhouse.org/report/freedom-world/2013/somaliland#.VRqUF454rYg>> accessed 12 November 2015.

³ HRC, 'Report of the independent expert on the situation of human rights in Somalia on Technical Assistance and Capacity-Building' (23 March 2010) UN Doc A/HRC/13/65, 17-18.

⁴ Ibid.

⁵ The Constitution of the Republic of Somaliland, Art 5(2) and Art 128(1)

<www.somalilandlaw.com/somaliland_constitution.htm#Heading> accessed 14 November 2015.

⁶ UNDP, 'Assessment of Development Results – Evaluation of UNDP Contribution – Somalia' (July 2010) 31 <<http://web.undp.org/execbrd/pdf/UNDP-ADR-Somalia.pdf>> accessed 22 March 2016.

⁷ Andre Le Sage, 'Stateless Justice in Somalia. Formal and Informal Rule of Law Initiatives', Centre for Humanitarian Dialogue' (*Centre for Humanitarian Dialogue*, 2005) 19 <www.hdcentre.org/files/Somalia%20report.pdf> accessed 3 February 2016.

⁸ Freedom House (n 2).

⁹ HRC (n 3) 17-18.

international human rights standards within the different legal systems in Somaliland. The human rights problems in Somaliland which the chapter focuses on and which are also raised as human rights problems in Somaliland in subsequent chapters,¹⁰ are issues related to the rights of women, refugees/internally displaced persons ('IDPs') and the media. The discussion of women's rights in Somaliland is because they are an area of human rights with problems that arise from Somali cultural issues and are thus relevant throughout Somalia not just Somaliland. Women's rights, along with media rights, are also sources of human rights problems in Somalia that are frequently raised internationally. Refugees/IDPs rights are an issue for which the external status of the self-determination exercised by Somaliland directly impacts international human rights obligations due to the effect it can have on the classification of refugees and IDPs, which is affected by the international status of Somaliland.

By understanding the role of international human rights in Somaliland, the chapter further elaborates on the idea of how the exercise of self-determination by Somaliland, in a way that enables greater engagement by the international human rights system in Somaliland, may impact human rights protection in Somaliland. The chapter will also highlight the efforts there are to improve the protection of international human rights standards in Somaliland. The chapter will demonstrate that although there are serious human rights problems and problems with the human rights system in Somaliland, there is an established de facto state structure and civil society within Somaliland that make up the human rights system in Somaliland. Therefore, if Somaliland's exercise of self-determination were agreed there is a human rights system within Somaliland with which the international human rights system could engage

2.2 Civil Society and Human Rights in Somaliland

Somaliland's independent human rights groups have faced obstruction from the Somaliland authority despite freedoms of assembly and association being constitutionally guaranteed.¹¹ The Somaliland House of Representatives passed a non-binding resolution in 1999 stating that the entire Public Order Law which is used to suppress Somaliland civil society was unconstitutional.¹² Despite this, Somaliland has for years also had no human rights

¹⁰ See chapters 2.4, 2.6.3 and chapters 5 and 6.

¹¹ Freedom House (n 2).

¹² Human Rights Watch, 'Hostages to Peace': Threats to Human Rights and Democracy in Somaliland' (July 2009) 23 <www.hrw.org/sites/default/files/reports/somaliland0709web.pdf> accessed 4 December 2016.

monitoring organisation after the Somaliland Human Rights Organization Network was effectively dismantled after a leadership struggle that was characterized by overt interference¹³ by the Somaliland authority. Other legislation has also been used to suppress Somaliland civil society. Civil society leaders in Somaliland have previously called on lawmakers to reject a draft bill on Combating and Preventing Terrorism.¹⁴ This is because it was said to violate human rights as “it grants security services sweeping powers to track phone and internet activity, empowers police to make arrests without warrants, and allows secret court hearings that exclude defendants and their representatives from attending”.¹⁵ As such it could prohibit the right to liberty, freedom of expression,¹⁶ fair trial, the right to defence, freedom of movement and freedom of association, thereby violating both Somaliland's constitution and international human rights law.¹⁷ As the bill was broad and gave an open-ended definition of terrorism it could also be applied in a wide range of activities.¹⁸

The repression of civil society in Somaliland has meant opposition political figures have been targeted¹⁹ examples of this include the arrest of three opposition leaders, who protested the Somaliland authorities decision to disqualify their groups from participating in local elections,²⁰ a ban by the Somaliland authority on political gatherings and demonstrations,²¹ over which no court exercised oversight²² and crackdowns on demonstrations in support of governments in Somalia.²³ Such blanket bans on any kind of political assembly have been issued by the Somaliland Ministry of the Interior without offering legal justification.²⁴ Existing statutory law also means that acts which amount to defamation and slander are dealt

¹³ Human Rights Watch, ‘Somaliland: Activist who Questioned Executions Detained’ (22 April 2015) <www.hrw.org/news/2015/04/22/somaliland-activist-who-questioned-executions-detained> accessed 17 January 2017.

¹⁴ HRC Somaliland, ‘Somaliland Oppressive Anti-terrorism Law is Submitted to the Parliament’ <www.hrcsomaliland.org/press-release/93-somaliland-oppressive-anti-terrorism-law-is-submitted-to-the-parliament> accessed 29 June 2015.

¹⁵ AllAfrica, ‘Somalia: Somaliland Civil Society Protests “Ambiguous” Counter-Terrorism Bill’ *AllAfrica* (Washington DC, 4 June 2014) <<http://allafrica.com/stories/201406050139.html>> accessed 2 October 2016.

¹⁶ HRC (n 14).

¹⁷ All Africa (n 15); HRC (n 14).

¹⁸ HRC (n 14).

¹⁹ Human Rights Watch (n 12) 39.

²⁰ Freedom House (n 2).

²¹ Human Rights Watch (n 12) 24-25.

²² Human Rights Watch (n 12) 21.

²³ Freedom House (n 2).

²⁴ Human Rights Watch (n 12) 42.

with through criminal legislation and carry detention sentences and are not dealt with as civil matters in line with human rights.²⁵

Somaliland has offered greater political stability than central and southern Somalia.²⁶ This has in turn lead to greater organised civil and social activity with an active non-governmental organisation community and a network of human rights defenders in Somaliland which campaign for fuller protection of human rights. Campaigns have been made on cases of arbitrary detention, media repression and unfair trials, including for political offence²⁷ but reports of human rights violations and abuses are still commonplace.²⁸ Although there are problems with civil society repression in Somaliland there is a civil society which promotes the defence of human rights and a legal structure that interacts with civil society, Therefore, if Somaliland exercised an agreed form of self-determination that enabled it to engage with the international human rights system, there is a structure within Somaliland separate from the Somali Republic with which the international human rights system could interact with. As such, any agreed constitutional arrangement for the exercise of self-determination in Somaliland would need to facilitate engagement between the international human rights system with the human rights system in Somaliland which has a separate identity from that of the Somali Republic. Therefore, the arrangement for the exercise of self-determination by Somaliland should enable direct interaction rather than interaction that is dependent on the Somali Republic.

2.3 The Somaliland Courts System

The Somaliland authority has strived to establish a stable nation “with a functional and fair justice system”.²⁹ Access to justice is guaranteed under the Judiciary Organization Act and the Somaliland Constitution,³⁰ every person is entitled to institute proceedings in a court and

²⁵ HRC, ‘Report of the independent expert on the situation of human rights in Somalia’ (29 August 2011) UN Doc A/HRC/18/48, 10.

²⁶ UK Foreign and Commonwealth Office, ‘Human Rights and Democracy Report for Somalia’ (2011) 1; OCHA Somalia, ‘Humanitarian Access - Update 01’ (30 August 2012) <http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_4339.pdf> accessed 26 June 2015; as discussed in more detail at chapter 1.3.3 and in chapter 3.7.1.2.

²⁷ Amnesty International, ‘Amnesty International Report 2005 – Somalia’ (25 May 2005) 4 <www.refworld.org/docid/429b27f616.html> accessed 13 June 2018.

²⁸ Ibid; UK (n 26) 1; OCHA (n 26); Human Rights Watch (n 12) 12.

²⁹ Somaliland Press, ‘MoJ Press Statement on Somaliland’s Justice System (April 2015) <www.somalilandpress.com/wp-content/uploads/2015/04/MoJ-Press-Statement-on-Somaliland%E2%80%99s-Justice-System.pdf> accessed 16 March 2016.

³⁰ Somaliland Constitution (n 5) Article 28, sec. v.

to defend him/herself in a court. The Somaliland Constitution also states³¹ that the Somaliland State shall provide free legal defence and that court fees may be waived for the poor.³² There are private legal aid providers who assist those who cannot afford attorney fees and in addition to this, the Somaliland authorities have also approved a legal aid policy and drafted, but not yet approved, a Legal Aid Act.³³ Despite this, women, poor people, IDPs and vulnerable people in general face obstacles in accessing justice.³⁴ Issues such as personal favourism, political influence and lack of transparency are all constraints to obtaining free and equal access to justice³⁵ And there is lack of respect for the independence of the judiciary.³⁶

The judiciary in Somaliland has a formal hierarchy of courts, up to a supreme court.³⁷ This judicial system is more established with a central territorial structure in Somaliland than the less formal regional courts system in territory controlled by the government of the Somali Republic offering the opportunity to develop greater legal stability. Although Somaliland's judicial system extends to all administrative regions within Somaliland³⁸ the judiciary is underfunded³⁹ and has a 'limited number of functioning courts'⁴⁰ that do not extend to all areas of those administrative regions, with rural and remote areas within the regions particularly lacking judicial resources.⁴¹ As such, people in rural and pastoral locations do not have access to state courts and rely heavily on traditional forms of conflict resolution⁴² such as Xeer.⁴³

There are also basic problems with the judiciary in Somaliland, such as a limited number of judges.⁴⁴ Somaliland has approximately 100 judges,⁴⁵ very few of whom are qualified

³¹ Somaliland Constitution (n 5) Article 28, sec. vi.

³² HRC Somaliland, 'Universal Periodic Review Somaliland Civil Society Organizations Submission' (1 July 2015) Part III, C, para 13-14 <<http://hrcsomaliland.org/universal-periodic-review-somaliland-civil-society-organizations-submission-2015/>> accessed 21 April 2016.

³³ Ibid.

³⁴ HRC (n 32) Part III, C, para 14, vii.

³⁵ Ibid.

³⁶ HRC, 'Report of the Independent Expert on the situation of human rights in Somalia' (16 September 2019) UN Doc A/HRC/42/62 para 86.

³⁷ UK (n 26) 2.

³⁸ HRC (n 32) Part III, C, paras 13-14.

³⁹ Freedom House (n 2).

⁴⁰ Le Sage (n 7).

⁴¹ HRC (n 32) Part III, C, para 14.

⁴² Ibid.

⁴³ As discussed in chapter at 2.6

⁴⁴ HRC (n 32) Part III, C, para 14.

⁴⁵ Freedom House (n 2).

lawyers,⁴⁶ and most of them do not have formal legal training⁴⁷ and thus require additional legal training.⁴⁸ This problem is compounded further by the simple issue of Judges not having copies of Somaliland laws.⁴⁹ In 2009 “[o]f the 54 judges serving in the courts of Hargeisa Region only 5 were qualified lawyers with University law degrees or equivalent legal knowledge.”⁵⁰ The Ministry of Justice employed no lawyers⁵¹ and most prosecutors and lawyers operated without a law degree⁵² with district prosecutors usually being police officers.⁵³ However, the number of lawyers in Somaliland with a law degree has since increased to roughly 300 lawyers and of these approximately 50 are women.⁵⁴ Military courts are also a problem as contrary to the Somaliland Constitution, they hear cases beyond those against the military⁵⁵ and conduct summary trials which breach evidential and procedural rules⁵⁶ and lawyers are intimidated and prosecuted before the military court.⁵⁷

Resource based problems such as those above mean there are also problems with the due process of law in Somaliland as surveys have shown 70% of detainees were sentenced by first instance courts without opportunity to appeal.⁵⁸ Somaliland civil society organizations have raised concerns regarding the due process of law, the capacity of judges, prosecutors and police⁵⁹ investigators, the effectiveness of trials and the use of Xeer in cases.⁶⁰ The independent expert on the situation of human rights in Somalia has also stated that in breach of the Somaliland Constitution, the judiciary has failed to challenge arbitrary and illegal detention of journalists, human rights defenders and ‘undisciplined’ juveniles.⁶¹ An example of this is despite a new prisons law a significant number of prisoners were imprisoned on an arbitrary basis and detained without a legal basis for example some women and girls have

⁴⁶ OHCHR, ‘UNDP inputs to the Universal Periodic Review – Somalia’ <http://lib.ohchr.org/HRBodies/UPR/Documents/Session11/SO/UNDP_UNDevelopmentProgramme-eng.pdf> accessed 16 March 2017.

⁴⁷ Freedom House (n 2); Human Rights Watch (n 12) 24-25.

⁴⁸ OHCHR (n 46).

⁴⁹ Human Rights Watch (n 12) 24-25.

⁵⁰ OHCHR (n 46).

⁵¹ Human Rights Watch (n 12) 24-25.

⁵² OHCHR (n 46).

⁵³ Alejandro Bendaña and Tanja Chopra, ‘Women’s Rights, State-Centric Rule of Law, and Legal Pluralism in Somaliland’ (2013) 5 Hague Journal on the Rule of Law 44, 47; Human Rights Watch (n 12).

⁵⁴ OHCHR (n 46).

⁵⁵ HRC (n 32) Part III, D, para 19.

⁵⁶ HRC (n 32) Part III, D, para 19.

⁵⁷ HRC (n 36)

⁵⁸ HRC, ‘Report of the Independent Expert on the Situation of Human rights in Somalia’ (22 August 2012) UN Doc A/HRC/21/61, 7.

⁵⁹ HRC (n 36)

⁶⁰ HRC (n 32) Part III, D, para 19.

⁶¹ HRC (n 3) 17-18.

also been imprisoned for disobeying parents and husbands.⁶² Such weak enforcement of existing laws and insufficient information on the justice system hampers access to justice as the delay of trials is a challenge and laws that hinder access to justice are not reviewed⁶³ such as the Penal Code and the Criminal Procedure Code that predate the Somaliland Constitution.⁶⁴ As a consequence of these issues the judiciary is considered to lack independence, “while the Supreme Court is largely ineffective⁶⁵” and where they exist courts and offices are considered to be poorly equipped.⁶⁶

As with Somaliland civil society, although there are problems with the courts system in Somaliland there is a courts system with which the international human rights can engage to potentially improve the meeting of international human rights standards in Somaliland. Again, as per Somaliland civil society, this courts system is also separate from the Somali Republic. Thus, an arrangement for the exercise of self-determination in Somaliland should allow interaction separate from the Somali Republic for it to have an impact on the international human rights system’s engagement with the Somaliland courts system.

2.4 Human Rights and the Somaliland statutory legal system

International human rights standards do play a role in Somaliland’s legal system but there are problems of both human rights violations within Somaliland and problems with the Somaliland legal system’s role in preventing or reducing human rights violations. Statutory law in Somaliland is almost exclusively based on former colonial laws pre-1991.⁶⁷ Prison legislation is an example of the problems with the age of statutory law, as existing prison legislation is inconsistent with the Somaliland Constitution and human rights standards the constitution claims to uphold⁶⁸ as it predates the Somaliland Constitution.⁶⁹ It therefore requires amending and modernising if it is to ensure compliance with international human rights.⁷⁰ The Somaliland parliament has passed a Somaliland Prisons Law⁷¹ which replaced

⁶² HRC (n 58) 15.

⁶³ HRC (n 32) Part III, C, para 16.

⁶⁴ HRC (n 32) Part III, C, para 16.

⁶⁵ Freedom House (n 2).

⁶⁶ Bendaña (n 53) 47.

⁶⁷ Bendaña (n 53) 49.

⁶⁸ HRC (n 58) 7.

⁶⁹ HRC (n 32) Part III, D, paras 19-34.

⁷⁰ HRC (n 32) Part III, D, paras 19-34.

⁷¹ Somaliland Press, ‘Somali Parliament Overwhelmingly Approves New Somaliland Prisons Law’ (2012) <www.somalilandpress.com/somalilandparliament-overwhelmingly-approves-new-somaliland-prisons-law/> accessed 22 June 2015.

the Somaliland Prisons Regulations Law which was in force in Somaliland after it had originally been adopted to be administered in the then ‘Northern Regions’ of the Somali Republic in 1984,⁷² seven years before Somaliland declared independence. Although the Somaliland Prisons Regulation Law is still in use in Somaliland its provisions are circumscribed by the provisions of the Somaliland Constitution and the practice of the Somaliland Corrections Force.⁷³ Due to its age statutory law in Somaliland is also written in English, Italian and Arabic and is therefore “largely inaccessible to the limited number of Somaliland legal professionals”.⁷⁴

The Somaliland authority does claim responsibility for the protection of human rights and has mechanisms for their protection. Although, health and education “runs from paltry to almost non-existent in many areas”,⁷⁵ under the Somaliland Constitution the government of the Somaliland Republic is responsible for the provision of free medicine and the care of the public welfare. The Somaliland Constitution further stipulates that the state shall combat communicable diseases and promote and extend healthcare centres.⁷⁶ Health policy is pursued in Somaliland and the number of new health centres in Somaliland has increased.⁷⁷ The right to education is also a fundamental right stipulated in the Somaliland Constitution⁷⁸ and the Somaliland authorities have introduced free primary education in the country, giving access to poor people and increasing girls’ enrolment in education.⁷⁹ Academic freedom is also less restricted than in territory controlled by the government of the Somali Republic and the territory has at least 10 universities and colleges of higher learning, although none are adequately resourced.⁸⁰

Somaliland has a National Human Rights Commission which is a statutory body that was established by an Act of the Somaliland Parliament⁸¹ in December 2005.⁸² Although there

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Bendaña (n 53) 49.

⁷⁵ Human Rights Watch (n 12) 12.

⁷⁶ HRC (n 32) Part II, A, para 6.

⁷⁷ Ibid.

⁷⁸ HRC (n 32) Part II, B, para 8.

⁷⁹ Ibid.

⁸⁰ Freedom House (n 2).

⁸¹ Yusuf M Hasan, ‘Somaliland: President Silanyo Reaffirms Commitment to Human Rights Promotion’ (*Somaliland Sun*, 10 December 2012) <www.somalilandsun.com/somaliland-president-silanyo-reaffirms-commitment-to-human-rights-promotion/> accessed 16 February 2016

⁸² OHCHR, ‘UNDP inputs to the Universal Periodic Review – Somalia’ para 11 <http://lib.ohchr.org/HRBodies/UPR/Documents/Session11/SO/UNDP_UNDevelopmentProgreamme-eng.pdf> accessed 16 March 2017.

have been problems with the Act, due to a lack of proper process in the selection of commissioners and the absence of Somaliland civil society playing a role in the process of establishing the Commission.⁸³ Neither was the Commission founded on the basis of Paris Principles. As a result of these issues the Commission's independence and impartiality have suffered.⁸⁴ The Independent Expert on Human Rights in Somalia has also raised concerns that the Somaliland National Human Rights Commission's lack of resources will prevent it from carrying out its mandate effectively.⁸⁵ Other statutory human rights bodies have also been established. A five-member Good Governance and Anti-Corruption Commission was established by Somaliland's President⁸⁶ and passed by both Houses of the Somaliland Parliament⁸⁷ in 2010.⁸⁸ This Commission was strengthened further in 2013 in an effort to crack down on the misuse of public funds.⁸⁹

This section demonstrates the separate identity and function of the Somaliland statutory system from that of the Somali Republic. Human rights guarantees are expressed in the Somaliland constitution and responsibilities are claimed by the Somaliland authority and bodies that oversee protection of human rights are statutory bodies under the Somaliland authority. Therefore, an arrangement for the exercise of self-determination in Somaliland that impacts engagement by the international human rights system in Somaliland would need to allow engagement that is not reliant on the Somali Republic.

2.4.1 Women and statutory law in Somaliland

Article 36 of the Somaliland Constitution guarantees women equal enjoyment of rights, and obliges the government to promote and enact laws on the rights of women to be free of customs and practices that are "injurious to their person and dignity".⁹⁰ A Rape and Sexual Offences Law was also adopted in 2018.⁹¹ These human rights frameworks are not

⁸³ HRC (n 32) Part III, B, para 12.

⁸⁴ Ibid.

⁸⁵ HRC, 'Report of the Secretary-General - United Nations support to end human rights abuses and combat impunity in Somalia' (21 September 2012) UN Doc A/HRC/21/36, 12.

⁸⁶ Yusef M Hasan, 'Somaliland: Legislators Approve Anti-Corruption Commission Bill' (*Somaliland Sun*, 1 January 2013) <<http://www.somalilandsun.com/somaliland-legislators-approve-anti-corruption-commission-bill/>> accessed 16 March 2017.

⁸⁷ Freedom House (n 2).

⁸⁸ Hasan (n 86).

⁸⁹ Freedom House (n 2).

⁹⁰ Somaliland Constitution (n 5).

⁹¹ HRC, 'Report of the Independent Expert on the situation of human rights in Somalia' (16 September 2019) UN Doc A/HRC/42/62 para 88.

adequately implemented⁹² as women and girls face a high level of sexual violence throughout Somaliland, particularly gang rape.⁹³ The implementation of the Rape and Sexual Offences Law has been delayed⁹⁴ because of objections from religious leaders and other sections of civil society.⁹⁵ As a consequence it has been amended which has negated many of the protections it introduced such as the exemption of fathers and grandfathers from prosecution for forced marriage.⁹⁶ Internally displaced women and girls are particularly vulnerable to rape by armed men including government soldiers and militia members.⁹⁷ An example of the prevalence of discrimination against women is the almost universal practice of female genital mutilation ("FGM") in Somaliland, with 98 per cent of 15-49 year olds having undergone the procedure and 77 per cent of those having undergone the most extreme form.⁹⁸ This is despite the fact FGM is illegal,⁹⁹ the Somaliland Constitution bans it, the Somali Penal Code covers "hurt", "grievous hurt" and "very grievous hurt" and Islam also prohibits the practice.¹⁰⁰ Despite this and in view of the prevalence of FGM, there is no national strategy in Somaliland for the eradication of FGM/circumcision or national law against it,¹⁰¹ despite a draft law having been developed by civil society with support of the UN since 2015¹⁰². This lack of importance of FGM indicating the cultural status of women in Somaliland.

Women are also not always treated fairly before Somaliland courts and face numerous challenges when pursuing justice.¹⁰³ This partly arises from the lack of women represented in the Somaliland legal system¹⁰⁴. In Somaliland in 2008 there were only 4 women lawyers in Somaliland and no female judges or prosecutors¹⁰⁵ and only 2 police stations in Hargeisa had women's desks with women police officers.¹⁰⁶ This has since increased to 75 women working

⁹² HRC (n 32) Part V.B, para 25.

⁹³ HRC (n 91) para 48

⁹⁴ HRC (n 91) para 48.

⁹⁵ HRC (n 91)

⁹⁶ HRC, 'Report of the Independent Expert on the situation of human rights in Somalia' (19 July 2018) UN Doc A/HRC/39/72 para 73.

⁹⁷ Human Rights Watch, 'World Report 2014: Somalia – Events of 2013' (2014) < www.hrw.org/world-report/2014/country-chapters/somalia > accessed 16 February 2017.

⁹⁸ HRC (n 25) 11.

⁹⁹ Freedom House (n 2).

¹⁰⁰ HRC, 'National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Somalia' (11 April 2011) UN Doc A/HRC/WG.6/11/SOM/1.

¹⁰¹ Report of the independent expert on the situation of human rights in Somalia (29 August 2011) UN Doc A/HRC/18/48, 11.

¹⁰² HRC (n 91) para 92.

¹⁰³ HRC (n 32) Part V.B, para 25.

¹⁰⁴ HRC (n 91) para 91.

¹⁰⁵ HRC (n 85) 8 and 12.

¹⁰⁶ HRC (n 25) 11.

in the legal sector in Somaliland.¹⁰⁷ The male dominated justice system is also reflected in the discrimination of women in political participation and decision making.¹⁰⁸

Although Somaliland's constitution does not discriminate against women's participation in the political process, it does not facilitate it either.¹⁰⁹ Even though, women have voted in large numbers in all of Somaliland's elections, women candidates have had little chance of being elected.¹¹⁰ Somaliland civil society has proposed a 10% quota for women in the Lower House of the Somaliland Parliament.¹¹¹ The House of Representatives (the Lower House of the Somaliland parliament) did pass a minimal quota or reservation system for women but this was vetoed by the Guurti (the Upper House of the Somaliland parliament) and in May 2014 the President of Somaliland "re-appealed to the lawmakers to take the gender quota issue into perspective".¹¹² As such, in 2010 there were 3 women in parliament out of 164 total members¹¹³ (1 woman in the House of Representatives, 1 in the Guurti, and a woman was elected chairperson of the Somaliland Human Rights Commission).¹¹⁴ Previous Somaliland Cabinets have featured 1 woman minister out of 47 in total and 2 women ministers out of 20 in total.¹¹⁵

A consequence of the obstacles in the legal system faced by women in Somaliland is that 90% of women do not seek to pursue the enforcement of their rights because of the fear of accessing the male dominated justice system.¹¹⁶ "Therefore, victims of rape, domestic violence, or those who are deprived of their inheritance rights are not protected".¹¹⁷ However, with assistance from the UN Development Program there were, as of 2018, 20 female prosecutors with the Somaliland Attorney general's office which should increase women's confidence to report crimes as shown by the prosecution of 134 rape cases in 2018.¹¹⁸ The UN Human Rights Council has also called on subnational authorities in Somalia to enable

¹⁰⁷ UNDP, "Somali Voices" – First female prosecutor in Somaliland' <www.so.undp.org/content/somalia/en/home/ourwork/crisispreventionandrecovery/successstories/Somaliland1.html> accessed 16 June 2017.

¹⁰⁸ HRC (n 32) Part V,B, para 28.

¹⁰⁹ Scott Pegg and Pål Kolstø, 'Somaliland: Dynamics of internal legitimacy and (lack of) external sovereignty' (2015) 66 *Geoforum* 193, 196.

¹¹⁰ M Bradbury, *Becoming Somaliland* (2008, Indiana University Press, Bloomington) 215.

¹¹¹ HRC (n 32) Part V,B, para 28.

¹¹² Somaliland Sun, 'Somaliland: SDF at Risk of Polarizing Beneficiaries' (11 July 2014) <www.somalilandsun.com/somaliland-sdf-at-risk-of-polarizing-beneficiaries/> accessed 16 February 2015.

¹¹³ Pegg (n 109) 196.

¹¹⁴ Freedom House (n 2).

¹¹⁵ Pegg (n 109) 196; Freedom House (n 2).

¹¹⁶ HRC (n 32) Part V,B, para 25.

¹¹⁷ Ibid.

¹¹⁸ HRC (n 91) para 90.

full participation of women and has instructed members of the Council to help.¹¹⁹ However, it is unclear whether such reference to subnational authorities in Somalia includes the Somaliland authority which does not regard itself as a subnational authority but as a state authority or whether it was a reference to subnational authorities in the Somali Republic.

The issues discussed above therefore highlight that systemic cultural human rights problems such as those relating to women's rights may act as a barrier to the international human rights system's engagement in Somaliland, regardless of the form of self-determination exercised in Somaliland. However, the calls by the UN Human Rights Council demonstrate that engagement in the form of interaction between international organisations such as the UN and Somaliland authorities that is possible, is hampered by the lack of clarity as to the status the exercise of self-determination takes in Somaliland. An agreed arrangement for the exercise of self-determination in Somaliland would therefore clarify the mechanisms and means through which engagement between the international human rights system and Somaliland could occur.

2.4.2 Refugees and internally displaced persons and statutory law in Somaliland

Many of those who fled Somaliland in 1991 have been unable to return to their homes after being repatriated and remain internally displaced.¹²⁰ A significant number of people have also been reported to have been displaced by fighting between Somaliland forces and militia's in the Sool, Sanaag and Cayn regions. A consequence of these events is an estimated third of the population Somaliland lives in forced displacement.¹²¹

Because there is a lack of a formal national asylum framework, the situation for refugees in Somaliland has remained insecure and protection from human rights violations weak.¹²² Some of the serious problems encountered by internally displaced persons in Somaliland that result from the lack of protections include overcrowding, severe malnourishment, lack of access to education programmes, economic exploitation of children and lack of public land.¹²³ There has also been a lack of livelihood opportunities which has led to problems of protracted

¹¹⁹ HRC, 'Senegal (on behalf of the African Group): draft resolution - Assistance to Somalia in the field of human rights' (24 September 2012) UN Doc A/HRC/21/L.31, para 13.

¹²⁰ HRC (n3) 7.

¹²¹ HRC (n 85) 6 and 12.

¹²² UNHCR, 'Somalia Fact Sheet' (October 2012) <www.unhcr.org/4ff5ac999.html> accessed 12 February 2018, 2.

¹²³ HRC (n 3) 15.

displacement.¹²⁴ Lack of physical security is also a serious problem¹²⁵ with frequent violations of internally displaced persons including physical assaults, killings and deaths by individuals, rape, attempted rape (internally displaced women are particularly vulnerable to sexual violence),¹²⁶ domestic violence and violence against children (including military recruitment).¹²⁷

There is a concern that Somaliland authorities view new arrivals of refugees and/or IDPs with increasing suspicion.¹²⁸ Somaliland's fight against Al Shabab has, in the past, led to many Somaliland officials to criticise immigration from southern and central Somalia and view new arrivals of refugees and/or internally displaced persons with increasing suspicion and as a source of insecurity.¹²⁹ As a consequence, the Somaliland authorities have previously stated they would expel approximately 100,000 illegal immigrants within 30 days¹³⁰ and have forcibly returned Ethiopian asylum-seekers¹³¹ and because most of the deportations happen within 24 hours, UNHCR interventions usually failed.¹³² There is now a policy on the rights of internally displaced persons¹³³ but there is no legal framework to protect internally displaced persons in Somaliland such as provision of access to basic health services, education, land, shelter and employment and the prospect of eviction from the land upon which they are squatters.¹³⁴ The Representative of the Secretary-General on the human rights of internally displaced persons ("the Representative") regards all Somalis from within Somalia's borders as internally displaced persons because the border between Somaliland and Somalia is not recognised as an international border.¹³⁵ The Representative has noted Somaliland's claim for independence but has confirmed that authorities in Somalia and Somaliland are to observe and apply the Guiding Principles on Displacement without discrimination.¹³⁶ The Representative has stated internally displaced persons are defined by the Guiding Principles and the AU Convention on the Protection and Assistance of the

¹²⁴ HRC (n 120) 16.

¹²⁵ HRC (n 120) 15.

¹²⁶ UK (n 26) 3-4; HRC (n 91) para 7.

¹²⁷ HRC (n 120) 11.

¹²⁸ HRC (n 120) 14.

¹²⁹ Ibid.

¹³⁰ HRC (n 58) 12.

¹³¹ Human Rights Watch (n 12) 42.

¹³² Human Rights Watch (n 12) 44.

¹³³ HRC (n 91) para 83.

¹³⁴ HRC (n 91) para 7.

¹³⁵ HRC (n 120) 14.

¹³⁶ HRC (n 120) 9.

Internally Displaced Persons in Africa (“the Kampala Convention”)¹³⁷ which apply if people “have not crossed an internationally recognised border”.¹³⁸

Somalia was among the first African states to sign the Kampala Convention but has not ratified it.¹³⁹ Somaliland’s authority considers itself bound by the 1951 Refugee Convention under which forced returns are in defiance of international law, as well as the Somaliland Constitution.¹⁴⁰ However, the Somaliland authorities treat internally displaced persons as foreigners (i.e. refugees or illegal immigrants).¹⁴¹ The Representative and the Somaliland authority, respectively, are therefore clear as to the Somaliland authority’s human rights obligations. However, because the status of Somaliland is not agreed the view of the Representative and the Somaliland authority as to whom those obligations benefit differs. The Representative is therefore unable to engage in relation to Somaliland’s obligations to internally displaced persons because Somaliland regards those internally displaced persons as refugees or illegal immigrants.

2.4.3 The media and statutory law in Somaliland

A contributing factor to limits of the human right system and Somaliland civil society’s role within it is the restriction of the media in Somaliland. While freedoms of expression and the press are guaranteed by the constitution, in practice, these rights are limited¹⁴² as the Somaliland media faces statutory laws that predate the Somaliland Constitution¹⁴³ and the human rights it guarantees, and the Somaliland authority’s tight control over the media.

The Somaliland Constitution protects press freedom¹⁴⁴ and LawNo.27/2004 (“the Press Law”) was passed in 2004.¹⁴⁵ The Press Law decriminalised media offences and “according

¹³⁷ African Union Convention on the Protection and Assistance of the Internally Displaced Persons in Africa (Kampala Convention) <https://au.int/sites/default/files/treaties/36846-treaty-0039_-_kampala_convention_african_union_convention_for_the_protection_and_assistance_of_internally_displaced_persons_in_africa_e.pdf> accessed 10 August 2019.

¹³⁸ HRC (n 120) 9.

¹³⁹ HRC (n 120) 9.

¹⁴⁰ Human Rights Watch (n 12) 43.

¹⁴¹ HRC (n 120) 14.

¹⁴² Freedom House (n 2).

¹⁴³ HRC (n 32) Part VII, para 38.

¹⁴⁴ Tom Rhodes, ‘Mission Journal: Fewer arrests but fear still lingers for Somaliland’s Press’ *CPJ* (Nairobi, 17 April 2015) <<https://cpj.org/blog/2015/04/mission-journal-fewer-arrests-but-fear-still-linge.php>> accessed 12 February 2018.

¹⁴⁵ Rhodes (n 144).

to the Somaliland Constitution, takes precedence over Somalia's penal code".¹⁴⁶ However, the Press Law has never been applied as Somaliland authorities have claimed the law requires more amendments before it can be utilized.¹⁴⁷ The Penal Code however is routinely used to arrest¹⁴⁸ and prosecute¹⁴⁹ journalists who have frequently been targets for intimidation.¹⁵⁰ This is despite the fact it predates the Somaliland Constitution¹⁵¹ and is contrary to the human rights guarantees respecting freedom of expression and the decriminalisation of journalism under the Somaliland Constitution.¹⁵² Detention of Somaliland journalists is thus a major challenge to freedom of expression¹⁵³ and the number of journalists arrested has been increasing.¹⁵⁴ The vast majority of Somaliland journalists arrested are as a result of reporting corruption¹⁵⁵ by Somaliland authority officials¹⁵⁶ as Somaliland officials are susceptible to media reports and exercise the power to silence journalists who report the issues of corruption and nepotism by state officials.¹⁵⁷ The detention of journalists is also frequently followed by closures of media stations.¹⁵⁸ The state controlled radio station operates under strict authority guidelines and the creation of FM radio stations is restricted,¹⁵⁹ for which many Somaliland lawyers argue there is no legal basis.¹⁶⁰ Therefore, unlawful detention of journalists and the forced closure of media houses occur in clear violation of the Somaliland Constitution and Press Law as well as international norms related to freedom of expression.¹⁶¹

Unlawful and repressive action by government officials undermines the right to information and freedom of expression as well as undermining the role the media plays in the oversight of

¹⁴⁶ RSF, 'Obsolete laws used to persecute two detained journalist' (*Reporters Without Borders*, updated 20 January 2016) <<http://en.rsf.org/somalia-obsolete-laws-used-to-persecute-19-05-2014,46301.html>> accessed 17 March 2016.

¹⁴⁷ Rhodes (n 144).

¹⁴⁸ Ibid.

¹⁴⁹ HRC (n 32) Part VII, para 38.

¹⁵⁰ HRC (n 58) 7; UNSC, 'Report of the Secretary-General on Somalia' (21 May 2019) UN Doc S/2019/393 para 57.

¹⁵¹ Rhodes (n 144).

¹⁵² Somaliland Constitution (n 5).

¹⁵³ HRC (n 32) Part VII, para 39-40.

¹⁵⁴ Ibid.

¹⁵⁵ Human Rights Watch (n 13).

¹⁵⁶ HRC (n 32) Part VII, para 39-40.

¹⁵⁷ HRC (n 32) Part VII, para 39-40; HRC, 'Report of the Independent Expert on the situation of human rights in Somalia' (19 July 2018) UN Doc A/HRC/39/72 para 71.

¹⁵⁸ Ibid; Ibid para 32.

¹⁵⁹ HRC (n 58) 14.

¹⁶⁰ Human Rights Watch (n 12) 21.

¹⁶¹ Somaliland Sun, 'Somaliland: Civil Society Position Paper on Freedom of Expression and Media Regulation' (*Somaliland Sun*, 5 June 2014) <www.somalilandsun.com/somaliland-civil-society-position-paper-on-freedom-of-expression-and-media-regulation/> accessed 7 July 2015.

good governance.¹⁶² The problems range from numerous low level abuse from government officials,¹⁶³ intimidation, harassment and bribery¹⁶⁴ to arrest and detention,¹⁶⁵ threats of violence and targeted killings.¹⁶⁶ The House of Representatives and the Ministry of Interior have tried drafting new draconian media law when neither of these bodies have the jurisdiction to draft such a law.¹⁶⁷ The Somaliland media has rejected such law, “arguing that there is already a law governing Somaliland media, approved by parliament (the House of Representatives and Guurti) and signed by the former President i.e. Law No 27/2004”.¹⁶⁸ And in the first 7 months of 2019 70 violations against media personnel were recorded, 28 journalists were arrested and three media houses had been suspended.¹⁶⁹ A 2015 directive by the Chief Justice prohibiting the arrest of journalists without a warrant has not been implemented.¹⁷⁰ There are problems with the media itself in Somaliland arising from a lack of journalistic ethics and education,¹⁷¹ although, this cannot excuse the Somaliland governments conduct as both journalists and human rights defenders in all parts of Somaliland continue to face risks and suppression of their work.

Despite problems of journalists being persecuted, the media in Somaliland is not censored¹⁷² and engagement between the media and the Somaliland authority does occur. The Information Ministry has said a statutory press regulator needs to be introduced in the legislation, with representatives from both the government and the media.¹⁷³ In 2012 the Somaliland authority and Somaliland Journalists Association reached a five-point agreement which highlighted highly sensitive issues including the implementation of the Press Law and the establishment of a media disciplinary committee by the Somaliland Journalists Association.¹⁷⁴

¹⁶² HRC (n 32) Part VII, paras 39-40.

¹⁶³ Human Rights Watch (n 12) 39.

¹⁶⁴ HRC (n 85) 7-8 and 12.

¹⁶⁵ UK (n 26) 3.

¹⁶⁶ HRC (n 3) 2.

¹⁶⁷ Somaliland Sun, ‘Somaliland: Collapsing Freedom Speech’ (*Somaliland Sun*, 1 June 2014) <www.somalilandsun.com/somaliland-collapsing-freedom-speech/> accessed 24 October 2015.

¹⁶⁸ Ibid.

¹⁶⁹ HRC (n 91) para 84.

¹⁷⁰ Ibid

¹⁷¹ S Allison, ‘Is all the fuss about media freedom diverting attention from the real problem with journalism in Somaliland?’ (*ISS*, 8 April 2015) <www.issafrica.org/iss-today/think-again-somaliland-and-the-trouble-with-a-free-press> accessed 20 October 2016.

¹⁷² HRC (n 32) Part VII, paras 39-40.

¹⁷³ Rhodes (n 144).

¹⁷⁴ Somaliland Sun (n 167).

The situation regarding the rights of the media in Somaliland demonstrate the issues discussed above regarding Somaliland civil society, the Somaliland courts system and Somaliland statutory law. Although there are problems with all of these three parts of the Somaliland human rights system in relation to addressing the rights of the media, they do interact with each other in relation to this issue in a system that is separate from the Somali Republic. Therefore, there is a human rights system in Somaliland which the international human rights system could engage with in relation to protection of human rights and such engagement would be assisted by a clear arrangement for the exercise of self-determination that allows for official engagement with the international human rights system separate from the Somali Republic that is agreed by the government of the Somali Republic.

2.5 Sharia Law

Islam is the state religion under governments of the Somali Republic and the Somaliland authority,¹⁷⁵ with Somalia's population 99.9% Muslim and nearly all Somaliland residents being Sunni Muslims¹⁷⁶ who observe their religion strictly.¹⁷⁷ Whilst the Somaliland Constitution allows for freedom of belief, it prohibits conversion from Islam and proselytizing by members of other faiths. It also requires that candidates for the Presidency, Vice Presidency, and House of Representatives be Muslim.¹⁷⁸

The Special Rapporteur for Women has stated "that the application and interpretation of sharia should be in conformity with international human rights and gender equality standards"¹⁷⁹ and the incorporation of Sharia law is one of "several factors to consider in developing the formal judicial system".¹⁸⁰ The Ulema Council in Somaliland serves to issue interpretive guidance to the executive and legislative branches of the federal government and

¹⁷⁵ Freedom House (n 2).

¹⁷⁶ Ibid.

¹⁷⁷ Nikolaus Grubeck and others, 'Civilian Harm in Somalia: Creating an Appropriate Response' (*Campaign for Innocent Victims in Conflict*, 2011) 31

<http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_2845.pdf> accessed 7 April 2017.

¹⁷⁸ Freedom House (n 2).

¹⁷⁹ HRC, 'Report of the Independent Expert on the situation of human rights in Somalia, Bahame Tom Nyanduga' (4 September 2014) UN Doc A/HRC/27/71.

¹⁸⁰ Nanako Tamaru and others, 'Cultivating Consensus: Exploring Options for Political Accommodation and Promoting All Somali Voices' (2014) Governance and Peacebuilding Series – Briefing Paper No 6, 72 <www.cdint.org/documents/CDI-Cultivating_Consensus_full_report_English.pdf> 22 January 2018.

to resolve disagreements regarding Sharia law”.¹⁸¹ However, the Somaliland Constitution does not reconcile an adherence to Islamic Sharia with a western code of human rights.¹⁸²

There are substantial differences between statutory and Islamic Law with regard to issues such as the evidentiary burden and the definition of crimes”.¹⁸³ For example, under sharia, there must be eye witness evidence to a murder, while statutory law considers the case as a whole with direct and indirect evidence in the absence of eye-witness evidence. In the case of rape, Islamic Law “demands direct evidence by four male witnesses to the actual sexual act”¹⁸⁴ whereas statutory law takes into account the testimony of the victim, medical and other forms of evidence.¹⁸⁵ Islamic Law also imposes the death penalty for rape if the perpetrator is married and for an unmarried accused, the punishment is 90 lashes, whereas, statutory law carries a punishment of imprisonment.¹⁸⁶ Laws against FGM has also been opposed on the basis they do not reflect Islamic principles¹⁸⁷ as it is practiced in some forms ‘to meet a perceived obligation under Islam’.¹⁸⁸ However, with Islam holding such a central position within a society that is so predominantly Muslim, relying on Islamic law as a means of resolving disputes¹⁸⁹ appears to be a natural development, especially in the absence of access to another state authority based legal system.¹⁹⁰

Sharia laws “detailed commands and prescribed punishments, is a very different kind of dispute resolution system than the traditional Somali Xeer with its focus on compromise and reconciliation”.¹⁹¹ As such, clan-based Islamic courts generally face fewer problems of legitimacy than their more religion-focused counterparts.¹⁹² This is because the position of final authority held by clan elders “means decisions that would contradict Somali tradition are generally avoided” and punishments that go beyond lashings are rarely, if ever, carried out.¹⁹³ In practice, Islamic Law is primarily applied in personal matters, especially in the

¹⁸¹ Tamaru (n 180) 71.

¹⁸² Matt Freear, ‘ Building Consensus for a New Somalia’ (*Huffington Post*, 16 November 2013) <www.huffingtonpost.com/matt-freear/building-consensus-for-a_b_3936576.html> accessed 9 April 2018.

¹⁸³ Bendaña (n 53) 47.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ HRC (n 91) para 88.

¹⁸⁸ *Ibid* para 92.

¹⁸⁹ Grubeck (n 177) 31.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² Grubeck (n 177) 32.

¹⁹³ *Ibid.*

areas of marriage, divorce, and inheritance.¹⁹⁴ The strength of this informal legal system that is not part of the public authority highlights that there are issues separate from the exercise of self-determination by Somaliland that will impact engagement between the international human rights system and Somaliland.

2.6 Xeer

Somaliland, presents itself as a liberal democracy,¹⁹⁵ however, the virtual collapse of the structures designed to administer justice including law enforcement and the protection of human rights in the past and their current weakness have impeded progress towards the establishment of formal mechanisms of the rule of law.¹⁹⁶ While the challenges facing the authorities in Somaliland include insecurity and the breakdown of the apparatus of the rule of law, Somali culture is rich in traditional “Xeer” (non-state customary) and religious mechanisms of conflict resolution¹⁹⁷ which are in place to deliver judicial and legal services¹⁹⁸ and as such cannot be ignored when assessing the impact of international human rights standards in the Somaliland legal system or the impact on engagement of the international human rights system in Somaliland.

2.6.1 How the Xeer legal system operates

“Somali society is organized along binding ties of patrilineal kinship [with] Clans the most important form of organization in Somali society”.¹⁹⁹ There are “seven clans, each of which traces its heritage to a different ancestor”²⁰⁰ and is in turn divisible into sub-clans, smaller family groups called lineages, and diyah groups,²⁰¹ which are made up of extended families of which the Elders are the patriarchal head.²⁰² Xeer justice is generally in the context of the diyah groups, “which can number anywhere from a few hundred to a few thousand

¹⁹⁴ Le Sage (n 7) 19.

¹⁹⁵ S Allison, ‘Somaliland: Losing patience in the world’s most unlikely democracy’ (*Daily Maverick*, 7 April 2015) <www.dailymaverick.co.za/article/2015-04-07-somaliland-losing-patience-in-the-worlds-most-unlikely-democracy/#.VcNuMPIVhBc> accessed 12 August 2015.

¹⁹⁶ Arman Abukar, ‘Somalia: Post-Transitional Political Fault Lines – OpEd’ (*Eurasia Review*, 16 July 2012) <www.eurasiareview.com/16072012-somalia-post-transitional-political-fault-lines-oped/> accessed 2 March 2016.

¹⁹⁷ HRC (n 100) 88-89.

¹⁹⁸ Arman (n 196).

¹⁹⁹ Grubeck (n 177) 26.

²⁰⁰ Louisa Lombard, ‘How Somalia’s aged tribal justice system keeps the peace in a country known for chaos’ (*Legal Affairs*, September/October 2005) <www.legalaffairs.org/issues/September-October-2005/scene_lombard_sepoct05.msp> accessed 12 June 2016.

²⁰¹ Ibid.

²⁰² Grubeck (n 177) 27.

people”²⁰³ and it is administered by the clan elders²⁰⁴ of the diyya-paying (compensatory blood money) groups involved in a relevant dispute.²⁰⁵

Xeer is based on clan responsibility for offences by individuals and “collective action to defend and vindicate rights of individual clan members”²⁰⁶ “rather than on individual punishment”,²⁰⁷ and “provides a broadly effective compensation (known as diyya or blood money) and reconciliation-based structure for the resolution of disputes”.²⁰⁸ “Each member is responsible for the crimes committed by anyone else from his diyah group. If someone in a group commits an offense, the whole group must pool its resources and contribute toward a payment (camels, other livestock, or money) to the victim's diyah group, with elders setting the amount of compensation using Xeer”.²⁰⁹ This is also “backed by the threat of the use of direct retaliatory force by the victim’s clan in the absence of a settlement”.²¹⁰ The failure to sufficiently compensate a victim by a perpetrators group “could result in further unrest and revenge killings”.²¹¹ As a result of this system, elders and other clan leaders have a strong interest in preventing members from wrongdoing.²¹²

Xeer covers crimes such as intra and inter-group killings, injuries and misconduct as well as family and civil cases including marriage, family, land, and natural resources.²¹³ If an incident occurs between different clans the elders of the alleged perpetrator’s diyya-paying group will be contacted and a meeting will be arranged as soon as possible.²¹⁴ During the meeting “[t]he elders of the complaining clan will make their demand for compensation and present those of the other clan with the evidence documenting the incident that triggered the demand. If it is deemed necessary then all parties or any party to the original dispute can be called upon to present their side of the story and witnesses may appear to corroborate accounts”²¹⁵ through a rigorous questioning process.²¹⁶

²⁰³ Lombard (n 200).

²⁰⁴ International Crisis Group, ‘Somalia’s Islamists’ (Africa Report No 100, 12 December 2005) 20.

²⁰⁵ Grubeck (n 177) 27.

²⁰⁶ Human Rights Watch (n 12) 35.

²⁰⁷ Grubeck (n 177) 26.

²⁰⁸ Grubeck (n 177) 25.

²⁰⁹ Lombard (n 200).

²¹⁰ Grubeck (n177) 26.

²¹¹ Bendaña (n 53) 52.

²¹² Ibid.

²¹³ Adam J Bihi, *Building from the Bottom: Basic Institutions of Local Governance* (Geneva, WSP/UNRISD, 2000).

²¹⁴ Grubeck (n 177) 28.

²¹⁵ Ibid.

The Elders serve as negotiators and mediators who seek to prevent revenge-motivated violence.²¹⁷ As such the process goes beyond just providing compensation as there is also emphasis on healing and reconciliation with the elders providing closure and addressing lingering doubts and disputes.²¹⁸ To enable this, Xeer has an “extremely dynamic system of rules, which can be adapted according to clan, circumstances and policy considerations”.²¹⁹ Compensation standards are widely known and frequently referred to by Somalis when discussing potential compensation for victims.²²⁰ The focus is therefore on compensation for loss arising from a breach of human rights and reconciliation within the community rather than rectification of how the breach occurred.

2.6.2 Impact of Xeer

Xeer courts have existed for centuries, long bringing a measure of legal calm throughout Somaliland.²²¹ Prior to civil war in Somalia, “the state itself was the primary abuser of human rights, and its courts were known for their brutal, politically motivated persecutions”²²² as a consequence people in Somaliland have generally continued to resolve disputes using Xeer, rather than legal structures and statutory law of the de facto state of Somaliland.²²³ The Xeer mechanisms are “applied by well-respected traditional and religious leaders”²²⁴ such as members of the Guurti.²²⁵ A strong role is played by these elders whose traditional leadership “is based on a segmentary social order, with clans and sub-clans led by elders”.²²⁶ Their intervention in all public matters tends to be accepted at the level of communities and authorities alike as “elders continue to be regarded throughout Somaliland as fundamental custodians and gatekeepers of peace and stability, retribitional justice, safety and security, striving to contain conflicts and negotiate differences among sub-clan groupings across regions and society”.²²⁷

²¹⁶ Ibid.

²¹⁷ Grubeck (n 177) 26.

²¹⁸ Grubeck (n 177) 26.

²¹⁹ Grubeck (n 177) 29.

²²⁰ Ibid.

²²¹ Lombard (n 200).

²²² Ibid.

²²³ Ibid.

²²⁴ HRC (n 100) para 88.

²²⁵ Alison (n 195).

²²⁶ Bendaña (n 53) 51.

²²⁷ Ibid.

Xeer is passed down orally and the traditional laws include stipulations about the conduct of war but can also be harsh and unfair with individual rights sometimes being sacrificed in the name of stability.²²⁸ Despite the use of Xeer in Somaliland, bursts of fighting and crime do occur but Xeer remains a law that people respect, which provides “a justice system strong enough to hold together communities that have been fragmented by previous upheaval”.²²⁹ Because of this, the application of Xeer is prevalent in Somaliland particularly in rural and remote areas²³⁰ and is respected by the secular courts.²³¹

The influence of Xeer has advantages and disadvantages. As one Somaliland lawyer has observed “without the clans, Somaliland’s judicial system would collapse – this is because most petty cases are dealt with through clan structures rather than through the over-stretched courts”.²³² Xeer has also “been a big part of Somaliland’s stability over the years”²³³ upholding “the values of compromise, consensus-building and egalitarianism”.²³⁴ However, the status of Xeer can also have a negative impact on issues such as “police accountability as often police choose not to conduct an internal investigation of individual police officers involved in a fatal shooting to establish exact responsibility as [i]ndividual policemen may be reluctant to use force for fear of clan retaliation.”²³⁵

Jurisdiction can also be affected as “[t]he police may be given a role in civil or traditional matters that are not within their formal jurisdiction”²³⁶ but is appreciated by those concerned. For example, a refusal to pay compensation awarded by Xeer “may lead to police detention including the detention of a family member of the alleged perpetrator”,²³⁷ despite no criminal offence having been committed or court hearing having taken place. Police and the military can intervene to separate militia forces in inter-clan conflict “but it is the clan leader delegations that negotiate a solution”.²³⁸ Judicial and police authorities fail to defend their constitutional prerogatives by willingly bestowing authority for law enforcement and

²²⁸ Lombard (n 200).

²²⁹ Ibid.

²³⁰ HRC (n 32) Part III, C, para 15.

²³¹ HRC (n 179) 11, para 41.

²³² Alison (n 195).

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Bendaña (n 53) 50.

²³⁶ Ibid.

²³⁷ Interpeace and Academy for Peace and Development, ‘Peace in Somaliland. An Indigenous Approach to Statebuilding’ (2008) 14 <<https://apd-somaliland.org/wp-content/uploads/2014/12/Peace-in-Somaliland-an-indigenous-Approach-to-State-building-.pdf>> accessed 10 August 2019.

²³⁸ Ibid.

prosecution to clan leaders.²³⁹ “Police and judges will also refer minor crimes back to the elders even though there is no legal basis for such action”.²⁴⁰ This can often include intra-family violence as well as cases of rape and murder.²⁴¹

The strength of the informal justice of Xeer also impedes many people’s access to the formal statutory law based system²⁴² because weakening trust in statutory law reduces concerns for its development and strengthening. As Xeer is outside the statutory legal system of the Somaliland authorities, if an arrangement for the exercise of self-determination by Somaliland led to increased engagement with the international human rights system then the impact of its engagement with the Somaliland authorities will be effected by a strong Xeer legal system due to its weakening effect on the statutory legal system in Somaliland.

2.6.3 Women and the Xeer legal system

The problems of discrimination against women, although systemic, are not formally part of the statutory legal system. In the Xeer legal system issues of discrimination against women are a formal part of its procedures and outcomes.

Sexual discrimination is a problem with Xeer as Somali women have observed that “everything in the old customary law works for the man’s side” and that it “dominates women”.²⁴³ “All elders are male and women are not allowed to speak at Xeer proceedings, even when women are killed, their lives are traditionally compensated with half as many camels as men’s”.²⁴⁴ As such, it is argued “that nomadic traditions are used by Somali men to subjugate the women in their society, along with incorrectly interpreted influences from Islamic sharia law”.²⁴⁵

Domestic and sexual violence are some of the most commonly reported violations of women’s rights throughout Somalia.²⁴⁶ “While the Xeer code theoretically includes punishments for rape”²⁴⁷ this sort of violence remains taboo in most Somali communities²⁴⁸

²³⁹ Bendaña (n 53) 50.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² HRC (n 32) Part III, C, para 15.

²⁴³ Grubeck (n 177) 30.

²⁴⁴ Lombard (n 200); Grubeck (n 177) 29.

²⁴⁵ Lombard (n 200).

²⁴⁶ HRC (n 25) 9.

²⁴⁷ Lombard (n 200).

²⁴⁸ UK (n 26) 3-4.

and is considered a matter for the family and clan and thus generally handled only by the clans involved.²⁴⁹ Rape and other forms of sexual and gender-based violence are dealt with by clans as a civil dispute, not involving the victim, and are often solved by²⁵⁰ “either the payment of blood money or a forced marriage between the victim and the perpetrator”.²⁵¹ This application of Xeer has continued to be applied in rape, sexual and other gender based violence despite the Somaliland Attorney General prohibiting Xeer use for cases of sexual violence.²⁵²

Although Xeer may protect the survivors honour, reduce shame, eliminate ostracism and “ensure full payment of her dowry by the attacker’s clan to the survivor’s clan, as well as preserve the peace between contending families or sub-clans”,²⁵³ forced marriage under Xeer does not comply with international human rights standards.²⁵⁴ As such traditional ways of solving rape cases can be an obstacle to the legal methods of punishing rapists, as convicted rapists can be charged with two separate crimes, one against the victim and another against the state²⁵⁵ and elders often intervene and withdraw a case in court under statutory law in order to resolve the matter under Xeer.²⁵⁶

Adherence to Somali traditions also means it is difficult for a girl to immediately report a rape if she does not have severe injuries as such the number of rapes reported to the Sexual Assaults Referral Centre (SARC) in Somaliland or the police are limited.²⁵⁷ Because of this local officials say “the weak presence of the government in some regions of Somaliland and [the] reliance on traditional customs are factors preventing women from reporting violence against them”.²⁵⁸ As “Elders and families wish to avoid publicity as it involves clan honour”,²⁵⁹ the reality is “no cases are ever tried²⁶⁰” and the stigma attached to it means many

²⁴⁹ Bendaña (n 53) 53.

²⁵⁰ HRC, ‘Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 – Somalia’ (21 February 2011) UN Doc A/HRC/WG.6/11/SOM/2.

²⁵¹ HRC (n 3).

²⁵² HRC (n 91) para 89.

²⁵³ Bendaña (n 53) 53.

²⁵⁴ Ibid.

²⁵⁵ HRC (n 179) 43.

²⁵⁶ Ibid; HRC (n 25) 10.

²⁵⁷ Yusef M Hasan, ‘Violence against Women Sparks Concern in Somaliland’ (*Somaliland Sun*, 22 June 2013) <www.somalilandsun.com/index.php/community/374-violence-against-women-sparks-concern-in-somaliland> accessed 21 April 2016.

²⁵⁸ HRC (n 25) 10; Ibid.

²⁵⁹ Bendaña (n 53) 53.

²⁶⁰ Lombard (n 200).

cases go unreported.²⁶¹ The Special Rapporteur on violence against women has observed that Xeer has been found wanting in addressing cases concerning the rights of women, sexual offences or domestic violence against women as the rights of the victims can be subjugated to the rights of the clan.²⁶² As such, the Independent Expert has stated that women victims of sexual and gender-based violence had no functioning judicial system to turn to.²⁶³

The strength of the Xeer legal system means there may be limitations that impact engagement between the international human rights system and the Somaliland governing structures if a large section of the Somaliland legal structure is an informal system which does not have a centralised structure with which the international human rights system could interact. Such limitations apply regardless of the arrangement for the exercise of self-determination and have an exclusionary effect on access to the Somaliland human rights system for a large proportion of Somalilanders. The impact of any reduction of discrimination against women within the statutory legal system that may result from greater official interaction with the international human rights system as a result of an agreed exercise of self-determination by Somaliland may be weakened through a lack of connection with the potential recipients of such benefits through the legal system that will provide them.

2.6.4 The Xeer legal system in Somaliland and reform

Women are not the only group discriminated against under Xeer rules. The informal system has the potential to discriminate against less powerful clans and minority groups who are still²⁶⁴ excluded from the process²⁶⁵ as “the system is more likely to function between groups of comparable power”.²⁶⁶ “In Somali society, there are groups that live in a client-patron relationship with the dominant clan in the region”.²⁶⁷ These lesser groups can be shut out of Xeer hearings. “Similarly, people who have moved far from their original home can be vulnerable at Xeer hearings, because the sub-clans of the region have not entered

²⁶¹ UK (n 26) 3-4.

²⁶² HRC (n 179) 43.

²⁶³ HRC, ‘Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 – Somalia’ (21 February 2011) UN Doc A/HRC/WG.6/11/SOM/2.

²⁶⁴ HRC (n 179) 44.

²⁶⁵ Arman (n 196).

²⁶⁶ Ibid.

²⁶⁷ Lombard (n 200).

into Xeer agreements with the sub-clans of the migrants. They might be killed in vengeance without a trial or ordered to leave the area”.²⁶⁸

The Special Rapporteur on violence against women, its causes and consequences pointed to “the rationale of preserving social harmony rather than punishing the individual or upholding the rights of the victim”²⁶⁹ as a shortcoming of Xeer as “the use of material compensation owing to the payment of blood money for homicides, makes families seek justice through that system rather than pursue formal criminal proceedings”.²⁷⁰ A lack of universal right of individuals access the Xeer legal system may have the effect of undermining the development of a statutory legal system, which would be the chief beneficiary of any positive impact arising from engagement with the international human rights system that could result from an arrangement for the exercise of self-determination in Somaliland.

The Special Rapporteur for violence against women has called for the clarification “the relationship and boundaries between customary law and institutions, and the civil and criminal justice system”.²⁷¹ The Independent Expert on the situation of human rights in Somalia has also referred to the challenges and tensions that exist between the formal legal system and Xeer and how they pose “considerable challenges to the reform programmes within the justice sector”²⁷² and “the fight against impunity requires a linkage to be developed between the formal and customary justice systems”.²⁷³ There have also been moves to harmonise the three legal systems including, the remittance of cases such as rape and homicide to the statutory legal system.²⁷⁴ However, evaluations acknowledged that sometimes the Somaliland authorities themselves still refer serious crimes to the Xeer legal system.²⁷⁵

The Independent Expert has noted “that the positive aspects within Xeer should be identified and retained, and that it would be necessary to engage with clan elders on how Xeer can be made more human-rights compliant”.²⁷⁶ This has been supported with a warning that “efforts to force one system across all areas would undermine those systems that function locally, and

²⁶⁸ Ibid.

²⁶⁹ HRC (n 179) 43.

²⁷⁰ HRC (n 179) 43.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ Bendaña (n 53) 52.

²⁷⁵ Ibid.

²⁷⁶ HRC (n 179).

“rule of law” assistance could in those circumstances create more conflict by undermining the structures that currently underpin local peace and security arrangements”²⁷⁷ as “top down attempts to implement criminal and penal laws (with little enforcement capacities) can upset the local balance of power and undermine local initiatives that draw more on customary clan law and Islamic Law”.²⁷⁸

Formal and informal engagement by actors from the international human rights system with the customary Somali legal system could offer a quicker path for legal empowerment. International organizations such as the Danish Refugee Council, the United Nations and the International Development Law Organisation have been working with clan elders to re-evaluate Xeer and enhance its compatibility with international human rights standards, criminal justice standards and sharia.²⁷⁹ This initiative has led to positive changes in Xeer such as the abolition of widow inheritance and the promotion of individual criminal responsibility²⁸⁰ and the protection of minority clans.²⁸¹ Therefore, Xeer does not have to end the possibility of engagement between the international human rights system, and the Somaliland legal system resulting from the exercise of self-determination in Somaliland, from having an impact on human rights protection.

Other moves to reform and “subject Xeer to a standardized code that protects human rights²⁸²” have included the 2006 Somaliland Elders Declaration” (“the Declaration”).²⁸³ In the Declaration representatives from the government, tribal and religious leaders, and legal representatives “stated that Somali customary laws of revenge killings, intentional killings, payment and receipt of blood compensation (Diya), and issues relating to cases involving women, children, refugees, internally displaced persons, and other minorities are contrary to international human rights standards and Islamic Law”.²⁸⁴ The Declaration also committed elders, to submit the Xeer aspects of criminal law to statutory legal judicial control,²⁸⁵ for example, in cases of intentional and revenge killings, the accused were to be handed over “to the police and provided direction on the payment of compensation”.²⁸⁶ The Declaration also

²⁷⁷ Le Sage (n 7) 4.

²⁷⁸ Le Sage (n 7) 16.

²⁷⁹ Bendaña (n 53) 52.

²⁸⁰ Arman (n 196).

²⁸¹ Bendaña (n 53) 52.

²⁸² HRC (n 179) 11, para 42.

²⁸³ Bendaña (n 53) 64.

²⁸⁴ Ibid.

²⁸⁵ HRC (n 179) 11, para 42.

²⁸⁶ Bendaña (n 53) 64.

included agreement regarding cases involving women and children.²⁸⁷ However, while the Xeer legal system has weakened its “efficacy as a mechanism for dispute resolution and a basis of expectations should not be underestimated”²⁸⁸ as most Somalis, do still honour it.²⁸⁹

Although the strength of the Xeer legal system may weaken the possible impact increased interaction with international human rights system the Somaliland statutory legal system could gain from an agreed arrangement for the exercise of self-determination in Somaliland, such engagement may still be the best means through which the role played by the international human rights standards in the Xeer legal system may be increased.

2.7 Conclusion

Although the Somaliland legal system is under resourced, there is an established public authority and civil society based human rights systems in Somaliland separate from the Somali Republic, which the international human rights system could formally engage with. The stability of the de facto state authority and the presence of an established civil society in Somaliland,²⁹⁰ mean an agreed arrangement for self-determination in Somaliland that enables formal interaction between the international human rights system and Somaliland legal structures separately from the Somali Republic could provide greater potential for the protection of international human rights in Somaliland. For example, Somaliland is not an official signatory of the UN Convention on the Rights of the Child and the age of a child is not defined in Somaliland, as a consequence many children are exposed to risks of harm and human rights violations²⁹¹ because of a lack of legal clarification as to who is a child.²⁹² The Somaliland authority has put together national plans of action for child rights and protection with national and international actors.²⁹³ Somaliland is also among the few places that have a Juvenile Justice Act.²⁹⁴ However, the Juvenile Justice Act of Somaliland is not always applied as the separate Juvenile Sections of the Somaliland courts are not functional and policies and guidelines for alternative child care are missing from the act.²⁹⁵ This lack of application of Juvenile Justice Law means the rights of the children are violated and leads to

²⁸⁷ Ibid.

²⁸⁸ Grubeck (n 177) 27.

²⁸⁹ Ibid.

²⁹⁰ Discussed in chapters 1.3 and 3.7.1.

²⁹¹ HRC (n 32) Part V,A, para 23.

²⁹² Ibid.

²⁹³ HRC (n 32) Part V,A, para 22.

²⁹⁴ Ibid.

²⁹⁵ HRC (n 32) Part V,A, para 24.

children being exposed to abuses as children are prosecuted and tried as adults and are jailed with adults.²⁹⁶ This demonstrates that there are problems in Somaliland's human rights structure but there is a structure that is trying to apply international human rights standards that different actors from the international human rights system could assist with. The Report on the Committee on the Rights of the Child does not reference any interaction with Somaliland authorities or discuss Somaliland at all and would only discuss the federal Somali arrangement.²⁹⁷ This engagement may be impacted by the form self-determination exercised in Somaliland takes, for example whether the arrangement would allow Somaliland to sign up to the Convention on the Rights of the Child.

This chapter has also demonstrated there are problems with the legal system/systems in Somaliland that may cause an obstacle to interaction between the international human rights system and legal structures in Somaliland. The Sharia and Xeer legal systems are both informal legal systems outside of the de facto state authority's control and thus engagement between these sections of the Somaliland legal system with the international human rights system will be limited, regardless of the form self-determination takes in Somaliland. However, both legal systems have an impact on the statutory legal system and will therefore affect the impact any engagement the international human rights system has in Somaliland that may arise from a constitutional arrangement for the exercise of self-determination in Somaliland.

The problems in relation to the rights of the media demonstrate there are problems that arise from the Somaliland authority's current approach to this issue. However, this problem also demonstrates the presence of a legal structure and a civil society with which the international system can engage regarding those human rights problems. The difference between the Somaliland authority's and the international human rights system's view of IDP's in Somaliland show the link between the human rights system in Somaliland and how the lack of an agreed arrangement for the exercise of self-determination by Somaliland impacts who is given the status of IDPs and what international human rights obligations apply.²⁹⁸ An agreement between the Somaliland authority and the Somali Republic as to the exercise of self-determination by Somaliland and the subsequent clarification of the responsibilities of the legal system in Somaliland under international human rights law could enable the

²⁹⁶ Ibid.

²⁹⁷ CRC (n1) para 21, para 43.

²⁹⁸ As discussed in more detail at chapter 5.7

possibility of formal interaction between Somaliland and the international human rights system on the basis of the subsequently agreed responsibilities. However, the problems in relation to women's rights show that there are limits to the impact the arrangement for self-determination in Somaliland can have on engagement by the international human rights system, as cultural and systemic discrimination against women impacts all three legal systems in Somaliland.

Chapter 3

Current Debates and Current Arrangements regarding the exercise of self-determination by Somaliland.

3.1 Introduction

This chapter provides the context in which the current debates about the exercise of self-determination by Somaliland are considered. It discusses previous considerations and debates regarding the possible exercise of self-determination by Somaliland and the current positions taken in relation to the form of self-determination currently exercised by Somaliland. This chapter therefore provides the basis of the discussion of the current status given to Somaliland by the international community and the context in which engagement between Somaliland and the international human rights system occurs.

3.2 Self-determination

Self-determination can be seen as a variable right depending on a combination of factors, most importantly the degree of stabilization in allowing the claim to self-determination and the degree to which the responding government represents the people.¹ Self-determination “is generally accepted as customary international law”² and “[f]or many years the majority of states in the UN General Assembly asserted that the expressed will of peoples to be free from colonial domination was the only face self-determination had”.³ However, the Declaration on the Principles of International Law Covering Friendly Relations said “any political status freely determined by a people constitutes a mode of implementing the right of self-determination”⁴ but it “disclaimed any intent to authorize or encourage the dismemberment of states, but its disclaimer was tied to a concept of internal self-determination”.⁵

¹ F Kirgis , ‘The Degrees of Self-Determination In The United Nations Era’ (1994) 88 *The American Journal of International Law* 304, 310.

² R McCorquodale, ‘Self-Determination: A Human Rights Approach’ (1994) 43 *International and Comparative Law Quarterly* 857, 858.

³ Kirgis (n 1) 305.

⁴ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Resolution 2625 (XXV) (24 October 1970) (‘Friendly Relations Declaration’).

⁵ Kirgis (n 1) 305.

International law has been vague about the specifics of the right to self-determination.⁶ Article 1 of the International Covenants hold that all peoples have the right to self-determination, which entitles Peoples to freely determine their political status and pursue their economic, social and cultural development.⁷ This was also reflected in the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (Declaration against Colonialism) which also identified the right as peoples under ‘alien subjugation, domination and exploitation’ blurring the definition of Peoples.⁸ However, these do confirm that self-determination is a right of Peoples not a status that can be recognised by governments.⁹ As a right of Peoples, self-determination has an external and an internal aspect. The external aspect including sovereignty and independent statehood or other political status freely determined by a people. The internal aspect is generally held to include the right to participation in the democratic governance of the state.¹⁰ Although commonly held, there are no standard forms to these aspects of the right which allows a rich and diverse array of ways in which self-determination can operate.¹¹ The general consideration across aspects of Peoples’ right to self-determination is political, and other, control of a shared view of the future by a Peoples¹² with a distinct character which is reflected in the government under which they live.¹³ The ways the right to self-determination can be expressed is not exhaustive¹⁴ as such it allows for nuanced forms in which the right to self-determination can be exercised by a Peoples¹⁵, which People from distinct political/geographical groups¹⁶ can use to meet their right to self-determination.¹⁷ To apply the rigid internal/external self-determination approach distorts many varied ways Peoples associate¹⁸ and would restrict the

⁶ Alexandra Xanthaki, *Indigenous Rights and the United Nations Standards: Self-Determination, Culture and Land* (CUP 2007), 136.

⁷ Ibid

⁸ Declaration on the Granting of Independence to Colonial Countries and Peoples (14 December 1960) UNGA Res 1514(XV).

⁹ James Crawford, ‘The Rights of Peoples: “Peoples” or “Governments”?’ in James Crawford (ed), *The Rights of Peoples* (Clarendon Press 1988) 59.

¹⁰ Xanthaki (n6) 159.

¹¹ Karen Knop, *Diversity and Self-Determination in International Law* (CUP 2002) 2.

¹² Yoram Dinstein, ‘Self-Determination Revisited’ in *International law in an evolving world: liber amicorum in tribute to Professor Eduardo Jimenez de Arechaga* (Fundacion de Cultura Universitaria 1994) 245.

¹³ Ian Brownlie, ‘The Rights of Peoples in Modern International Law’ in James Crawford (ed), *The Rights of Peoples* (Clarendon Press 1988).

¹⁴ Gudmunder Alfredsson, ‘Different Forms of and Claims to the Right of Self-Determination’ in Donald Clark and Robert Williamson (eds), *Self-Determination: International Perspectives* (Palgrave Macmillan 1996) 79.

¹⁵ S James Anaya, ‘The Capacity of International Law to Advance Ethnic or Nationality Rights Claims’ (1990) 75 Iowa Law Review 837, 842.

¹⁶ James Crawford, *The Creation of States in International Law* (Clarendon Press 1979) 100-01.

¹⁷ Stephen Hall, ‘The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism’ (2001) 2 European Journal of International Law 269, 297.

¹⁸ Ibid

expansion of the right to self-determination, as allowing transnational relations and cooperation across borders for political reasons.¹⁹

Qualifications to the right to self-determination demonstrate that “[t]he contextual restriction of external self-determination and the sharp division between external and internal self-determination appear to be dissolving, however gradually and hesitantly”.²⁰ Even if the divisions are not dissolving they are linked, as there are claims that “the right to exercise external self-determination should be conditional on the presence of internal self-determination: the expression of people’s free will”.²¹ Therefore, “[t]he self-determination principle in the UN era has a great many faces”²² and these faces are provided by a spectrum of different forms of self-determination that are tied to the extent to which the section of the population seeking self-determination is represented in the state. The more representative governments are of those sections of the population seeking self-determination, the lesser the degree of destabilisation the international community will tolerate in accepting a claim for self-determination.²³ Therefore internal self-determination, which “concerns the right of peoples within a state to choose their political status, the extent of their political participation and the form of their government”,²⁴ could be a viable alternative to full sovereign independence for Somaliland. Although, “[t]he logic of the principle of self-determination extends beyond the question of independent statehood to political and cultural options exercisable within the established state”.²⁵

3.3 Internal self-determination and Constitutional arrangements

3.3.1 Autonomy, decentralisation and devolution

Self-determination can be exercised internally within a state in a variety of forms. The form the exercise of the right of self-determination takes “will usually depend on the constitutional order of the state concerned and may challenge the present centralised structure of most

¹⁹ United Nations Declaration on the Rights of Indigenous Peoples (adopted 2 October 2007) UN Doc A/RES/61/295, art 36.

²⁰ M Weller, ‘Settling Self-determination Conflicts: Recent Developments’ (2009) 20(1) European Journal of International Law 111, 164.

²¹ M Koskenniemi, ‘National Self-Determination Today: Problems of Legal theory and Practice’ (1994) 43 International and Comparative Law Quarterly 241, 266.

²² Ibid.

²³ Kirgis (n 1) 308.

²⁴ McCorquodale (n 2) 864.

²⁵ B Kingsbury, ‘Claims by Non-State Groups in International Law’ (1992) 25 Cornell International Law Journal 481, 500.

states”.²⁶ Opting for these constitutional arrangements can be “tied to an abandonment of claims to self-determination. Or rather, one might say that these settlements can be taken as an exercise of the self-determination claim at the internal level”.²⁷ Autonomy, decentralisation and devolution are all arrangements for exercising power internally within a state by entities separate from the central state authority.

Autonomy of a region or part of a state from the central government of that state can allow a section of the state varying degrees of decision making powers separate from the state, this can include the pursuit of most policies and the power to pass most laws or it can be exclusive control in a region or part of a state “over only certain aspects of policy”.²⁸ Autonomy allows local actors to take decisions themselves and “denotes self-governance of a demographically distinct territorial unit within the state”.²⁹ Although Article 4 of the UN Declaration on the Rights of Indigenous Peoples includes the right to autonomy as an aspect of the exercise of the right to self-determination³⁰, under international law there is no right to autonomy.³¹ The extent of the self-governance within a state will be established by constitutional law and/or autonomy statute.³² Operating within the state’s constitutional framework, autonomy usually denotes original decision-making power in relation to devolved competences. In this respect autonomy differs from decentralization. Rather than powers to make original decisions as autonomy allows, decentralisation allows local agencies some room to implement decisions taken by the central authority.³³

Like decentralisation, devolution moves powers from the central authority to local authorities or regions; however, devolution moves autonomous powers to make decisions rather than powers to implement as per decentralisation. Some devolved settlements “re-allocate sovereignty to constituent entities or offer shared sovereignty between the centre and regions.”³⁴ Devolution can occur state wide and can establish an entity which is not quite a federation and can result in asymmetrical autonomy. Separating power from the central state

²⁶ Ibid.

²⁷ Weller (n 20) 159.

²⁸ Ibid.

²⁹ Weller (n 20) 115.

³⁰ United Nations Declaration on the Rights of Indigenous Peoples (adopted 2 October 2007) UN Doc A/RES/61/295.

³¹ Xanthaki (n 6) 164.

³² Hans-Joachim Heintze, ‘On the Legal Understanding of Autonomy’ in Markku Suksi (ed), *Autonomy: Applications and Implications* (Kluwer Law International 1998) 7-32.

³³ Ibid.

³⁴ Weller (n 20) 164.

authority through autonomy, decentralisation or devolution can occur within different types of constitutional arrangements.

3.3.2 Unitarianism

Whereas the Somali Republic is held to be a federal state, Somaliland is a unitary state. Due to the concerns about a powerful centralised unitary state of Somalia arising from its history,³⁵ a discussion of a unitary arrangement needs to involve discussion of devolution within a unitary system. Devolution within a unitary state transfers powers from a central authority to specific entities which are still one sovereign central state.³⁶ Even with negotiations, the transfer of authority is a top-down process³⁷ in which the central government of the unitary state delegates powers to regional authorities.³⁸ This is in contrast to the bottom-up process in forming a federal state where individual local government units join together to create a layer of government above them “for limited purposes”.³⁹ Despite this contrast the difference between a decentralised unitary state and a federation can be as slight as the difference between a confederation and a federation can be.⁴⁰ In theory, devolution within a unitary state can sometimes provide greater autonomy to regional authorities than in federal systems.⁴¹

3.3.3 Federalism

Federalism can be the devolving of sovereignty from the central authority or the transferring of sovereignty from the regions to the centre.⁴² Federalisation tends to be offered where a secessionist entity has established control of a territory with no prospect of capture by the central authority or where the entity seeking self-determination can point to a previously enjoyed federal status.⁴³ *Quebec*⁴⁴ “would suggest that any federation implies a right to self-determination of territorial entities that are no longer fully represented in and by the centre. Given the restrictive attitude exhibited from among the organised international community

³⁵ As discussed at chapter 1.3.

³⁶ Abdi Elmi Afyare, ‘Decentralization Options for Somalia’ (Paper for Heritage Institute for Policy Studies, 2014) 7 <www.heritageinstitute.org/decentralization-options-somalia/> accessed 11 October 2014.

³⁷ Ioan Lewis and James Mayall, *A Study of Decentralized Political Structures for Somalia: A Menu of Options* (European Union, 1995) 24.

³⁸ Afyare (n 36) 7.

³⁹ Lewis (n 37) 24.

⁴⁰ Lewis (n 37) pgxx.

⁴¹ Afyare (n 36) 7.

⁴² Afyare (n 36) 125.

⁴³ Weller (n 20) 116.

⁴⁴ Reference re Secession of Quebec [1998] 2 SCR 217.

for instance in relation to Somaliland...it is not clear, however, that this view has found universal support yet".⁴⁵

The Somali Republic has officially been a federal state since 2004,⁴⁶ an advantage of this is that federalism satisfies both a desire to establish a central government and a desire to have strong regional governance⁴⁷ both of which are strong desires that have arisen from the emotional consequences of Somalia's history.⁴⁸ Federal states are able to satisfy these desires because they are generally based on geographical devolution with guarantees for the autonomy of the subnational units.⁴⁹ These guarantees take the form of the central authority and the regions sharing power, with the centre unable, on its own authority, to change the constitution.⁵⁰ Power and responsibilities are shared between a federal government and regional authorities. These powers can be exercised equally or exercised mostly by the federal government or regional authority.⁵¹

A diversity of relationships can also occur within different federal arrangements with all member states of a federation having identical rights and duties or member-states having different levels of autonomy from a central government. It is even possible to grant the right to secede or disassociate from a federation to some regions.⁵² A federation can therefore be multi-functional so issues of responsibility can be separated out and a federal constitution can specifically limit powers of a central government.⁵³ Currently the federal government of the Somali Republic has responsibility for national defence, security, monetary and economic regulation, nationality and immigration, national symbols and foreign relations, whilst constituent units, have responsibility over trade and economy, education, health and policing.⁵⁴

3.3.3.1 Federalism and Somalia

⁴⁵ Weller (n 20) 160.

⁴⁶ Afyare (n 36) 5.

⁴⁷ Lewis (n 37) 17.

⁴⁸ As discussed at chapter 1.3.

⁴⁹ Afyare (n 36).

⁵⁰ Lewis (n 37) 17.

⁵¹ Ibid.

⁵² Afyare (n 36).

⁵³ Lewis (n 37) 17.

⁵⁴ Afyare (n 36).

The understanding of federalism by the public in Somalia is limited.⁵⁵ Some groups claim that federalism is an externally supported⁵⁶ attempt to weaken a Greater Somalia in which all Somalis are united in one state, with others suggesting that federalism will lead to a break-up of the country into exclusive clan based entities.⁵⁷ Others see federalism as a viable solution to the political crisis in Somalia that offers “a middle solution between an autocratic, centralized system of governance and outright secession”.⁵⁸

The different federal arrangements proposed for Somalia reflect the lack of an agreed view of federalism in Somalia. The leaders of the regional authority of Puntland “argue for a version that accords so much autonomy to the constituent parts of the Somali state they hope even Somaliland might be tempted back into the fold”.⁵⁹ Such proposed constitutional arrangements could mean “Somalia would look more like a multi-state free trade zone than a single nation”.⁶⁰ Whereas, the central Mogadishu governments of the Somali Republic prefer a far stronger central government “than many outside the capital are willing to countenance”.⁶¹ The lack of consensus in Somalia “about the merits and meaning of federalism”⁶² and with federalism meaning so many things within Somalia some argue “it is in effect a meaningless term” highlighting the difficulties in establishing an effective federal state throughout Somalia.⁶³

Despite the inconsistent Somali view of federalism, it has had high-level support from the international community as the preferred means to establish a stable state.⁶⁴ This adds fuel to the ideas of those Somalis that view federalism as an externally driven means to weaken a Greater Somalia. Finances and support from regional actors and the wider international community have both prevented the ‘federal project’ from collapsing, and have promoted and

⁵⁵ Nanako Tamaru and others, ‘Cultivating Consensus: Exploring Options for Political Accommodation and Promoting All Somali Voices’ (2014) Governance and Peacebuilding Series – Briefing Paper No 6, 34 <www.cdint.org/documents/CDI-Cultivating_Consensus_full_report_English.pdf> 22 January 2018.

⁵⁶ Ibid.

⁵⁷ Afyare (n 36) 5.

⁵⁸ Ibid.

⁵⁹ Abdiweli M Ali, ‘Solidifying the Somali State: Puntland’s Position and Key Priorities’ (talk at Chatham House, Royal Institute of International Affairs, London, 24 October 2014).

⁶⁰ Africa Research Institute, ‘Statebuilding in the Somali Horn: Compromise, Competition and Representation’ (December 2014) <www.africaresearchinstitute.org/newsite/wp-content/uploads/2014/12/Statebuilding-in-the-Somali-Horn.pdf> accessed 16 October 2016.

⁶¹ Africa Research Institute (n 60).

⁶² K Menkhaus, ‘Governance without government in Somalia: Spoilers, state building, and the politics of coping’ (2006) 31(3) *International Security* 74, 98.

⁶³ Africa Research Institute (n 60).

⁶⁴ Jason Mosley, ‘Somalia’s Federal Future: Layered Agendas, Risks and Opportunities’ (Chatham House Research Paper, 2 September 2015) <www.chathamhouse.org/publication/somalias-federal-future-layered-agendas-risks-and-opportunities> accessed 29 April 2016.

given it additional momentum as the forum for development⁶⁵ such as AMISOM's operations which have "created a political environment in which federalism has remained the dominant political process".⁶⁶ A consequence of this support is that generally proponents and opponents of federalism are conducting their activities within the framework of federalism.⁶⁷

3.3.4 Confederalism

A confederation is a union of states in which "[i]ndependent States 'confederate' to establish common and complimentary policies"⁶⁸ under a confederation agreement of the constituent territorial units.⁶⁹ The two or more independent states of a confederation enter a treaty for specific reasons the nature of which can be to whatever extent is agreed such as mutual trade, political rapprochement and/or geographical necessity.⁷⁰ However the agreement would not have any foreign sovereignty implications.⁷¹ A confederation is therefore a group "of separate but equal states linked by international treaties",⁷² with sovereignty resting with the uniting states rather than the shared central state in a federation.⁷³ An advantage of this is that it reduces potential friction⁷⁴ as the central government and the regional sub-states are constitutionally co-sovereign with neither level of government subordinated to the other".⁷⁵ However, this means it can also lead to fragmentation,⁷⁶ as demonstrated by attempts in Africa to create the Senegambia confederation between Senegal and Gambia which was aborted in the 1980s⁷⁷ and Somalilanders may think that if they are going to get a confederacy then they may as well have unattached independent statehood.⁷⁸

3.4 Debates regarding the exercise of internal self-determination by Somaliland

Discussions concerning potential arrangements between the Somali Republic and Somaliland on the exercise of self-determination by Somaliland have generally focussed on the unitary,

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Afyare (n 36) 4.

⁶⁹ Lewis (n 37) 17.

⁷⁰ Afyare (n 36).

⁷¹ Lewis (n 37) 15.

⁷² Lewis (n 37) xviii.

⁷³ Ibid.

⁷⁴ Lewis (n 37) 87.

⁷⁵ Lewis (n 37) 18.

⁷⁶ Lewis (n 37) 87.

⁷⁷ Afyare (n 36).

⁷⁸ M Bryden, 'State-Within-a-Failed-State: Somaliland and the Challenge of International Recognition' in P Kingston and IS Spears (eds), *States-Within-States* (Palgrave Macmillan, 2004) 28.

federal and confederal political systems and their increasingly decentralised and devolved structure and thus their ability to allow for self-determination internally within a state.⁷⁹ This means the discussions regarding the self-determination of Somaliland have focussed on the re-establishing of a united Somalia in one form or another. However, a legacy of the poor governance in the pre-1991 Somalia under Siad Barre has left a persisting distrust of an overbearing centralized government, for many Somalis⁸⁰ who associate a unitary state system with Siad Barre's authoritarian regime.⁸¹ The affect this has had on constitutional discussions regarding the exercise of self-determination has been to fuel demands for federalism and statehood by certain groups.⁸²

There is however a lack of comprehensive understanding of the concepts of 'federalism' and 'decentralization' and the resulting lack of consensus has led to federalism being generally understood to be the only alternative to the centralised unitary system of the Siad Barre regime.⁸³ As a consequence although federalism and/or Somaliland statehood are not the only constitutional options⁸⁴ there is little discussion of alternative models of decentralization⁸⁵ which has encouraged external actors, such as donors and regional influencers, to push for rapid implementation of the federal project.⁸⁶

In contrast to a single unified personality of Somalia resulting from federation or Somaliland resulting from statehood, there is a lack of understanding in the Somali Republic and Somaliland regarding different constitutional arrangements and the diverse interests and concerns held in relation to a potential outcome to the dispute between the Somali Republic and Somaliland. Managing the diverse interests and concerns will require flexibility in finalising and implementing any constitutional framework in Somaliland and sub-state territories of the Somali Republic⁸⁷ and would entail a continual process of conflict management regarding approaches to external relations.⁸⁸ The requirement of flexibility also touches on a concern that a process for reaching an agreed arrangement in Somalia should be

⁷⁹ Afyare (n 36); A Menu of Options, 1995; as discussed above at 3.3.

⁸⁰ Moseley (n 64).

⁸¹ Moseley (n 64).

⁸² Lewis (n 37) 59.

⁸³ Afyare (n 36) 1.

⁸⁴ Lewis (n 37) 59.

⁸⁵ Afyare (n 36) 1.

⁸⁶ Lewis (n 37) 9; as discussed in the subsequent chapters on the status of Somaliland.

⁸⁷ Moseley (n 64).

⁸⁸ R Mac Ginty, 'Hybrid Peace: The Interaction Between Top-Down and Bottom-Up Peace' (2010) 41(4) Security Dialogue 391, 407.

not be too planned and should not be top down.⁸⁹ Top-down attempts in the region to revive central state institutions have resulted in the delegitimisation of involvement by external actors⁹⁰ in the domestic sphere and thus may impact subsequent engagement with the international human rights system, as an external actor.

Many different interests affect how relevant stakeholders may approach a constitutional outcome in Somalia and consideration of the different approaches to a possible constitutional arrangement may help to reconcile these interests.⁹¹ However, as the focus of this thesis is the impact of self-determination in Somaliland on engagement between the international human rights system and Somaliland, there will not be an analysis of issues such as the balance of executive power in Somaliland, what accountability mechanisms will be necessary or comparative issues of fiscal decentralization or resource-related issues in different parts of Somalia and Somaliland⁹² as these are relevant to an assessment of the governing capacity of authorities in the Somali Republic and Somaliland. What is of importance however is the political stability in the Somali Republic and Somaliland, as political stability of a state government of Somalia is required if a clear constitutional arrangement that legally establishes and protects any internal arrangement for the exercise of self-determination in Somaliland. Although, Democratic credentials however are not respected as criteria for the recognition of sovereignty anywhere in the world.⁹³

3.5 Foreign Policy

Within the different constitutional arrangements there is a lot of flexibility to reach an arrangement between the ‘parent state’ and the territory in which greater self-determination is sought. However, consideration needs to be given to how constitutional arrangements for the exercise of self-determination affect foreign policy as it is a territories control of foreign policy and thus external self-determination that impacts the degree of freedom a territory has to engage with the international human rights system in its own right. This is because formal foreign relations are “those of one sovereign people with another, which live under a separate

⁸⁹ Ibid.

⁹⁰ Moe L Wiuff, ‘Hybrid and “Everyday” Political Ordering: Constructing and Contesting Legitimacy (2011) 63 The Journal of Legal Pluralism and Unofficial Law 143, 157.

⁹¹ Tamaru (n 55) 37.

⁹² Ibid.

⁹³ Alexis Arieff, ‘De facto Statehood? The Strange Case of Somaliland’ [2008] Yale Journal of International Affairs 60, 68.

jurisdiction,⁹⁴ the consequence of this is that foreign policy and external relations tend to be within the powers of the central institutions of a state.⁹⁵

Article 74 of the 1969 Vienna Treaty on the Law of Treaties⁹⁶ allows foreign relations between de facto states and non-recognising countries and international courts hold that de facto states may be given legal recognition in spite of the lack of formal diplomatic relations⁹⁷ without bestowing meaningful recognition⁹⁸ as “the conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations”.⁹⁹ State practice, however, reflects that economic external relations would come from the centre. This is reinforced by organisations which operate almost exclusively at state level as shown by the articles of agreement of the World Bank and the IMF, and UN agency mandates which “make it difficult for them to work through any agency other than a legally recognised government”.¹⁰⁰ However, variations do occur such as with foreign trade¹⁰¹ and the international legal system is still able to cope with de facto states. In general, though there are fewer discrepancies between decentralised constitutional arrangements in regard to foreign affairs than in most other aspects of government¹⁰² with an advantage of them being that in foreign relations they normally have a unified single personality.¹⁰³

3.5.1 Unitarianism and Foreign Policy

For the purposes of implementation of international human rights obligations an advantage of a decentralised unitary state is that it has a “single international personality”.¹⁰⁴ Therefore, international obligations can be “more readily legislated in a unitary state because the central political unit has exclusive authority over the laws of the country”.¹⁰⁵ However, in relation to

⁹⁴ Lewis (n 37) 61.

⁹⁵ Lewis (n 37) 61.

⁹⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art 74.

⁹⁷ Scott Pegg, ‘De Facto States in the International System, Institute of International Relation’ (1998) The University of British Columbia Working Paper No 21, 12-13

<www.liu.xplorex.com/sites/liu/files/Publications/webwp21.pdf> accessed 22 April 2017; AK Eggers, ‘When is a State a State? The Case for Recognition of Somaliland’ (2007) 30 Boston College International and Comparative Law Review 211, 214.

⁹⁸ Brad Poore, ‘Somaliland: Shackled To A Failed State’ (2009) 45 Stanford Journal of International Law 117, 119.

⁹⁹ Vienna Convention (n 96) Article 74.

¹⁰⁰ Lewis (n 37) 31.

¹⁰¹ Lewis (n 37) 61.

¹⁰² Lewis (n 37) 62.

¹⁰³ Lewis (n 37) 88.

¹⁰⁴ Lewis (n 37) 90.

¹⁰⁵ Lewis (n 37) 59.

Somaliland's engagement with the international human rights system this is a disadvantage as the advantages of the potential exercise of external self-determination within a confederal or federal arrangement that arise from Somaliland's greater political stability than that of the Somali Republic would be lost.¹⁰⁶

3.5.2 Federalism and Foreign Policy

There are differences in the conduct of foreign policy by a federal state than the conduct of foreign policy under other constitutional arrangements such as a unitary state which could have consequences for engagement with the international human rights system. In federal states it is more difficult to take decisions to ratify treaties¹⁰⁷ as well as to comply with and report on obligations under treaties¹⁰⁸ as awareness of treaties and their impacts is lower at the sub-state levels of government such as regional government.¹⁰⁹ As such, in federal states a regional authority may not comply with international laws, or inconsistent laws may prevent the implementation of human rights obligations. Such problems can be overcome through coordination of laws and a constitutional court can "oversee the process of coordination and implementation".¹¹⁰ However, this does not address the potential advantage of separate engagement with the international human rights system by the Somaliland authority from the less stable government of the Somali Republic.

Some federal systems allow a degree of independence in treaty making but these maybe on limited issues with restrictions such as a requirement not to conflict with obligations of the central government or the maintenance of the right of the central government to approve the treaty, examples of this include Australia, Canada,¹¹¹ Switzerland¹¹² and the United Arab Emirates.¹¹³ Despite the flexibility in relation to foreign affairs shown by different federal arrangements of a federal state there is a loss by regional states of "international personality and separate representation".¹¹⁴ A possible disadvantage therefore of a federal system to the implementation of human rights is that a federal government can be embarrassed internationally by the failure to comply with international obligations more than a regional

¹⁰⁶ Lewis (n 37) 90.

¹⁰⁷ Christof Heyns & F Viljoen, 'The Impact of the United Nations Human Rights Treaties on the Domestic Level' (2001) 23(3) Human Rights Quarterly 483, 520.

¹⁰⁸ Heyns (n 107) 508.

¹⁰⁹ Heyns (n 107) 520.

¹¹⁰ Lewis (n 37) xxvii.

¹¹¹ Ibid.

¹¹² Lewis (n 37) 19.

¹¹³ Lewis (n 37) 21.

¹¹⁴ Lewis (n 37) 89.

authority without legal personality.¹¹⁵ However, within a federal system regional authorities may establish standards beyond those of the central federal state's international commitments.¹¹⁶

As with issues around internal self-determination as discussed above, for a federal arrangement to incorporate an external element of self-determination in the exercise of the right within a sub-state entity, a level of political stability by the state government is required. Such political stability is necessary for the constitutional institutions that address inconsistent laws and political institutions and processes that enable co-ordination. This is not available through the Somali Republic.

3.5.3 Confederalism and Foreign Policy

The political entities that come together as constituent units within a confederation¹¹⁷ “retain their international status”¹¹⁸ and maintain a separate international personality¹¹⁹ within the international community as separate states.¹²⁰ In establishing a confederal arrangement between the Somali Republic and Somaliland, an asymmetrical confederation may allow a unitary Somaliland a greater degree of autonomy than other territorial units within Somalia enabling it to engage with the international human rights system in its own right. A confederation for specific purposes¹²¹ such as an economic union comparable to the EU¹²² or Ethiopia and Eritrea's agreement to limit links to just sharing a currency upon Eritrea's secession,¹²³ would also allow a separate engagement with the international human rights system by Somaliland. Confederal structures may therefore help develop cooperation whilst maintaining independence of individual regional authorities to engage internationally¹²⁴ and enable Somaliland a degree of sovereignty and external self-determination that could prevent the government of the Somali Republic from being an obstacle to engagement between Somaliland and the international human rights system, as there would not be the requirement for the central Somali state to provide a legal and political constitutional structure to enable

¹¹⁵ Lewis (n 37) 59.

¹¹⁶ Ibid.

¹¹⁷ Lewis (n 37) 87.

¹¹⁸ Lewis (n 37) 15.

¹¹⁹ Lewis (n 37) 87.

¹²⁰ Lewis (n 37) 15.

¹²¹ International Crisis Group, ‘Somaliland: Time for African Union Leadership’ (Africa Report No 110, 23 May 2006) 4, 18.

¹²² Poore (n 98) 134.

¹²³ Pegg (n 97), 19.

¹²⁴ Tamaru (n 55) 65.

external engagement by the authorities exercising self-determination in Somaliland which there is with federalism.¹²⁵

3.6 External self-determination

External self-determination is seen in the three main methods for exercising the right to self-determination mentioned in the General Assembly Resolution 1541 (XV) “emergence as a sovereign independent state; ...free association with an independent state; or ... integration with an independent state”.¹²⁶ The resolution does not imply that independence or secession from an independent state is the only means of exercising the right,¹²⁷ it is the right of Peoples to politically participate.¹²⁸ External self-determination as a recognised sovereign state is just one end of the scale of different forms of self-determination and has largely been applied to colonial entities and closely analogous cases.¹²⁹ As such, it has rarely been applied to cases of secession from a state which has previously seceded from another state.¹³⁰

Many benefits are seen to flow from the personality and status¹³¹ arising from external self-determination. For full participation in the international community, external self-determination is required frequently in the form of “independence and sustained effective control of territory, combined with a degree of recognition, although there have been attempts to set higher standards for entry, as with EC policy on recognition of highest-level republics of the former Yugoslavia”.¹³² The international community’s response to separatist movements seeking external self-determination as a state has been strongly influenced by the reality of the effective control by the separatist movement of the territory which is seeking statehood.¹³³

The formation and recognition of states is generally guided by the contradictory international norms of self-determination and territorial integrity.¹³⁴ The Badinter Commission referred to

¹²⁵ As discussed at 3.5

¹²⁶ UNGA 1541 (XV).

¹²⁷ McCorquodale (n 2) 863.

¹²⁸ Xanthaki (n6) 141.

¹²⁹ Weller (n 20) 112.

¹³⁰ Weller (n 20) 113.

¹³¹ B Kingsbury, ‘Whose International Law? Sovereignty and Non-State Groups’ (1994) 88 American Society of International Law Proceedings 1, 4.

¹³² Ibid.

¹³³ O Schachter, ‘The Decline of the Nation-State and its Implications for International Law’ (1998) 36 Columbia Journal of Transnational Law 7, 16.

¹³⁴ International Crisis Group (n 121) 15.

self-determination¹³⁵ and the *Western Sahara* case¹³⁶ defined the principle of self-determination as “the need to pay regard to the freely expressed will of peoples”¹³⁷ which suggests that it is the right of people to participate in their social economic and political development.¹³⁸ Self-determination does not however necessarily mean a right to secede. The legitimacy of the right to self-determination is dependent on the legitimacy of the state’s government that is declaring independence and thus the destabilizing effect to the international community.¹³⁹ *Western Sahara*, the UN General Assembly Resolution 1514¹⁴⁰ and 2625¹⁴¹ all acknowledge that self-determination need not result in sovereign independence.¹⁴²

The Universal Declaration of Human Rights (UDHR), which the International Court of Justice (“ICJ”) held to be customary law,¹⁴³ confirms the enduring political and international legal maxim that from the deprivation of basic human rights a right to secession can arise.¹⁴⁴ The preamble to the Universal Declaration of Human Rights also recognises the right to rebellion as a last resort against tyranny and oppression.¹⁴⁵ This qualification to territorial integrity and the rights to secession was reiterated in the Vienna Declaration¹⁴⁶ with the distinction that it does not apply when there is “a government representing the whole people belonging to the territory without distinction of any kind”,¹⁴⁷ making it clear that partial or total disruption of territorial integrity of a country is incompatible with the UN Charter.¹⁴⁸ Therefore, since 1970 the uncompromising principle of territorial integrity has now expanded and developed to that point that the UN General Assembly suggests that there may be a right

¹³⁵ CMJ Ryngaert and S Sobrie, ‘Recognition of states: international law or realpolitick? The practice of recognition in the wake of Kosovo, South Ossetia and Abkhazia’ (2011) 24(2) *Leiden Journal of International Law* 467, 475.

¹³⁶ *Western Sahara* (Advisory Opinion) [1975] ICJ 12.

¹³⁷ *Western Sahara* (n 136) 33.

¹³⁸ International Crisis Group (n 121) 15.

¹³⁹ *Kirgis* (n 1) 308.

¹⁴⁰ Joshua Castellino, ‘Territorial Integrity and the “Right” to Self-Determination: An Examination of the Conceptual Tools’ (2007-2008) 33 *Brooklyn Journal of International Law* 503, 515; UNGA Resolution 1541(XV) of 1960 (‘UNGA Res 1514’).

¹⁴¹ Friendly Relations Declaration (n 4).

¹⁴² Pegg (n 97) 19; G Barrie, ‘Uti Possidetis Versus Self-Determination and Modern International Law: In Africa the Chickens are coming Home to Roost’ (1988) *Journal of South African Law* 451, 454.

¹⁴³ Ryngaert (n 135) 482.

¹⁴⁴ Anthony J Carroll & B Rajagopal, ‘The Case For the Independent Statehood of Somaliland’ (1993) 8 *American University International Law Review* 653, 662; see also *Ibid*; Poore (n 98) 146.

¹⁴⁵ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), Preamble.

¹⁴⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

¹⁴⁷ Vienna Convention (n 146) part I, para 2.

¹⁴⁸ *Kirgis* (n 1) 306.

of peoples to secede if a government is unrepresentative of people under any definition¹⁴⁹ so that forcible secession of parts of a state (without outside intervention) may not be prohibited by international law.¹⁵⁰ Somaliland has argued the atrocities of the Siad Barre regime satisfy the criteria of tyranny and oppression providing Somaliland with sufficient grounds for self-determination and secession.¹⁵¹

3.6.1 Statehood

Since declaring independence in 1991 and confirming a constitution by referendum in 2001 the Somaliland administrations in Hargeisa have held that self-determination is exercised in Somaliland as a Somaliland sovereign independent state. It is on the basis of sovereign independent statehood that Somaliland wants to engage with the international human rights system and it is therefore on this basis that a discussion of how the exercise of self-determination in Somaliland may impact engagement with the international human rights system should start. Sovereign statehood offers full external self-determination and thus the greatest level of potential engagement. However, sovereign statehood is hard to achieve and there are several issues that affect the possibility of Somaliland achieving it that will be explored. As such, although sovereign independence is what Somaliland claims, there are other possible arrangements for the exercise of self-determination in Somaliland that are relevant to engagement with the international human rights system.¹⁵²

In discussing Somaliland's claim to self-determination as a state, consideration needs to be given to the Montevideo Convention on the Rights and Duties of States¹⁵³ ('Montevideo Convention'), as to engage with the international human rights system as a state Somaliland does need to satisfy the Montevideo Convention. Under Article 1 of the Montevideo Convention to qualify as "a person of international law"¹⁵⁴ Somaliland needs to possess "(a) a permanent population; (b) defined territory; (c)[effective] government; and (d) capacity to enter into relations with the other states".¹⁵⁵ The importance of these criteria were highlighted by Talmon when he said "[a] declaration by the international community even a binding

¹⁴⁹ Ibid.

¹⁵⁰ S Talmon, 'The Constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur' (2004) 75 BYIL 101, 165.

¹⁵¹ International Crisis Group (n 121) 15.

¹⁵² As discussed at chapter 3.3.

¹⁵³ Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19 ('Montevideo Convention').

¹⁵⁴ Ibid, Art 1.

¹⁵⁵ Ibid.

decision of the United Nations Security Council cannot replace criteria for statehood which are otherwise missing”.¹⁵⁶ Within Somaliland’s borders there is a stable permanent population of approximately 3 million, the territory of Somaliland is also clearly defined in three treaties between the UK and France, Italy and Ethiopia.¹⁵⁷ Somaliland also has effective state institutions such as a currency, a constitution, elected local and state authorities, an independent judiciary, as well as an army and custodial forces.¹⁵⁸ As part of its case for independence, the Somaliland authority therefore maintains that it fulfils the criteria for statehood under the Montevideo Convention.¹⁵⁹

Although it appears that Somaliland satisfies the Montevideo criteria for statehood, Article 3 of the Montevideo Convention states that “[t]he political existence of the state is independent of recognition by the other states”.¹⁶⁰ Therefore, under the Montevideo Convention international law allows states a wide degree of discretion and manoeuvrability and does not impose an obligation on states to recognise a territory that satisfies the criteria for statehood only an obligation not to recognise a state if it does not. Even so, states do consider the Montevideo Convention legal criteria by which they are bound to justify their recognition of a territory as a state so that if premature recognition is given when the Montevideo criteria have not been met then it is generally considered intervention and an illegitimate act.¹⁶¹

3.6.2 Sovereignty

In most states sovereignty, the supreme political authority is vested in people but in the context of Somaliland this tells us very little, if we do not know who the people consist of and through what rules and what institutions their sovereignty is expressed.¹⁶² In the context of Somalia sovereignty can reside with all adult citizens within the territory of Somalia, it can be vested in the constituent territorial units and it can also rest with the clans.¹⁶³

¹⁵⁶ Talmon (n 150) 137.

¹⁵⁷ International Crisis Group (n 121) 11.

¹⁵⁸ Ibid.

¹⁵⁹ Scott Pegg and Pål Kolstø, ‘Somaliland: Dynamics of internal legitimacy and (lack of) external sovereignty’ (2015) 66 *Geoforum* 193, 197.

¹⁶⁰ Montevideo (n 153) Art 3; Recognition maybe explicit or tacit see AK Eggers, ‘When is a State a State? The Case for Recognition of Somaliland’ (2007) 30 *Boston College International and Comparative Law Review* 211, 214.

¹⁶¹ Ryngaert (n 135) 472-474.

¹⁶² Lewis (n 37) 61.

¹⁶³ Lewis (n 37) 14, 15.

An absolute conception of sovereignty is that a state is either the supreme authority in its territory or it is not¹⁶⁴ and thus sovereignty is not partially realised.¹⁶⁵ From this point of view the absence of international recognition of sovereignty would make a discussion about different forms of sovereignty meaningless¹⁶⁶ because without sovereignty there is not a state.¹⁶⁷ Recognition of sovereignty tends to be an additional and decisive criterion of statehood which is suggestive of a constitutive approach,¹⁶⁸ although state practice¹⁶⁹ appears to counter the constitutive view that prior to recognition no legal personality exists.¹⁷⁰ A view of sovereignty as simply fixed and indivisible has been challenged¹⁷¹ with the view that there are different forms of sovereignty and as such sovereignty can have different meanings for different states¹⁷² and territorial entities.¹⁷³ As a result of these criticisms and observations the constitutive theory and the view that non-recognition does not have a status preventing effect has been largely rejected¹⁷⁴ and the view that recognition “establishes, confirms or provides evidence of the objective legal situation that is the existence of the State” held.¹⁷⁵ This view of sovereignty makes possible a conception of varying degrees of sovereignty or statehood, including for territories that lack international recognition as states.¹⁷⁶ Satisfaction of the criteria for statehood is therefore no longer the decisive factor for acceptance into or engagement with, the international community.¹⁷⁷

3.6.3 Territorial Integrity

UN Practice in relation to self-determination and territorial integrity is not always consistent, the UN approach to proposed settlements in Nagorno Karabakh and Northern Cyprus demonstrate how far the international community is “willing to go in order to retain,

¹⁶⁴ Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton University Press 2001) 32.

¹⁶⁵ Ibid.

¹⁶⁶ Nina Caspersen, ‘Degrees of legitimacy: Ensuring internal and external support in the absence of recognition’ (2015) 66 *Geoforum* 184, 185.

¹⁶⁷ O Tansey, ‘Does democracy need sovereignty?’ (2010) 37(40) *Review of International Studies* 1515, 1519.

¹⁶⁸ International Crisis Group (n 121) 12, e.g. Rhodesia, Katanga and Biafra.

¹⁶⁹ As discussed at chapters 4, 5 and 6.

¹⁷⁰ Carroll (n 144) 677; see also the Western Sahara’s membership of the AU and Taiwan’s membership of the WTO.

¹⁷¹ Caspersen (n 166) 185.

¹⁷² G Sorensen, ‘Sovereignty: change and continuity in a fundamental institution’ (1999) 47 *Political Studies* 590, 597.

¹⁷³ Caspersen (n 166) 185.

¹⁷⁴ Talmon (n 150) 105.

¹⁷⁵ Talmon (n 150) 105.

¹⁷⁶ Caspersen (n 166) 185.

¹⁷⁷ Pegg (n 159) 197.

nominally, the doctrine of territorial unity of states".¹⁷⁸ However, the International Court of Justice ('ICJ') in its *Accordance with International Law of the Unilateral Declaration of Independence In Respect of Kosovo, Advisory Opinion*¹⁷⁹ supported the *Quebec* case that "the scope of the principle of territorial integrity is confined to the sphere of relations between states".¹⁸⁰ As such, secession from a parent state, such as in Somaliland's situation does not fall into such relations and should therefore not violate territorial integrity, nor breach international law.¹⁸¹ Although, territorial integrity can limit the exercise of self-determination in states in which the government represents the whole population in accordance with the exercise of internal self-determination.¹⁸² Due to the political instability of the government of the Somali Republic which has led to an inability to create a state structure that enables the exercise of internal self-determination, it is unclear whether this would apply in Somaliland. The ICJ opinion has however left open the possibility that although a declaration of independence was lawful under international law, recognition of the statehood of the seceding territory maybe unlawful.¹⁸³

There are legal issues regarding territories seceding from a state which impact international engagement with a territory on the basis of statehood. Territorial integrity does not necessarily stop the exercise of self-determination but territorial integrity is a concern that affects the international community's engagement with Somaliland. This is demonstrated by the UN Declaration on the Rights of Indigenous Peoples which affirms and expands the view of what the exercise of the right of self-determination by a Peoples includes a provision at Article 46.1 that nothing in the Declaration may be interpreted as implying 'authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states'.¹⁸⁴ Such concerns make the international community reluctant to engage with Somaliland in a way that could be considered recognition of Somaliland's independent statehood and thus an infringement of the territorial integrity of the Somali Republic. Although UN practice does allow for self-determination to override claims of territorial integrity, under international law the result of the 2001 referendum in Somaliland on its independence does not necessarily give legitimacy

¹⁷⁸ Weller (n 20) 127.

¹⁷⁹ *Accordance with international law of the universal declaration of independence in respect of Kosovo, Advisory Opinion*, 2010, ICJ 141 (22 July) ("*Kosovo*").

¹⁸⁰ *Quebec* (n 44) para 80.

¹⁸¹ Ryngaert (n 135) 479.

¹⁸² *McCorquodale* (n 2) 880.

¹⁸³ Ryngaert (n 135) 479; *Kosovo* (n 179) para 56.

¹⁸⁴ UNGA (n 19)

to Somaliland's claim to secession as a sovereign state, as the vote for the referendum reflected only a minority of the overall population of the recognised state of the Somali Republic and the minority cannot dictate to the majority.¹⁸⁵ If the argument that the 2001 referendum was illegitimate is accepted then it raises the question of whether recognition of Somaliland as a state by another state would be premature and amount to an intervention in the internal affairs of the Somali Republic.¹⁸⁶

An assessment of the application of the criteria for sovereign statehood, such as the Montevideo Convention, to Somaliland therefore cannot be considered in isolation as Somaliland is a de jure part of a recognised state of Somalia.¹⁸⁷ As such, it can be argued that recognition of Somaliland's secession from Somalia would violate the Somali Republic's territorial integrity.¹⁸⁸ What is unique about Somaliland's case for recognition is that the larger recognised state does not comply with the Montevideo criteria in many respects¹⁸⁹ as the governments of the Somali Republic have not been effective governments over a clearly defined territory. Proponents of Somaliland independence, therefore, do not argue for a general right to secede but that recognition in this case would be more favourable than the continuation of the failed Somali Republic state.¹⁹⁰ This argument means it can also be posited that recognising Somaliland does not violate the principle of not recognising states that are established through the violation of jus cogens¹⁹¹ as there is not an effective parent state to reassert control.¹⁹²

3.6.4 Secession

Although the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty stated that 'every State has the inalienable right to self-determination'¹⁹³, the right to exercise self-determination does not grant the right to independence,¹⁹⁴ neither does it prohibit secession expressly¹⁹⁵ as

¹⁸⁵ Poore (n 98) 143.

¹⁸⁶ Carroll (n 144) 680.

¹⁸⁷ International Crisis Group (n 121) 11.

¹⁸⁸ Carroll (n 144) 680.

¹⁸⁹ International Crisis Group (n 121) 11; Ryngaert (n 135) 472.

¹⁹⁰ Poore (n 98) 143.

¹⁹¹ Responsibility of States for Internationally Wrongful Acts (adopted by the International Law Commission, 53rd session, 2001) Art 41(2); Ryngaert (n 135) 473.

¹⁹² Carroll (n 144) 678-679.

¹⁹³ Declaration on Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (21 December 1965) UNGA Res 2131(XX).

¹⁹⁴ Anne F Bayefsky, *Self-Determination International Law: Quebec and Lessons Learned* (Kluwer Law International 2000) 294.

demonstrated by the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States which understood the external aspect of self-determination as a range of ways the right could be exercised.¹⁹⁶

In the *Quebec*¹⁹⁷ case the Canadian Supreme Court held that the right of a state's minority to effectively participate in political and economic processes gives rise to a right to internal self-determination or "remedial succession".¹⁹⁸ Therefore, when a clear majority want secession there is an obligation to negotiate a possible settlement in accordance with four principles of constitutionalism, the rule of law, democracy, federalism and protection of minority rights. If meaningful internal self-determination is denied then unilateral secession is acceptable.¹⁹⁹ Although *Quebec* addressed the issue of secession from a state, it did not explicitly address what happens when the central government of a state is that of a failed state.²⁰⁰ In contrast to *Quebec*, there are no avenues, democratic or otherwise, available to Somalilanders for internal self-determination. There is not the politically stable government there is in Canada which can agree to or grant such a right with the required constitutional institutions to protect such a right and there has not been for decades. In such a case it could be said that the level of effectiveness required of Somaliland as a new state is lower as a consequence of the Somali Republic's lack of effectiveness as a recognised state.²⁰¹ However, "[t]here is neither legislation nor customary international law that expressly prohibits or allows secession from a failed state as opposed to a democratic state".²⁰²

The South African Foreign Ministry provided a legal opinion on Somaliland's independence which observed that "while it does not authorise secession the right to self-determination does not prohibit secession".²⁰³ Eritrea and Bangladesh are examples of self-determination which resulted in secession which were accepted by the international community.²⁰⁴ However, the act of secession has come to be viewed not as part of the right to self-

¹⁹⁵ Xanthaki (n6) 141.

¹⁹⁶ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (24 October 1970) UNGA Res 2625(XXV), para 4.

¹⁹⁷ *Quebec* (n 44).

¹⁹⁸ Poore (n 98) 139.

¹⁹⁹ *Ibid.*

²⁰⁰ Poore (n 98) 144-145.

²⁰¹ Poore (n 98) 146.

²⁰² Poore (n 98) 149.

²⁰³ International Crisis Group (n 121) 15.

²⁰⁴ International Crisis Group (n 121) 15.

determination but as a possible right separate from self-determination.²⁰⁵ The lack of clarity in relation to self-determination, territorial integrity and secession means that a consensus on what the standards of legitimate secession are has not been reached.²⁰⁶ International law and the international community's approach to secession appears to reflect the Canadian Supreme Court in *Quebec*²⁰⁷ in that "international law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their 'parent' state".²⁰⁸ This approach matches the international community's ever present fears of the unknown potential for never ending secession, the result being that secession is considered a last resort.²⁰⁹

In view of the fears of the international community of the problems resulting from the territorial break ups of the decolonisation period and the examples of secession accepted by the international community, it can be argued that international law neither prohibits nor encourages secession outside of the colonial experience but if a state's secession is successful international law will recognise it.²¹⁰ This imprecise approach reflects a practical approach in international law to reflect a need, noted by Talmon, for international law not to appear out of touch and so it cannot completely disregard states that exist in fact.²¹¹

3.6.5 Prospects for sovereign statehood for Somaliland

Some legal scholars claim the absence of a valid act of union between British and Italian Somaliland and the fact that Italian Somaliland was technically under UN trusteeship, invalidate the act of union²¹² that created the Somali Republic. Because of these discrepancies in the creation of the Somali Republic, Somaliland has presented its case for statehood in terms of the dissolution of a failed union. This allows Somaliland to place its claim within a wider tradition of legally acceptable dissolutions²¹³ which includes dissolutions of "Egypt/Syria, Cape Verde/Guinea Bissau, and Senegal/Gambia."²¹⁴ As well as the more recent dissolution of the former Yugoslavia²¹⁵ whose constituent republics, were recognized only

²⁰⁵ J Klabbbers, 'The Right to be Taken Seriously: Self-Determination in International Law' (2006) 28 Human Rights Quarterly 186, 198.

²⁰⁶ Pegg (n 97) 20.

²⁰⁷ Eggers (n 160) 215.

²⁰⁸ Quebec (n 44) 65, para 111.

²⁰⁹ Pegg (n 97) 16.

²¹⁰ Eggers (n 160) 216.

²¹¹ Talmon (n 150) 132.

²¹² International Crisis Group (n 121); Carroll (n 144) 662.

²¹³ Pegg (n 159) 197.

²¹⁴ S Kaplan, 'The Remarkable Story of Somaliland' (2008) 19 Journal of Democracy 143, 152.

²¹⁵ Pegg (n 159) 197.

after other countries decided to treat the dissolution of the Yugoslav union “legally equivalent to what happened in the former Soviet Union or Czechoslovakia, albeit without the consent of the parent state”.²¹⁶

Somaliland’s claim to self-determination and statehood has several aspects which give it a uniqueness. Somaliland’s separate colonial existence prior to unification, its claim to former colonial borders,²¹⁷ and its five days of sovereign independence after decolonisation has also been used to argue that, the recognition of Somaliland as a sovereign state is consistent with the Constitutive Act of the African Union’s respect for the territorial integrity of borders at the moment of independence from colonial rule.²¹⁸ A 2005 African Union (‘AU’) fact-finding mission highlighted that these different aspects mean “Somaliland’s search for recognition historically unique and self-justified in African political history”.²¹⁹

The argument that Somaliland satisfies the Constitutive Act of the African Union is based on the premise that Somaliland satisfies the principle of *uti possidetis* that the boundaries between former colonies should be kept intact, by claiming it maintains the borders of its colonial incarnation as British Somaliland. The history of Somaliland’s independence as decolonised state prior to unification under the Somali Republic adds to this argument and thus Somaliland’s claims to statehood. It is also why in Somaliland’s territorial dispute with Puntland it insists on the continual territorial integrity of the former British protectorate.²²⁰

Despite these unique legal arguments sovereign statehood for Somaliland is politically difficult. The international community is unwilling to recognise Somaliland without an African consensus.²²¹ Regionally, African states are worried about weakening the principle of *uti possidetis*²²² which would add to their own internal concerns²²³ despite Somaliland’s historical background. These concerns of African states are used by the Somali Republic to

²¹⁶ M Fabry, ‘Secession and state recognition in international relations and law’ in A Pavkovic and P Radan (eds), *On the Way to Statehood: Secession and Globalisation* (Ashgate, Aldershot, 2008) 51, 62.

²¹⁷ Pegg (n 159) 197.

²¹⁸ Anonymous, ‘Government recognition in Somalia and regional political stability in the Horn of Africa’ (2002) 40(2) *The Journal of Modern African Studies* 247, 263; Bryden (n 78) 175.

²¹⁹ African Union, ‘Resume: AU Fact-Finding Mission to Somaliland (30 April to 4 May 2005)’ (2005) 4 <<https://wargeyskasaxafi.files.wordpress.com/2018/01/au-fact-finding-mission-to-somaliland-30-april-to-4-may-2005.pdf>> accessed 12 August 2017.

²²⁰ Pegg (n 159) 200.

²²¹ DH Shinn, ‘Somaliland: The Little Country that Could’ (2002) 9 *Africa Notes* 1, 7; Poore (n 98) 122 and 124; M Wallis & S Kibble, ‘Beyond Polarity: Negotiating a Hybrid State in Somaliland’ (2010) 1 *African Spectrum* 31, 54; Discussed further at chapter 4.

²²² McCorquodale (n 2) 882.

²²³ International Crisis Group (n 121) 2.

frustrate Somaliland's aim of being a sovereign state through its maintenance of juridical statehood.²²⁴ As such even when governments of the Somali Republic have been "unable to exercise authority over more than a few neighbourhoods in the capital",²²⁵ they have been recognised as the government over all of Somalia by the UN, the Arab League and the AU. This is in contrast to over two decades of Somaliland's unrecognized, effective de facto statehood.²²⁶ This has allowed the Somali Republic to effectively veto Somaliland's attempts to progress its claim of statehood. The importance of the Somali Republic as the parent state in Somalia is demonstrated by the recognized sovereign independence of Eritrea and South Sudan which both gained recognition once their parent states had agreed to it.²²⁷

As has been shown above, prospects of the international community engaging with Somaliland on the basis it is a sovereign independent state are not likely soon. A successful secession that maintains international legal principles such as territorial integrity and *uti possidetis* involves addressing the concerns and subsequently obtaining the agreement of a parent state. There are therefore currently too many legal issues and internal interests, related to how the international community engages with Somaliland, for Somaliland to engage with the international community on the basis it is a sovereign independent state.

3.7 Current arrangement

This section addresses what the current arrangement for the exercise of self-determination is between the Somali Republic and Somaliland. A discussion of the current political arrangement between the Somali Republic and Somaliland is required because this is the starting point for an agreed arrangement for self-determination in Somaliland. The current arrangement between the Somali Republic and Somaliland is also the starting point from which an assessment of how the exercise of self-determination by Somaliland may affect engagement with the international human rights system can be made. An understanding of the current arrangement is also essential to understanding the confusion that affects the status accorded to Somaliland by the international community and the international human rights system's engagement with Somaliland, both issues of which will be elaborated upon further in subsequent chapters.

²²⁴ D Geldenhuys, *Origins of Contested Statehood. In: Contested States in World Politics* (Palgrave Macmillan 2009) 146.

²²⁵ K Menkhaus, 'The Somali Spring' (Foreign Policy, 24 September 2012) 92.

²²⁶ Pegg (n 159) 197.

²²⁷ Pegg (n 159) 198.

The current arrangement between the Somali Republic and Somaliland not only relates to the subsequent confusion that effects the international human rights system's engagement with Somaliland and the confusion as to the legal status of Somaliland's current arrangement but also relates to the strength of Somaliland's legitimate arguments in relation to its claim for statehood.

3.7.1 Current Arrangement in Somaliland

The territory of Somaliland is currently a de jure part of the state of the Somali Republic which encompasses all of the territory of Somalia. However, the governments of the Somali Republic have had "little effective or direct control over the majority of the country"²²⁸ and its continued existence is ensured largely by an international military mission.²²⁹ Once again demonstrating the difficulty of a lack of a politically stable state with which a constitutional arrangement for the exercise of self-determination in Somaliland can be established. Since declaring independence no member of the UN has recognised Somaliland as a sovereign state.

The government of the Somali Republic considers Somaliland to be a territorial unit of a federal Somalia. The Constitution of the Republic of Somaliland ("Somaliland Constitution") recognizes the territory of Somaliland as an independent sovereign state, separate from the rest of Somalia since 1991²³⁰ and therefore exercising external self-determination. The Somaliland Constitution does not include any provisions in relation to a "structural relationship with the Republic of Somalia, except to highlight Somaliland's independence".²³¹ However, as no member of the international community recognises Somaliland's independence, the government of the Somali Republic's position that Somaliland exercises an unauthorised form of self-determination can be viewed as correct under international law. Although, as I demonstrate in later chapters engagement by the international community and the international human rights system with Somaliland makes any view of Somaliland's self-determination more opaque.

3.7.1.1 De Facto State

²²⁸ Chiara Giorgetti, 'Using International Law in Somalia's Post-Conflict Reconstruction' (2014) 53 *Columbia Journal of Transnational Law* 48, 50.

²²⁹ *Ibid.*

²³⁰ Tamaru (n 55) 11.

²³¹ *Ibid.*

Although Somaliland is a de jure part of Somalia, Somaliland also engages with the international human rights system on the basis of being a de facto state. A de facto state is a sovereign anomaly, in that it controls territory and has provided governance of a territory over an extended period of time but is unrecognized by the international community.²³² A de facto state can control territory as a “peoples exercising a right to self-determination outside of the decolonisation context, with the aim of establishing a newly independent State”²³³ and “as political entities seeking separation from the State” whose recognition is withheld by the international community due to non-recognition by the parent state.²³⁴ Both of these de facto state descriptions apply to Somaliland.

As a de facto state, Somaliland has exercised a form of self-determination that has enabled it to establish governmental institutions, including a President and bicameral legislature consisting of the Guurti (the Upper House of Elders) and a popularly elected House of Representatives (the Lower House).²³⁵ These institutions have been separate from every government of the Somali Republic, none of which have been popularly elected and all of whom have been affected by the civil conflict in the territory of the Somali Republic, which has been on-going since Somaliland declared independence in 1991.²³⁶ The political stability of these Somaliland authority institutions and governing systems in relation to the government of the Somali Republic, as discussed throughout this thesis, demonstrate the difficulty of international engagement and thus the exercise of the external self-determination of all Peoples in Somalia being conducted through the government of the Somali Republic and is discussed in more detail below. The success of the exercise of self-determination in Somaliland is also a persuasive argument for external self-determination to be exercised in Somaliland without the Somali Republic acting as an intermediary.

The forms of support for, and international engagement with de facto states by the international community are varied.²³⁷ As such, although there is generally a focus on recognition of de facto states there are other avenues available for exercising external self-determination which fall short of full recognition as a sovereign state by the international

²³² Pegg (n 159) 193.

²³³ Anthony Cullen and Steven Wheatley, ‘The Human Rights of Individuals in De Facto Regimes under the European Convention on Human Rights’ (2013) 13(4) Human Rights Law Review 691, 717-718.

²³⁴ Cullen (n 233) 717-718.

²³⁵ The Constitution of the Republic of Somaliland
<www.somalilandlaw.com/somaliland_constitution.htm#Heading> accessed 14 November 2015.

²³⁶ International Crisis Group (n 121) 6.

²³⁷ Caspersen (n 166) 187.

community. For example, not all membership of economic organisations is reliant on juridical statehood. Membership of the Asian-Pacific Economic Cooperation (“APEC”) region, for example, is reliant on economies as such Hong Kong and Taiwan (Chinese Taipei) can participate in APEC along with the People’s Republic of China. In the World Trade Organisation governments are the participating parties, the two main qualifications are that members must represent a customs union that maintains tariff and non-tariff trade restrictions and the government must control those tariffs and show functional competence.²³⁸ Therefore, there are arrangements for the exercise of self-determination short of statehood and subsequent international engagement. Application of such an approach to the international human rights system could involve consideration of jurisdiction rather than states. However, further consideration of this issue would involve a much wider discussion that would divert too far from a focus on Somaliland.

Taiwan shows that lack of diplomatic relations as a sovereign state does not preclude economic success.²³⁹ Under the People’s Republic of China (“PRC”) pleasing name Chinese Taipei, Taiwan has become a member of the Asian Development Bank, the World Trade Organisation²⁴⁰ and an observer on some OECD panels.²⁴¹ Despite being denied UN recognition, the government of Taiwan has also incorporated the International Human Rights Covenants into law.²⁴² A “Taiwan model” for exercising self-determination therefore requires flexibility from the de facto state and non-diplomatic partners. Membership of economic organisations and a ‘Taiwan Model’ also both demonstrate the importance of the parent state agreement or acceptance of such an alternative arrangement for the exercise of external self-determination.

3.7.1.2 Somaliland Governance

Another strategy de facto states use to seek access to the international system is to “proclaim their stability, their successful institutions, and their democratic credentials”.²⁴³ Somaliland’s claim to democratic credentials in part were demonstrated on 31 May 2001 when 3.5 million Somalilanders reaffirmed their support for sovereign independence in a constitutional

²³⁸ Pegg (n 97) 9.

²³⁹ Pegg (n 97) 4.

²⁴⁰ Caspersen (n 166) 187.

²⁴¹ The Economist, ‘Defining what makes a country: In quite a state’ (8 April 2010) <www.economist.com/node/15868439> accessed 15 June 2015.

²⁴² Caspersen (n 166) 187.

²⁴³ Caspersen (n 166) 189.

referendum²⁴⁴ that was considered to be largely compliant with internationally recognized election procedures²⁴⁵ with few voting irregularities or instances of fraud.²⁴⁶ The result of the referendum was that two thirds of eligible voters in Somaliland voted with 97 % approving the new constitution.²⁴⁷

Somaliland's claims to stability and successful institutions derive in part from being held up against a consensus within the international community that the Somali Republic governments have administered a 'failed state'.²⁴⁸ On a scale from highest to lowest of 1 to 7 in terms of countries in terms of their civil liberties and political freedoms Freedom House's "Freedom in the World" index gives Somalia 7.²⁴⁹ In contrast Somaliland has a functioning government and legislature, as well as an army,²⁵⁰ police force,²⁵¹ currency,²⁵² passport²⁵³ and courts system.²⁵⁴ A result of the institutions Somaliland has established has been a period of relative stability.²⁵⁵ The political hybrid that forms Somaliland's constitutional arrangement has been received favourably by international observers²⁵⁶ and the Somaliland authority has been regarded as one of the more democratic governments in Africa.²⁵⁷ The Freedom in the World index gives Somaliland 4.5 which compares well to Somalia's 7 but which is also better than most of the other neighbouring countries such as Uganda with 5, Djibouti's 5.5, Ethiopia with 6; and Sudan with 7.²⁵⁸ Of its regional neighbours only Kenya's 4 scores marginally better than Somaliland.²⁵⁹ A former foreign minister has stated that the

²⁴⁴ Eggers (n 160) 218.

²⁴⁵ Shinn (n 221) 2.

²⁴⁶ Poore (n 98) 131.

²⁴⁷ Shinn (n 221) 2.

²⁴⁸ FP Staff, '2011 Failed States Index – Interactive Map and Rankings' (*Foreign Policy*, 17 June 2011)

<www.foreignpolicy.com/articles/2011/06/17/2011_failed_states_index_interactive_map_and_rankings> accessed 12 July 2015.

²⁴⁹ Pegg (n 159) 194.

²⁵⁰ Somaliland Constitution (n 235) Art 123.

²⁵¹ Somaliland Constitution (n 235) Art 124.

²⁵² Somaliland Press, 'Somaliland: SL/Ethiopia Sign Trade and Security Treaty' (15 November 2014)

<<https://mereja.com/news/505059>> accessed 21 May 2015.

²⁵³ Ali Mo, 'Somaliland: Friendly Countries Accept Somaliland Passport' (*Somaliland Sun*, 27 July 2013)

<www.somalilandsun.com/somaliland-friendly-countries-accept-somaliland-passport/> accessed 12 July 2015.

²⁵⁴ International Crisis Group (n 121) 4; as discussed in more depth at chapter 2.

²⁵⁵ A Kreuter, 'Self-determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession' (2010) 19 *Minnesota Journal of International Law* 363, 364.

²⁵⁶ Pegg (n 159) 196.

²⁵⁷ M Wallis & S Kibble, 'Beyond Polarity: Negotiating a Hybrid State in Somaliland' (2010) 1 *African Spectrum* 31-56, 32.

²⁵⁸ Freedom House, 'Somaliland' <<https://freedomhouse.org/report/freedom-world/2013/somaliland#.VRqUF454rYg>> accessed 12 November 2015.

²⁵⁹ Pegg (n 159) 194; Pål Kolstøa and Helge Blakkisrud, 'De facto states and democracy: The case of Nagorno-Karabakh' (2012) 45 *Communist and Post-Communist Studies* 141, 142.

Somaliland Constitution is “the single biggest asset we have created”²⁶⁰ which demonstrates a feeling of “no turning back on Somaliland’s institutions”²⁶¹ when considering constitutional arrangements.

Somaliland has used traditional clan based democracy to develop a modern democratic system “that transcends clan politics and allegiances”²⁶² which has successfully held elections for its head of state, lower house of parliament and local councils.²⁶³ However, “Somaliland’s government remains fundamentally a product of political compromise, negotiation, and consensus and the presidency is often not strong enough to defy the diverse coalition of clan and other interests that support it”.²⁶⁴ Individual members of the Guurti have not had their own mandate challenged since 1997²⁶⁵ and the Guurti extended the previous President’s term of office twice with a minimal acknowledgment of constitutional requirements and in 2007 extended the term of Somaliland’s local district councils without legal basis.²⁶⁶ “There is virtually no transparency around government expenditures in Somaliland”²⁶⁷ and the executive has ignored the legislative amendments to the budget and sometimes operates without any budget at all rather than address the amendments, and frequently doesn’t submit an expenditure report to the House of Representatives.²⁶⁸

Despite the problems, the stability of Somaliland since it declared independence has resulted in a legal structure in Somaliland that has better placed to protect human rights than the unstable government of the Somali Republic. Not only providing an argument to support the Somaliland authority’s claim to independent statehood but also demonstrating a capacity to exercise a broader range of forms of external self-determination. However, it is the government of the Somali Republic which is recognised as the government of Somalia, of which Somaliland is a de jure part. External self-determination has not been exercised consistently in Somaliland so the Somaliland authority is unable to engage with the international human rights system in its own right separate from governments of the Somali Republic. The result of this is that any benefit to engagement between Somaliland and the

²⁶⁰ Tamaru (n 55) 9.

²⁶¹ Ibid.

²⁶² Poore (n 98) 132.

²⁶³ Wallis (n 221) 32.

²⁶⁴ Human Rights Watch, ‘Hostages to Peace’: Threats to Human Rights and Democracy in Somaliland’ (July 2009) 22 <www.hrw.org/sites/default/files/reports/somaliland0709web.pdf> accessed 4 December 2016.

²⁶⁵ Human Rights Watch (n 264) 23.

²⁶⁶ Human Rights Watch (n 264) 21.

²⁶⁷ Human Rights Watch (n 264) 20.

²⁶⁸ Ibid.

international human rights system's that may be gained from the Somaliland authority's stability or the presence of a Somaliland legal system²⁶⁹ is dependent on the less stable government of the Somali Republic. In order to avoid reliance by Somaliland upon the less stable governments of the Somali Republic when engaging with the international human rights system, an agreed arrangement for the exercise of self-determination by Somaliland would need to enable a degree of external self-determination to allow such engagement.

3.7.2 The Current Arrangement in the Somali Republic

The current political arrangement in place in the Somali Republic is a consociational 4.5 arrangement regarding representation of clans. The term 'consociationalism' is commonly understood to refer to non-majoritarian or consensus democracy where group representation along clan lines in the Somali Republic, is guaranteed regardless of territorial cohesion.²⁷⁰ Consociational arrangements can be used within all the constitutional arrangements for the exercise of self-determination discussed in this chapter and within a state as a whole or within regional units.²⁷¹ In Somalia a 4.5 consociational arrangement is used as a "clan-based power-sharing formula"²⁷² which "provides equal political representation to the four clan families in Somalia - the Darood, Digil and Mirifle, Dir and Hawiye - with a number of smaller clans receiving, cumulatively, half representation".²⁷³ The system is defended by "clans historically marginalized by the previously domineering Darood and Hawiye clans"²⁷⁴ and has resulted in the Somali Republic's longest lasting form of decentralized governance.²⁷⁵ Although relevant to effective internal governance in Somalia, the consociational arrangement does not impact the ability of regional authorities to engage with the international human rights system as it does not concern the exercise of external self-determination.

The Provisional Federal Constitution does establish Somalia as a federal State but decentralization is not explained in detail.²⁷⁶ There is a lack of clarity regarding the division of legal responsibility for human rights obligations there would be between the government of the Somali Republic and a Somaliland authority under the Somali Republic's constitution.

²⁶⁹ As discussed in chapter 2.

²⁷⁰ Lewis (n 37) 24.

²⁷¹ Lewis (n 37) 24.

²⁷² Afyare (n 36) 6.

²⁷³ Ibid.

²⁷⁴ Ibid.

²⁷⁵ Moseley (n 64).

²⁷⁶ Tamaru (n 55) 9.

The Provisional Federal Constitution of the Somali Republic does highlight foreign affairs are the responsibility of the federal government²⁷⁷ with other powers to be “negotiated and agreed upon by the federal government and the federal member states”.²⁷⁸ The current arrangement under the Somali Republic therefore provides an arrangement for the internal exercise of power but does not allow a level of self-determination to be exercised within Somaliland which would allow engagement with the international human rights system. The lack of clarity regarding responsibility for human rights protection also affects a discussion of the human rights obligations in Somaliland²⁷⁹ and the role of human rights within the Somaliland legal system.²⁸⁰

3.7.3 Puntland

Puntland is relevant to a discussion of the exercise of self-determination in Somalia because there are differences between Somaliland and Puntland in relation to the exercise of self-determination which their respective administrations claim to exercise, with Somaliland claiming statehood and Puntland claiming autonomy in a federal Somalia. The differences and similarities between the engagement the two territories have with the international community and the international human rights system confuses the assessment of what Somaliland’s status is now and therefore what impact any change in the exercise of self-determination may have.²⁸¹

3.7.3.1 Puntland - Sool and Sanaag

Puntland is an autonomous federal state of the Somali Republic, which declared sovereignty within Somalia in 1998²⁸² and is Somaliland’s neighbour on its eastern border.²⁸³ The Puntland authorities have opposed Somaliland independence and on the basis of clan assertions of rights to the disputed regions of Sool and Sanaag, which were part of British Somaliland when it gained independence in 1960,²⁸⁴ Puntland has periodically declared intentions to retake the territories.²⁸⁵ Puntland’s claim to Sool and Sanaag is based on clan

²⁷⁷ Tamaru (n 55).

²⁷⁸ Provisional Constitution of the Federal Republic of Somalia (adopted 1 August 2012) Art 54 <<http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf>> accessed 16 October 2016.

²⁷⁹ As discussed at chapter 5.

²⁸⁰ As discussed at chapter 2.

²⁸¹ As discussed at chapters 5 and 6.

²⁸² Pegg (n 159) 197.

²⁸³ Shinn (n 221) 3.

²⁸⁴ International Crisis Group (n 121) 9.

²⁸⁵ Wallis (n 221) 48; International Crisis Group (n 121) 10.

ethnicity as the Warsengheli and Dhulbahante clans in Sanaag, Sool and Cayn also belong to the Harti clan family which most inhabitants of Puntland belong to.²⁸⁶ It is generally agreed that about half of the residents of the Sanaag and a higher proportion in the Sool sympathise with Puntland. In the 2001 referendum on Somaliland independence voter turnout in the Sool region was only 31% well below the national average with many voters in that region using their non-vote as a way of opposing independence.²⁸⁷ The dispute over the Sool and Sanaag has caused significant political violence²⁸⁸ between Sool, Sanaag and Caynabo militias and the Somaliland Army,²⁸⁹ as well as limited direct military confrontations between Somaliland and Puntland forces over the region.²⁹⁰ The political violence has also included assassinations of Somaliland police and judicial officials followed by arbitrary and/or unlawful arrests by Somaliland authorities.²⁹¹

Peace agreements between the parties to the dispute have now been signed with an agreement reached between the President of Somaliland and the Sool, Sanaag and Cayn Leader in Dubai on 27 June 2012 to end human rights violations resulting from the conflict in the region.²⁹² In August 2012 a peace accord was signed in Hargeisa between the Somaliland authority and representatives of the Sool community.²⁹³ However, reports of violence continue to occur and the use of force by Somaliland, including lethal force, must comply with human rights standards.²⁹⁴ The Independent Expert on the Situation of Human rights in Somalia has drawn attention to developments in the Sool, Sanaag and Cayn regions because they “had potential to get out of hand”²⁹⁵ as belief that the Sool and Sanaag regions hold significant gas and oil deposits is only likely to fuel the conflict.²⁹⁶ The conflict has also stoked other human rights

²⁸⁶ Pegg (n 159) 197.

²⁸⁷ Shinn (n 221) 3.

²⁸⁸ HRC, ‘Report of the Secretary-General - United Nations support to end human rights abuses and combat impunity in Somalia’ (21 September 2012) UN Doc A/HRC/21/36, 5.

²⁸⁹ HRC, ‘Report of the independent expert on the situation of human rights in Somalia’ (29 August 2011) UN Doc A/HRC/18/48, 13; UNSC, ‘Report of the Secretary-General on Somalia’ (21 May 2019) UN Doc S/2019/393, para 18.

²⁹⁰ HRC (n 2) 6.

²⁹¹ HRC (n 289) 13; UNSC, ‘Report of the Secretary-General on Somalia’ (20 August 2019) UN Doc S/2019/661, para 32.

²⁹² HRC (n 288) 5.

²⁹³ Interpeace, ‘Somaliland: Talks Between Elders’ (22 November 2012)

<www.interpeace.org/2012/11/somaliland-talks-between-elders/> accessed 16 December 2014.

²⁹⁴ HRC, ‘Report of the Independent Expert on the Situation of Human rights in Somalia’ (22 August 2012) UN Doc A/HRC/21/61, 18.

²⁹⁵ HRC (n 294) 10.

²⁹⁶ HRC (n 289) 13.

abuses in Somaliland as there have been a number of reports that Somaliland authorities have repeatedly arrested and detained journalists working on issues around the disputed regions.²⁹⁷

There is an international fear that secession may create a volatile trapped minority²⁹⁸ in areas such as the disputed border regions of Sool and Sanaag where a network of violent jihadists favours unity.²⁹⁹ However, grassroots reconciliation conferences have been held by Somaliland elders since 1992 so fear of a volatile state maybe excessive³⁰⁰ and recognition of Somaliland statehood or an agreement as to the arrangement for the self-determination in Somaliland would also mean those claims could be assisted by access to international tribunals and appropriate international law.³⁰¹

3.7.3.2 Puntland and the current arrangement

Puntland, like Somaliland, has established a separate authority from the government of the Somali Republic. However, unlike Somaliland, Puntland's constitution formally commits it to being part of a future federal Somalia. Although, a lack of progress in establishing stability in southern and central Somalia and the governments of the Somali Republic has pushed Puntland closer to full secession with the adoption by Puntland of its own flag, emblem, coat of arms and anthem.³⁰²

Despite the move towards a more secessionist stance the Puntland Constitution is compatible with the Provisional Federal Constitution of the Somali Republic³⁰³ as reflected by the international community's interaction with the Puntland Government.³⁰⁴ This is because rules under the Provisional Federal Constitution,³⁰⁵ relating to federal member states would allow Puntland to continue its authority's institutions and local administrations.³⁰⁶ Although, the Puntland Constitution establishes itself as a part of the Somali Republic, it also states that

²⁹⁷ UK Foreign and Commonwealth Office, 'Human Rights and Democracy Report for Somalia' (2011) 2; HRC, 'Report of the Independent Expert on the situation of human rights in Somalia' (19 July 2018) UN Doc A/HRC/39/72, para 32.

²⁹⁸ Poore (n 98) 147; Pegg (n 97) 17.

²⁹⁹ International Crisis Group (n 121) 1.

³⁰⁰ Eggers (n 160) 213.

³⁰¹ Poore (n 98) 148.

³⁰² Peter Pham, 'The Somaliland Exception: Lessons on Postconflict State Building from the Part of the Former Somalia That Works' (2012) 3(3) Marine Corps University Journal 1, 24.

³⁰³ Tamaru (n 55) 13.

³⁰⁴ UNSC, 'Report of the Secretary-General on Somalia' (21 May 2019) UN Doc S/2019/393 para 5; As discussed at 4.4 and 6.4.1

³⁰⁵ Provisional Constitution of the Federal Republic of Somalia (adopted 1 August 2012) <<http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf>> accessed 16 October 2016.

³⁰⁶ Tamaru (n 55) 13.

until a federal constitution of the Somali Republic is completed and ratified by a popular referendum, “Puntland shall have the status of an independent state”.³⁰⁷ It also states that the provisions regarding the status of Puntland as an independent state until a federal constitution is established can be reviewed if a federal system is not agreed upon “or instability persists indefinitely in other parts of Somalia”.³⁰⁸ Therefore, both the Puntland Constitution and Provisional Federal Constitution share similar language about the need for negotiation in determining responsibilities as a regional unit of a federal Somali Republic.³⁰⁹ Although, tensions arise³¹⁰ due to the lack of discussion of the level of autonomy exercised by regional units and the division of responsibilities between the central government of the Somali Republic and regional authorities.³¹¹

3.8 Conclusion

This chapter has set out the current debates regarding potential arrangements for the exercise of self-determination by Somaliland and address some of the issues relevant to interested Somali parties and the international community.³¹² The arrangements for the exercise of self-determination which have been discussed demonstrate a flexibility and overlap as to the extent to which self-determination may be exercised by regional authorities under such arrangements. For example a confederation or a federation can develop from the other form of government.³¹³ As such, arrangements that join elements from different models can be developed to suit specific needs.³¹⁴ In considering the possible arrangements the relevant Somali parties do not include just the Somali Republic and Somaliland but other regional authorities³¹⁵ such as Puntland which do not have the same governing capacity.³¹⁶ The capacities and interests of these authorities would need to be considered if an arrangement for the exercise of self-determination were reached.

³⁰⁷ Transitional Constitution of Puntland Regional Government (published 1 July 2001) Arts 4(3) and (4) <www.refworld.org/docid/4bc589e92.html> accessed 12 September 2014.

³⁰⁸ Transitional Constitution of Puntland Regional Government (published 1 July 2001) Art 4(4) <www.refworld.org/docid/4bc589e92.html> accessed 12 September 2014.

³⁰⁹ Tamaru (n 55) 13.

³¹⁰ UNSC, ‘Report of the Secretary-General on Somalia’ (20 August 2019) UN Doc S/2019/661 para 30.

³¹¹ Tamaru (n 55) 25.

³¹² Tamaru (n 55) 73.

³¹³ Lewis (n 37) 18.

³¹⁴ Tamaru (n 55) 21.

³¹⁵ Tamaru (n 55) 73.

³¹⁶ Tamaru (n 55) 53.

Federalism is the favoured arrangement both within the Somali Republic and internationally as a means to accommodate the desire for the self-determination in Somaliland but discussions of federalism and the other arrangements have not demonstrated how they may accommodate both the level of external self-determination which Somaliland has exercised as a de facto state³¹⁷ and which would be essential to engagement with the international human rights system and the agreement of the Somali Republic as the parent state.

It is the historical circumstances to Somaliland's decolonisation and declaration of independence and the subsequent stability that has been established that has maintained the impetus of Somaliland's claim to statehood. It is also this which distinguishes Somaliland and provides it a basis from which it can assuage some of the concerns regarding the territorial integrity of Somalia and the principle of *uti possidetis* that may dissuade states from engaging with Somaliland and its exercise of self-determination as a state. Despite the historical background and the consequential argument that Somaliland's statehood would not have a negative effect on the principles of territorial integrity and *uti possidetis*, states do still have concerns for these principles which demonstrates the importance of the agreement of the parent state.³¹⁸

The stability of governance in Somaliland compared to the governance in southern and central Somalia, ostensibly under the governments of the Somali Republic, highlights a reality of engaging on the ground in Somalia. If an international actor aims to engage in Somaliland then they must interact with the Somaliland authorities in some way regardless of the official legal status of Somaliland. The political stability of the governance that the exercise of self-determination in Somaliland through the Somaliland authority has produced means that the benefits of the external self-determination that Somaliland exercises separate from the government of the Somali Republic through its current unrecognised arrangement will need to be protected. This leads to the inconsistent status given to Somaliland and inconsistent engagement had with Somaliland by the international community.³¹⁹

The flexibility of the arrangements discussed and the political problems envisioned in Somaliland statehood demonstrate that the formal model that a potential constitutional arrangement between Somaliland and the Somali Republic is based is not of key importance

³¹⁷ As discussed at chapter 4.

³¹⁸ Discussed in more depth at chapters 4 and 6.

³¹⁹ As demonstrated in chapter 4, 5 and 6.

what is required in order to enhance and protect the exercise of self-determination that enables formal engagement in all its forms with the international human rights system is permission from the parent state. This will be elaborated on further in the next chapters analysing the international community's engagement with Somaliland.

Chapter 4

Status of Somaliland and the international community

4.1 Introduction

Somaliland's status under international law is unclear because it is a de jure part of a federal Somalia but the international community interacts with it as a de facto state. Somaliland is denied external recognition but the majority of the Somaliland population regard Somaliland as a legitimate state and the Somaliland authority tries to fulfil the functions of a government of a state such as providing security, infrastructure and basic health and educational services. Somaliland is therefore in a paradox between being "a legal state with limited internal legitimacy and an internationally "illegal" state which enjoys widespread domestic legitimacy".¹

As an unrecognised state Somaliland views itself as capable of entering into relations with other states and seeks constitutional independence and international recognition as a sovereign state. To this end "Somaliland's engagement with the rest of the world has been almost entirely focused on gaining international recognition for its self-declared independence from Somalia".² However, as will be elaborated upon in this chapter, moves by international organisations or individual states to recognise Somaliland as a state have been largely dependent on a lead from Africa, due to many states' fear of appearing imperialist in their policies.

As Somaliland is unable to achieve substantive recognition it remains illegitimate in international eyes.³ The international approach to Somaliland can be characterised as that of a "limited acceptance approach" as the international community conducts relations with Somaliland on a level that is accepted by the federal government of the Somali Republic but

¹ Anonymous, 'Government recognition in Somalia and regional political stability in the Horn of Africa' (2002) 40(2) *The Journal of Modern African Studies* 247, 247–248; Brad Poore, 'Somaliland: Shackled To A Failed State' (2009) 45 *Stanford Journal of International Law* 117; M Wallis & S Kibble, 'Beyond Polarity: Negotiating a Hybrid State in Somaliland' (2010) 1 *African Spectrum* 31, 52; Scott Pegg and Pål Kolstø, 'Somaliland: Dynamics of internal legitimacy and (lack of) external sovereignty' (2015) 66 *Geoforum* 193, 194.

² Alex Vines, 'Stability and Development in Somalia' (Speech delivered to the Working Group 1, Contact Group on Piracy off the Coast of Somalia, 14 November 2012) 6
<www.chathamhouse.org/sites/default/files/public/Research/Africa/141112vines.pdf> accessed 19 October 2015.

³ Scott Pegg, 'De Facto States in the International System, Institute of International Relation' (1998) *The University of British Columbia Working Paper No 21*, 1
<www.liu.xplorex.com/sites/liu/files/Publications/webwp21.pdf> accessed 22 April 2017.

which is short of recognising Somaliland as a state.⁴ The international community therefore interacts with Somaliland on the basis that Somaliland can act in the capacity of a state but withholds recognition and the rights that statehood would entail. The difference in the formal and informal status accorded to Somaliland is demonstrated by the differences and overlaps in the relationship between Somaliland and the international community (both through international organisations and individual states).

The uncertainty of Somaliland's status is reflected in the obligations which Somaliland is expected to uphold⁵ for which, as a de jure part of Somalia, governments of the Somali Republic should be expected to have responsibility. Despite the fact Somaliland does not have the capacity to enforce international agreements,⁶ Somaliland has acted and been treated as a state internationally which contrasts and/or is inconsistent with the international human rights system's interaction with Somaliland as discussed in Chapter 6. It has reached agreements with states such as Ethiopia regarding cooperation in the long term use of its port of Berbera⁷ and Somaliland has reached agreements with states and international organisations in other areas⁸ such as aid, election monitoring, security and counter-terrorism, trade and immigration.⁹ Despite the absence of recognised sovereignty, Somaliland has been expected to undertake some of the duties of statehood such as accepting the return of refugees with several countries such as UK, Denmark, the Netherlands and Sweden denying asylum on the grounds the homeland of Somaliland is safe.¹⁰ The members of international community such as the Seychelles¹¹, UAE and Yemen¹² have made agreements with the Somaliland authority relating to the use Somaliland ports to combat piracy.¹³ Conduct such as this from the international community towards Somaliland, indicates that the governance of

⁴ Ibid 7.

⁵ As discussed in chapter 5

⁶ Poore (n 1)148.

⁷ AK Eggers, 'When is a State a State? The Case for Recognition of Somaliland' (2007) 30 Boston College International and Comparative Law Review 211, 219.

⁸ Ibid 213.

⁹ Alexis Arieff, 'De facto Statehood? The Strange Case of Somaliland' [2008] Yale Journal of International Affairs 60, 62.

¹⁰ International Crisis Group, 'Somaliland: Time for African Union Leadership' (Africa Report No 110, 23 May 2006) 4, 12; Ibid 63.

¹¹ As elaborated at chapter 4.4.

¹² See chapter 4.6.

¹³ Christopher Clapham and others, 'African Game Changer? The Consequences of Somaliland's International (Non) Recognition: A Study Report' (2011) The Brenthurst Foundation Discussion Paper 2011/05, 2011) 19 <www.somalilandlaw.com/Brenthurst_paper_2011-05_african_game_changer_SL_recognition.pdf> accessed 13 June 2018.

Somaliland by the Somaliland authority is effective enough to maintain an adequate level of stability for such actions.

4.2 Recognition of Somaliland

Either as a regional entity of a failed state or as a de facto unrecognised state, Somaliland has had to assume certain responsibilities on behalf of the government of the Somali Republic. An example of this is the running of a legitimate vote¹⁴ for the independence referendum of 2001 which established a constitution based on universal suffrage and has overseen the restoration of peace and demobilisation of combatants.¹⁵ Somaliland has also engaged in other state like diplomatic activities such as ministerial visits,¹⁶ opening diplomatic offices in many capitals around the world¹⁷ as well as accepting several embassies in Hargeisa.¹⁸ Somaliland's passport is also recognised by South Africa, Kenya, Djibouti and Ethiopia¹⁹ but in spite of these state-like activities between Somaliland and the international community no state "has established formal diplomatic ties with Somaliland even though it has the capacity to do so."²⁰

The impact of the inconsistency in the status given to Somaliland depends on the international actor in question as issues such as secession, territorial integrity and *uti possidetis* can be used to support whichever political position is being pursued. The status given and political position taken by international actors in their relations with Somaliland is important as due to the level of discretion there is in international state recognition, Somaliland's relations with interstate organisations, regional powers and other states are significant in evaluating the potential likelihood of Somaliland exercising different degrees of self-determination. This is because donors, such as states like the UK and Denmark and international organisations such as the EU provide the majority of funding for social services,

¹⁴ Poore (n 1) 143.

¹⁵ Wallis & Kibble (n 1) 40.

¹⁶ Eggers (n 7) 219.

¹⁷ Clapham (n 13) 22; including Addis Ababa, Djibouti, London, Sana, Nairobi, Washington DC, Brussels, South Africa, Sweden and Oslo.

¹⁸ Eggers (n 7) 219, including Ethiopia, Germany, Kenya, Tanzania, Zambia, Rwanda and Uganda.

¹⁹ Clapham (n 13) 22; Arieff (n 9) 63.

²⁰ Eggers (n 7) 219.

institutional support, and security operations²¹ and will therefore play a big part in the Somaliland authority's capacity to uphold human rights protection in Somaliland.

The status of Somaliland is also impacted by and/or distinguished from the international community's engagement or relationship with the government of the Somali Republic because it is the recognised government of Somalia the state of which Somaliland is a territory and the government of the Somali Republic currently opposes Somaliland independence. Therefore, the greater the interaction of the government of the Somali Republic with the international community as a state government the weaker the argument that the Somaliland authority is the government of a state territory.

Up until the latter part of 2012 forces of the Transitional Federal Government of the Somali Republic ("TFG") controlled no more territory than Mogadishu.²² Governments of the Somali Republic have received various expressions of support from the international community but states were reluctant to give formal recognition of the TFG,²³ only five countries extended diplomatic recognition to it.²⁴ Despite this the TFG held the seat for Somalia at the UN, Arab League, AU²⁵ and other international bodies. This gave an international voice to those arguing for a unified Somalia under a government of the Somali Republic which Somaliland separatists have not have.²⁶

In contrast to the approach to the recognition given to Somaliland and the Somali Republic, the UN appears to show a willingness to work with the Somaliland authority. UN agencies have tacitly acknowledged Somaliland's separate status by conducting tacit negotiations with Somaliland.²⁷ When UNSOM's intervened in Somalia in 1992-1995 it acquiesced to Somaliland's refusal to accept foreign troops on its territory²⁸ and this remains the case with the presence of UNSOM in Somaliland still on hold as the Somaliland authority does not

²¹ Nanako Tamaru and others, 'Cultivating Consensus: Exploring Options for Political Accommodation and Promoting All Somali Voices' (2014) Governance and Peacebuilding Series – Briefing Paper No 6, 35 <www.cdint.org/documents/CDI-Cultivating_Consensus_full_report_English.pdf> 22 January 2018.

²² I Jhazbay, 'Somaliland: Africa's best kept secret, A Challenge to the international community?' (2003) 12(4) African Security Review 77, 79.

²³ Peter Pham, 'The Somaliland Exception: Lessons on Postconflict State Building from the Part of the Former Somalia That Works' (2012) 3(3) Marine Corps University Journal 1, 1.

²⁴ D H Shinn, 'Somaliland: The Little Country that Could' (2002) 9 Africa Notes 1, 2; these countries are Djibouti, Eritrea, Sudan, Libya and Egypt.

²⁵ Jhazbay (n 22) 79.

²⁶ International Crisis Group (n 10) 3.

²⁷ S Talmon, 'The Constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur' (2004) 75 BYIL 101, 38; C H, 'Somaliland: Another country-in-waiting' (*The Economist*, 10 January 2011)

<www.economist.com/blogs/baobab/2011/01/somaliland> accessed 24 April 2015.

²⁸ International Crisis Group (n 10) 2.

accept a UNSOM mandate in Somaliland. Somaliland's relative stability as a de facto state has also encouraged pragmatic inventiveness on the part of the UN, such as the UN Development Program,²⁹ to pursue a development strategy that directly benefits Somaliland's process of state formation such as the enhancement of the institutions of the state under the Somaliland authority.³⁰ However, no UN official or agency has formally recognised Somaliland and the UN has recognised the government of the Somali Republic as the de jure government of Somalia.³¹

The diplomatic efforts of the UN Security Council at resolving conflict in Somalia have also persistently endeavoured to reconstruct a central state³² and establish a strong government in Mogadishu.³³ Again, in contrast to its own efforts, the UN has not called for non-recognition of Somaliland for the lack of fulfilment of statehood criteria or international law.³⁴ Neither has the UN declared Somaliland's independence invalid as it has in the past with other territories which have declared independence such as the homeland states in South Africa.³⁵ This demonstrates an inconsistent or even contradictory approach to Somaliland's status all of which result in a lack of clarity that makes engagement with Somaliland more difficult. It also demonstrates an ability on the part of Peoples in Somaliland to exercise a degree of external self-determination even if informal, which discussions of a federal Somalia would not allow and which Peoples in Somaliland are not prepared to give up.

4.3 International collective engagement processes

4.3.1 Road Map/New Deal

There have been a number of international processes which the international community has taken a collective approach to involvement in trying to resolve conflict in Somalia. Processes is a term I use to describe a different aspect of engagement by the international community in Somalia that involves the attempt to agree and establish a consistent broad approach in order to establish stability and initiate development across all aspects of Somali society in Somaliland and the Somali Republic. This is in distinction from the engagement of the

²⁹ Moe L Wiuff, 'Hybrid and "Everyday" Political Ordering: Constructing and Contesting Legitimacy (2011)

³⁰ The Journal of Legal Pluralism and Unofficial Law 143, 165.

³¹ Ibid; examples of which are discussed in chapters 4, 5 and 6.

³² Arieff (n 9) 69.

³³ II Ahmed and RH Green, 'The heritage of war and state collapse in Somalia and Somaliland: local-level effects, external interventions and reconstruction' (1999) 20(1) Third World Quarterly 113, 125.

³⁴ Arieff (n 9) 69.

³⁵ Talmon (n 27) 116.

Talmon (n 27) 138.

international community with separate identifiable issues. These broad approach processes engage with human rights issues in Somaliland differently from how international organisations and state actors engage in relation to other specific issues.

The Road Map/New Deal was the process used to establish a stable government in the Somali Republic's capital Mogadishu. Mogadishu was therefore the focus with little discussion of control of the wider territory of Somalia and little reference to Somaliland. The "Road Map" was mandated by the Kampala Accord³⁶ which was signed by the then President and Speaker of the Somali Republic in June 2011.³⁷ The Road Map called for the resignation of the Prime Minister and postponed elections until 2012 this extended the writ of the government of the Somali Republic, which at the time was the Transitional Federal Government until August 2012 in order to enable the long term process of reconciliation in Somalia.³⁸ The aim of the Roadmap was to improve security in Mogadishu and southern and central Somalia through the pursuit of "national reconciliation and outreach"³⁹ including efforts to reach out to regional administrations.⁴⁰

The New Deal was also part of the ongoing Road Map process, it was a framework developed by the G7 group and endorsed in Busan, South Korea in December 2011 by over 40 states and organisations.⁴¹ The New Deal principles were the result of the Fourth High Level Forum on Aid Effectiveness⁴² and were a list of international financial pledges to the New Deal for Somalia⁴³ which included human right and humanitarian law requirements.⁴⁴ The Road Map's reference to human rights focussed on how the Transitional Federal

³⁶ HRC, 'Report of the Independent Expert on the Situation of Human rights in Somalia' (22 August 2012) UN Doc A/HRC/21/61, 6.

³⁷ Human Rights Watch, 'No Place for Children: Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia' (February 2012) 13 <www.hrw.org/sites/default/files/reports/somalia0212ForUpload_0.pdf> accessed 24 May 2016; Committee on the Rights of the Child, 'Initial Report submitted by Somalia under article 44 of the Convention' (16 October 2019) UN Doc CRC/C/SOM/1 para 11.

³⁸ Faisal A Roble, "'The Somali Compact: A new deal or an indirect rule?' (*Wardheer News*, 25 September 2013) <www.wardheernews.com/somali-compact-new-deal-indirect-rule> accessed 24 May 2016.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ 'Communique – A new deal for Somalia' (EU-Somalia New Deal Conference, Brussels, 16 September 2013) 1 <http://eeas.europa.eu/archives/new-deal-for-somalia-conference/sites/default/files/somalia_new_deal_conference_communique.pdf> accessed 16 November 2016; 'The Somali Compact' (EU-Somalia New Deal Conference, Brussels, 16 September 2013) 1 <https://eeas.europa.eu/sites/eeas/files/20130916_the_somali_compact.pdf> accessed 16 November 2016.

⁴² Roble (n 38).

⁴³ 'Pledges as of 16th September 2013' (EU-Somalia New Deal Conference, Brussels, 16 September 2013) <http://eeas.europa.eu/archives/new-deal-for-somalia-conference/sites/default/files/recovery_pledge_somalia_en.pdf> accessed 16 November 2016.

⁴⁴ UK Foreign and Commonwealth Office, 'Human Rights and Democracy Report for Somalia' (2011) 2.

Government would protect civil and political rights in Somalia but not Economic and Social and Cultural Rights.⁴⁵

In 2013 the New Deal sought to establish a development framework to govern assistance from the international community to Somalia over three years.⁴⁶ The agenda for this framework included assistance for the strengthening and expansion of justice. The Communique from the New Deal conference in Brussels of September 2013 highlighted this by stating the aim of the New Deal was to ‘create a better future for all Somali people’⁴⁷ (although whether all Somali people included Somalilanders was not clarified) ‘by means of a dialogue and process that promotes political reconciliation and establishes peace, security, justice and sustainable development throughout the country’⁴⁸ (again it was not clarified whether throughout the country included Somaliland). The Communique from the conference re-enforced that the New Deal process endorsed in Busan in 2011 was the best platform to achieve those aims.⁴⁹

The Communique highlighted “that security and justice go hand in hand”⁵⁰ and stated that improving human rights through appropriate legal frameworks and addressing sexual violence and violence against women required judicial, independent, accessible and legitimate justice institutions.⁵¹ However, it did not provide the details as to what jurisdiction would be supported in such reforms or what it meant by legitimacy bearing in mind the comparable stability of the Somaliland authority in Hargeisa.

The aim of the New Deal conference was “to create a better future for all Somali people, by means of a dialogue and process that promotes political reconciliation and establishes peace, security, justice and sustainable development throughout the country”.⁵² This suggests the goal for the international community was a sovereign united Somalia. This view of the international community’s approach to Somaliland is further evidenced by the encouragement of an inclusive national dialogue between the federal government of the Somali Republic and

⁴⁵ HRC (n 36) 17.

⁴⁶ Human Rights Watch, ‘The Courts of “Absolute Power”: Fair Trial Violations by Somalia’s Military Court’ (May 2014) <www.hrw.org/sites/default/files/reports/somalia0514_ForUpload.pdf> accessed 12 September 2016.

⁴⁷ Communique (n 41) 3.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Communique (n 41) 6.

⁵¹ Ibid.

⁵² Communique (n 41) 1.

existing and emerging administrations⁵³ with the view that it would lead to the establishment of local and regional authorities and federal units, anchored in the Provisional Constitution of the Somali Republic.⁵⁴ The Communique goes on to state that local authorities and federal units would be “building blocks for a viable, united, sovereign and stable Somali state”⁵⁵ and “we underscored the importance of including all Somalis in the political process”.⁵⁶ The Somaliland authority was therefore encouraged to be involved in the New Deal.

The encouragement to the Somaliland authority and the intended engagement with various sections of civil society is all on the basis of Somaliland being a territorial unit of a sovereign state of Somalia and makes no hint at the possibility of a dialogue with Somaliland as or about exercising self-determination in Somaliland being exercised as an independent territory. The reference to engagement between the international community and Somalilanders is framed from the perspective of “highlight[ing] the importance of strengthening mutual accountability between the international community and Somalia, and between the Federal Government and the Somali people”⁵⁷ not between the international community the federal government of the Somali Republic and regional authorities nor the regional authorities and the Somali people. As a consequence of this the Somaliland authority’s reaction was to welcome the New Deal process to the extent it offered a more effective mechanism to deliver development assistance to Somaliland and the Somali Republic.⁵⁸ However, Somaliland chose not to participate in the Conference. This was on the basis that the exercise of self-determination in Somaliland had built a separate state, from the Somali Republic which meets in full the criteria of customary international law for statehood and would not cooperate in attempts to rebuild the former unified state of Somalia, if it purports to include Somaliland. Neither would the Somaliland authority cooperate in any effort to use aid as a lever to force Somaliland to become part of Somalia under a government of the Somali Republic.⁵⁹

4.3.2 Somali Compact and Somaliland Special Arrangement

⁵³ Ibid.

⁵⁴ Communique (n 41) 2.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Communique (n 41) 3.

⁵⁸ Euractiv, ‘Why Somaliland does not attend “New Deal for Somalia” conference’ (16 September 2013) <www.euractiv.com/development-policy/somaliland-attend-new-deal-somal-analysis-530481> accessed 2 October 2016.

⁵⁹ Ibid.

The Somali Compact and the Somaliland Special Arrangement (“the Somaliland Arrangement”) are international agreed arrangements for the direction of aid for development in Somalia, in both the Somali Republic and Somaliland respectively, which arose from the New Deal process. The Somali Compact refers throughout to Somalia and makes no distinction between Somaliland and the Somali Republic as being separate entities. The Somaliland Arrangement discusses Somaliland as being administered by a government separate from that supported by the Somali Compact. The Somali Compact and Somaliland Arrangement demonstrate the lack of clarity in the international community’s approach to Somaliland as both agreements were put together as part of the same process but dealt with Somalia and Somaliland, and the Somaliland ‘government’ (authority) separately.

4.3.3 The Somali Compact

The Somali Compact drew from the federal government of the Somali Republic’s Six Pillar Programme, Puntland’s second Five Year Development Plan and other sub-states (Mogadishu, Baidoa, Galkayo and Garowe) were also consulted in putting the Somali Compact together. The Somaliland Arrangement drew from Somaliland’s Five Peacebuilding and Stability Goals’ priorities.⁶⁰

The Somali Compact indicated the status it intended Somaliland, the Somali Republic and Somalia should be given by saying the Somali Compact is “a key political document that: strengthens the mutual commitments between the Federal Government and international partners”⁶¹ and that implementation of the Compact “will facilitate the process of dialogue on the federal model of Somalia”.⁶² This confirms the intent demonstrated in the Communique that engagement the international community has with regional authorities in Somalia is on the basis of them being part of a federal state of Somalia. It also makes it hard to separate the political from the legal relationships because it is unclear whether there is an intent that the political engagement the international community has with Somaliland, the Somali Republic and other Somali authorities does or should have any legal consequences.

The lack of clarity of Somaliland’s status leads to confusion as to the intended basis of the international community’s relations in Somalia as although the Somali Compact’s aim is

⁶⁰ Geeska Afrika Online, ‘Somalia: The United Nations Multi-donor Trust Fund Meeting’ *Geeska Afrika Online* (Mogadishu, 10 May 2014) <www.geeskaafrika.com/somalia-the-united-nations-multi-donor-trust-fund-meeting/3117/> accessed 16 December 2014.

⁶¹ Somali Compact (n 41) 4.

⁶² Ibid.

“broadening the national dialogue to ensure effective implementation of the Compact”⁶³ parameters are placed on ‘broadening dialogue’ because dialogue is to be “in line with the Provisional Constitution”⁶⁴ in order to “pave the way for international dialogue to form federal states”.⁶⁵

A stated short-term goal of the government of the Somali Republic as stated in the Compact is “the establishment of government authority by setting up interim administration at district and regional levels”.⁶⁶ The compact’s priority under inclusive politics is to “[a]dvance political dialogue to clarify and settle relations between federal government and existing emerging administrations”⁶⁷ it then goes onto clarify that the dialogue it was aiming at was at “both local and national levels”⁶⁸ but there are problems with this as it is unclear what these levels are. The Somali Compact refers throughout to the recognition of Somalia’s territorial integrity and the determination of the international community to maintain the territorial integrity of Somalia. The Somali Compact also makes no reference to a Somaliland authority or Somaliland Government. Thereby the Somali Compact upholds the recognition of the sovereign territory of Somalia as including Somaliland or at least not providing evidence of the territory of Somaliland as being a sovereign independent state.

Any engagement the international community does intend to have with the regional authorities is on the basis of a federalist constitution as the Communique promotes “federalism, dialogue and reconciliation, highlighting the importance of the strengthening of relations and cooperation between the Federal Government and the regions in this process. We therefore looked forward to the Federal Government’s plan to promote federalism”.⁶⁹

The Somali Compact then states the role the international community see’s for other Somali authorities “[i]n this respect, the establishment of local and regional administrations and federal units, in the spirit of the Provisional Constitution, are key milestones for a vibrant and stable Somalia”.⁷⁰ Therefore, from the Somali Compact it can be taken that the international community regards regional entities, such as Somaliland, as essential for the guarantee of human rights but as subordinate authorities to a federal government of the Somali Republic.

⁶³ Ibid.

⁶⁴ Communique (n 41) 5.

⁶⁵ Ibid.

⁶⁶ Communique (n 41) 12.

⁶⁷ Communique (n 41) 5.

⁶⁸ Ibid.

⁶⁹ Communique (n 41) 3.

⁷⁰ Communique (n 41) 3.

4.3.3.1 Post Somali Compact

The mixed status given to the Somali Republic and Somaliland has continued since the Somali Compact was agreed. In 2014, High Level Partnership Forum's (HLPF), which oversee the implementation of the Somali Compact and have been co-chaired by the President of the government of the Somali Republic and the UN⁷¹ and attended by Ambassadors and international agency representatives,⁷² were held in order to discuss the progress of the Federal Government of Somalia and the associated support of the international community in achieving activities outlined in the New Deal Compact, Vision 2016 and the Peace and State Building Goals.⁷³ These meetings endorsed the New Deal Somali Compact and stated it "marked a new phase in the political relationship between Somalia and the international community".⁷⁴

Communiqués from the meetings referred to the government of the Somali Republic's and the Somali Compact's commitment to working towards "the unity of Somalia with the international community's commitment to provide support".⁷⁵ Commitment to the "[t]he finalisation of a new federal state structure" of Somalia⁷⁶ was also stated. When other Somali administrations were discussed Somaliland was not raised whereas Puntland, the Interim Jubba Administration (IJA), Galmudug and emerging administrations were but only in the context of close engagement in the government of the Somali Republic's led plans under the New Deal. The communiqué also welcomed progress towards the formation of interim administrations in southwest and central Somalia but not Somaliland or "Northwest Somalia".⁷⁷ Somali Compact donors' support of the federal government of the Somali Republic and sub-federal authorities in defeating al-Shabaab was also confirmed but confirmation of what sub-federal authorities meant or which authorities they were, was not given.⁷⁸

4.3.4 Somaliland Arrangement

⁷¹ UNSOM, Final Communiqué (2014) Point 1
<<http://unsom.unmissions.org/Portals/UNSOM/CPH%20Communique-141118FINAL.pdf>> accessed 25 June 2015.

⁷² Geeska (n 60).

⁷³ Ibid.

⁷⁴ UNSOM (n 71) Point 3.

⁷⁵ UNSOM (n 71) Point 3.

⁷⁶ Ibid Point 7.

⁷⁷ Ibid.

⁷⁸ Ibid Point 9.

The Somaliland authority did not support the New Deal process but the Somaliland authority along with civil society in Somaliland adopted the Somaliland Arrangement which was based on the New Deal principles and is fully compatible with the Somaliland authority's (which regards Somaliland as a sovereign state) national plan and priorities.⁷⁹ The aim was that the Somaliland Arrangement would form a distinct and separate component of the broader New Deal to facilitate coordination between the international donor community and Somaliland authority and civil society with no input from the federal government of the Somali Republic.⁸⁰ The Somaliland Arrangement is intended to serve as a strategic framework for international partners to support a limited number of priority areas of Somaliland's Development Plan. It sets out partnership principles, modes of finance and mechanisms for coordination and monitoring.⁸¹

The funds under the Somaliland Arrangement are not given to the Somaliland authority but are administered in consultation with the Somaliland authority through the Somaliland Development Fund. This fund was created as part of the Somaliland Arrangement and is supported by the UK Department for International Development, Danida and Norway⁸² and is fully aligned with the New Deal principles.⁸³ The Somaliland Arrangement states that "based on the achievement of jointly agreed benchmarks international assistance will increasingly be channelled through Somaliland's systems".⁸⁴ This indicates that the international community will increasingly engage with Somaliland in terms of funding on the basis of the Somaliland authority being a government of Somaliland that exercises external self-determination. At priority one of the benchmarks is support for the court system, for which the Somaliland Ministry of Justice and the Somaliland Supreme Court are listed as having responsibility, which again indicates Somaliland as being an identifiable actor with a personality separate from the Somali Republic.

⁷⁹ Eur Activ (n 58).

⁸⁰ Ibid.

⁸¹ Yusef M Hasan, 'Somaliland: OECD Pursuing Implementation of New Deal for Sustainable Development in Fragile Countries' (*Somaliland Sun*, 26 October 2013) <www.somalilandsun.com/somaliland-oecd-pursuing-implementation-of-new-deal-for-sustainable-development-in-fragile-countries-sp-1101539322/> accessed 16 February 2015.

⁸² Somaliland Sun, 'Somaliland: SDF at Risk of Polarizing Beneficiaries' (11 July 2014) <www.somalilandsun.com/somaliland-sdf-at-risk-of-polarizing-beneficiaries/> accessed 16 February 2015; Waheen, 10 June 2014, HARGEISA <<http://waaheen.com/?p=29454>> accessed 10 July 2014.

⁸³ Ibid.

⁸⁴ Somaliland Special Arrangement (2013 – 2016) (updated November 2014) 27 <https://slministryofplanning.org/images/front-page/Somaliland_Special_Arrangement_Final.pdf> accessed 2 November 2016.

The Somaliland Arrangement “lays out a way forward for institutionalising on-going Somaliland processes and initiatives within an overarching and equal partnership between the Somaliland government, its people and the international community. It is underpinned by a need to protect and build upon Somaliland’s development gains”.⁸⁵ This seems to be in contrast to the frequent reaffirmation of the federal government of the Somali Republic’s control of Somalia throughout the Somali Compact as discussed above. This is because it refers to the Somaliland “Government” as being in an equal partnership with the international community and the sovereign actors of which it is composed. As such it points to the idea that the international community are engaging with Somaliland as if it were a sovereign state exercising external self-determination of its people. This separate engagement with the Somaliland authority and the government of the Somali Republic is supported further by the Somaliland Arrangement which is stated to be a separate and distinct part of the Somali Compact that amounts to two arrangements developed through separate processes implemented using separate government systems and mechanisms.⁸⁶ As such Somaliland’s government is on an equal footing to the government of the Somali Republic.

The Somaliland Arrangement is held to be the sole framework for engaging with Somaliland’s development process under the New Deal partnership.⁸⁷ However, the pillars for the development plan of Somaliland which were consolidated and taken into consideration through the lens of the Peace and State Building Goal by the Somaliland authority and civil society representatives that led the Somaliland Arrangement drafting process correspond to the federal government of the Somali Republic’s New Deal goals which refer to a united federal Somalia.⁸⁸ This again highlights the confusion in the status given to Somaliland as the international community is indicating a view of Somaliland as being part of the Somali Republic’s territory but is engaging with Somaliland on basis equal to that of the Somali Republic.

Despite the fact the status of the Somaliland administration in Hargeisa has not been agreed by the internationally recognised government of the Somali Republic, the language of the Somaliland Arrangement refers to the “Somaliland government”⁸⁹ throughout and not the Somaliland authority or authorities as reports from other international bodies seem to make a

⁸⁵ Somaliland Arrangement (n 84) 20.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid 21.

⁸⁹ Somaliland Arrangement (n 84) 27.

point of doing.⁹⁰ This along with the unqualified referral to “the ratification of the Somaliland Constitution by popular referendum in 2001”,⁹¹ could be construed as a possible tacit recognition of Somaliland’s sovereign aspirations and the Hargeisa administration’s authority in or control of the territory of Somaliland, if not recognition of Somaliland as a sovereign state. The Somaliland Arrangement does not however, contain any qualification that the Somaliland Arrangement itself does or does not uphold the Somali Republic’s claim to sovereignty over the territory of Somaliland.

The Somaliland Arrangement states that a framework was agreed between ‘the government of Somaliland’ and development partners for “joint monitoring of peacebuilding and state building outcomes based on mutually-acceptable indicators to be jointly developed by government and international partners”.⁹² As the Somaliland ‘government’ only wants recognised sovereign independence, mutually acceptable indicators that are separate from any other Somali administration inherently recognise a degree of external self-determination. This engagement by the international community with Somaliland under the Somaliland Arrangement is a further demonstration of a degree of acceptance of external self-determination by Somaliland.

The ongoing monitoring of the Somaliland Arrangement has included the High Level Aid Coordination Forum (HLACF) which was first established in 2011 as a means for ensuring harmonization and complementarity between donors and the government in implementing Somaliland’s National Development Plan.⁹³ The HLCAF has since integrated structures for aid management and coordination structures of the Somaliland Arrangement, as its platform for facilitating policy dialogue and implementation of projects towards the Somaliland Arrangement’s Peacebuilding and Statebuilding Goal.⁹⁴

Under the HLACF the Chair of the OECD Development Assistance Committee has met with the Somaliland President and Minister of Trade and Foreign Investment and other senior government officials, representatives from civil society and the private sector, and members of the international community in Hargeisa, in relation to advancing development progress

⁹⁰ As demonstrated below and at chapter 6.

⁹¹ Somaliland Arrangement (n 84) 20.

⁹² Ibid 28.

⁹³ Waheen (n 82).

⁹⁴ Ibid.

and implementation of New Deal principles under the Somaliland Arrangement.⁹⁵ There have also been meetings between Somaliland government officials, civil society and their development partners such as policymakers from foreign governments, representatives from the EU, African Development Bank, UN agencies, international NGOs and private sector development actors, to discuss ways to make the New Deal cooperation plan a reality on the ground.⁹⁶ These meetings which the international community has supported have included support for such state like activities as investment climate reforms and progressing trade talks with Ethiopia.⁹⁷

The contemporaneous nature of the Somali Compact and the Somaliland Arrangement to each other and the contrasting expression of the status within them of the respective administrations in Hargeisa and Mogadishu are examples of the unspoken recognition of the extent and limits of control of the two administrations and the unwillingness of the international community to clearly set out the limits to engagement with the two authorities on the basis of their sovereignty and/or exercise of external self-determination or lack thereof under international law.

4.4 Puntland

Puntland does not see itself as an independent state and has made no declaration in this regard. It regards itself as part of federal Somalia although the extent of its federal autonomy has not been agreed with the government of the Somali Republic. The Provisional Somali Constitution indicates that two or more regions can form a member state⁹⁸ and Puntland has been held up as the benchmark for aspirant federal member states of the federal Somali Republic.⁹⁹ However, Puntland's governmental institutions grew from an insurgency framed by regional clan identity and the influence of a Harti sub-clan in North Mudug over the course of more than a decade. This basis for the establishment of Puntland sets a difficult precedent for other aspiring federal member states because such a clear clan basis has not

⁹⁵ Hasan (n 81).

⁹⁶ Waheen (n 82).

⁹⁷ Ibid.

⁹⁸ Provisional Constitution of the Federal Republic of Somalia (adopted 1 August 2012) <<http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf>> accessed 16 October 2016.

⁹⁹ Rift Valley Institute, 'Somalia's Jubbaland: Past, present and potential futures' (2013, Meeting report: Nairobi Forum, 22 February 2013) 1 <<http://riftvalley.net/publication/somalias-jubbaland#.XXTYxNJKgY0>> accessed 20 April 2015.

created such a durable territorial and political coalition in other parts of southern or central Somalia.¹⁰⁰

Despite Puntland's declared intent to remain part of the Somali Republic, Puntland is frequently engaged with separately from the Somali Republic by the international community but in a limited way similarly to engagement with Somaliland. Puntland has received signals from the international community that its territorial integrity should not be affected by the Somali Compact.¹⁰¹ This was reinforced by a signed agreement in October 2014 between the government of the Somali Republic and Puntland. Puntland has demonstrated that a top-down approach to implementing the Provisional Somali Constitution of the Mogadishu government "will entail reaching accommodations with existing political realities".¹⁰²

International Organisations including the World Bank, UN,¹⁰³ AU, EU, IGAD and key donor states¹⁰⁴ have engaged with Puntland and the Puntland President through donor conferences and in meetings focussed exclusively on Puntland.¹⁰⁵ AU representatives have stated that the AU would support the development of Puntland security forces in order to combat terrorism, piracy and human trafficking and have praised the Puntland elections. The AU representatives have also stated that the international community is "ready to assist Puntland in handling its development, to consider its suggestion instead of dictating plans to Puntland".¹⁰⁶ This is comparable to the relationship the international community has with Somaliland under the Somaliland Arrangement.

Other direct engagement with Puntland in an external self-determination capacity has included an arrangement between Somaliland and Puntland and the Seychelles with regards

¹⁰⁰ Jason Mosley, 'Somalia's Federal Future: Layered Agendas, Risks and Opportunities' (Chatham House Research Paper, 2 September 2015) <www.chathamhouse.org/publication/somalias-federal-future-layered-agendas-risks-and-opportunities> accessed 29 April 2016.

¹⁰¹ Raxanreeb Somalia: Un EU and IGAD envoys for Somalia send concerned letter to Puntland President after the region suspended ties with Mogadishu <www.raxanreeb.com/2014/08/somalia-un-euand-igad-envoys-for-somalia-send-concern-letter-to-puntland-president-after-the-region-suspended-ties-with-mogadishu/> accessed 12 September 2014.

¹⁰² Mosley (n 100).

¹⁰³ [UN News, 'Somalia: UN envoy appeals for calm following clashes in northern region' \(30 November 2013\) <www.un.org/apps/news/story.asp?NewsID=46629#.VRqGj454rYg> accessed 12 June 2015.](http://www.un.org/apps/news/story.asp?NewsID=46629#.VRqGj454rYg)

¹⁰⁴ Sabahi, 'Somalia: Donor Conference Calls On International Partners to Support Puntland' *AllAfrica* (Washington DC, 22 May 2014) <<http://allafrica.com/stories/201405230167.html>> accessed 16 April 2016.

¹⁰⁵ Garowe Online, 'Somalia: Puntland President Inaugurates New Pirates Prison' *AllAfrica* (Garowe, 2 April 2014) <<http://allafrica.com/stories/201404030408.html>> accessed 16 April 2016.

¹⁰⁶ Sabahi (n 104).

to prisoner transfer agreements¹⁰⁷ and sentencing pirates¹⁰⁸ and financing from the UK through the UN to build a new Ministry of Justice in Puntland and expand Puntland's prison to enable pirates to be handed over to the Puntland authorities.¹⁰⁹ The EU's inclusion of the state of Galmudug in plans to strengthen Somalia's judicial capacity indicates that engagement with sub-national authorities is likely to continue as the governments in regions such as Somaliland, Puntland and Galmudug are able to wield varying amounts of authority over their territories.¹¹⁰ This overlap of treatment of Somaliland and Puntland can be regarded as evidence that the informal status afforded to Somaliland by the international community may not amount to unofficial recognition of its sovereign independent statehood.

However, the status inferred upon Somaliland by the international community can also be distinguished as being more autonomous, from that status inferred upon Puntland, on the basis that Puntland does not have a separate process for dealing with the administration of international funds for its development separate from the Somali Compact process as Somaliland does under the Somaliland Arrangement as despite severing ties with the government of the Somali Republic, Puntland still took part in the New Deal process.¹¹¹

4.5 Regional actors and Somaliland's status

The lack of formal recognition of Somaliland independence by international actors in the Horn of Africa region and the wider Middle East, North Africa and African regions reflects the political concerns regarding secession, *uti possidetis* and territorial sovereignty of the individual actors within those regions. The state actors and international organisations within these regions have a strong influence on Somaliland's efforts to achieve recognised statehood because many international actors outside of the region, with an imperial legacy in Africa or with a concern about being associated with such a legacy, will not take the lead without regional actors. This affects the level of engagement the international community has had with Somaliland because states do not want to create a level of engagement from which a de

¹⁰⁷ Knox Chitiyo and Anna Rader, 'Somalia 2012 – Ending the Transition' (2012) Brenthurst Foundation Discussion Paper 4/2012, 13 <<https://issat.dcaf.ch/download/9299/88472/Brenthurst%20paper%202012-04.pdf>> accessed 3 May 2018.

¹⁰⁸ HRC (n 36) 7.

¹⁰⁹ Mike Pflanz, 'Al-Qaeda's East Africa network "regrouping and rearming in northern Somalia"' (*The Telegraph*, 27 November 2012) <www.telegraph.co.uk/news/worldnews/al-qaeda/9706696/Al-Qaedas-East-Africa-network-regrouping-and-rearming-in-northern-Somalia.html> accessed 16 April 2016.

¹¹⁰ Vines (n 2) 6.

¹¹¹ Security Council Report, 'September 2013 Monthly Forecast – Somalia' (29 August 2013) <www.securitycouncilreport.org/monthly-forecast/2013-09/somalia_10.php> accessed 14 January 2014.

facto status, that is a contradiction of the status regional actors are prepared to give, can be inferred.

IGAD is the Regional Economic Commission for the Horn of Africa. It provides the institutional framework for regional economic integration, towards increasing prosperity and integration into the global economy.¹¹² IGAD is in the process of trying to transform itself into a free trade area, with the intention of speeding up infrastructure projects in order to develop the region.¹¹³ Engagement by regional organisations, such as IGAD, in Somalia and the influence they exercise is largely affected by the political and economic concerns of individual state actors. To this end stability in Somalia remains a major concern for neighbouring states and as such the approach of IGAD¹¹⁴ (whose current members are Djibouti, Eritrea, Ethiopia, Kenya, The Somali Republic, South Sudan, Sudan and Uganda¹¹⁵) is the non-recognition of Somaliland independence. All three neighbouring states of Somalia (Ethiopia, Kenya and Djibouti) have troops in Somalia and IGAD and the AU have significant interests in Somalia, as reflected in political missions and military deployments there.¹¹⁶

Concerns about the economic impact of the stability of Somalia is the basis upon which much engagement with the Somali Republic, as the state authority of Somalia is based and adds to the desire of regional actors to maintain stability. Such engagement in Somalia includes assistance with a view to ensuring that Somalia attains the infrastructure rehabilitation, economic recovery, post conflict reconstruction, institution and capacity building it needs.¹¹⁷

Engagement with the government in Mogadishu is an example of the regional organisations and their members attempting to maintain the territorial sovereignty of individual members. This motivation has been confirmed by IGAD, in statements highlighting the need for ongoing political processes in Somalia to establish regional administrations to be anchored on

¹¹² Milas Seifulazizm, 'Somalia its neighbours and Al Shabab: the quest for sustainable solutions' African Arguments (2013) <<http://africanarguments.org/2013/01/03/somalia-its-neighbours-and-al-shabaab-the-quest-for-sustainable-solutions-%E2%80%93-by-seifulaziz-milas/>> accessed 28 May 2016.

¹¹³ The East African, 'IGAD prepared to turn into a free trade area' (15 December 2012) <www.theeastafrican.co.ke/news/Igad-prepares-to-turn-into-a-free-trade-area/2558-1644674-10tll9n/index.html> accessed 19 January 2015.

¹¹⁴ Tamaru (n 21) 35.

¹¹⁵ The East African (n 113).

¹¹⁶ Tamaru (n 21) 35.

¹¹⁷ Press TV, 'Igad member states pledge full support for new Somali government' (2013) <www.presstv.com/detail/2013/01/25/285394/igad-member-states-pledge-full-support-for-new-somali-govt/> accessed 19 January 2015.

the principles of leadership by the government of the Somali Republic and respect for the Provisional Constitution of Somalia.¹¹⁸ Such reaffirmation of Somalia's territorial integrity is also linked to the reluctance, within the wider Horn of Africa, to see another secession take place within the region following South Sudan's struggles¹¹⁹ and the instability it has produced.

4.5.1 The African Union

As with the issues of the wider international community needing regional actors to take the lead, recognition by the AU is essential to wider international recognition of Somaliland. This is because the "UN and other various Western donors have indicated at one time or another that Somaliland's broader prospects for international recognition hinge first upon the attitude of the AU".¹²⁰

In December 2005 Somaliland's application for AU membership was submitted; and, although the Somaliland President met with the AU Commission Chairperson to discuss Somaliland's application in May 2006,¹²¹ no response to the application has ever been issued.¹²² In order to obtain AU recognition Somaliland would require the vote of a simple majority of AU member states.¹²³ Individual AU member states policies towards Somaliland are discretionary because the AU lacks a "common policy on issues of 'second generation' independence".¹²⁴ As such, individual states in the AU could recognise Somaliland on the basis of their own principles, however, this may lead to a problematic legal situation where a member is not recognised by all AU members, as is the case with Western Sahara.¹²⁵

The underlying fear behind AU opposition to the recognition of Somaliland's secession is that it will have a domino effect which could lead to the 'Balkanisation of Africa'¹²⁶ and undermine the principle of *uti possidetis*. Many major political powers in Africa feel that the sovereignty of their own national boundaries could be threatened because "[o]ver 90 per cent

¹¹⁸ African Union, 'Communique PSC/PR/2.(CCCLXXIX)' (2013) 2 <www.peaceau.org/uploads/psc-379-com-somalia-13-06-2013-3-2-.pdf> accessed 19 March 2016.

¹¹⁹ Vines (n 2) 7.

¹²⁰ International Crisis Group (n 10) 1.

¹²¹ Ibid.

¹²² Human Rights Watch, 'Hostages to Peace': Threats to Human Rights and Democracy in Somaliland' (July 2009) 54 <www.hrw.org/sites/default/files/reports/somaliland0709web.pdf> accessed 4 December 2016.

¹²³ International Crisis Group (n 10) 24.

¹²⁴ Ibid 14; Clapham (n 13).

¹²⁵ International Crisis Group (n 10) 10-17.

¹²⁶ Poore (n 1) 142.

of states contain significant, historically rooted minority groups (about a third do not even have a majority group)”¹²⁷ The AU is aware that there are clan or tribal issues relevant to Somaliland independence¹²⁸ as the Isaaq clan account for well over half of the Somaliland population.¹²⁹ In contrast to such concerns about Somalia’s borders and on the basis of the decolonisation of the Horn of Africa, an AU fact-finding mission on Somaliland’s status in 2005 reported favourably on Somaliland’s claim for sovereignty and found that Somaliland’s situation is unique and should not be linked to the African fear of the Balkanisation of different ethnic groups.¹³⁰ The report stated Somaliland was “unique and self-justified in African political history” and that “the case should not be linked to the notion of opening a Pandora’s Box” in relation to the consideration of former colonial boundaries.¹³¹ The Somaliland Foreign Ministry has reiterated that recognition of Somaliland will not “open Pandora’s box in Africa”, and “[n]either will it set a precedent”.¹³² However, to muddy the waters in response to this certain unionists have highlighted the potential issue of Sool and Sanaag’s¹³³ secession from Somaliland.¹³⁴

The AU’s approach to Somaliland’s status is inconsistent as despite the findings of the AU fact finding mission in 2005 the AU has reiterated its commitment to the unity, territorial integrity and sovereignty of Somalia¹³⁵ and appears increasingly to support actively the unifying of Somalia.¹³⁶ The AU has extended support and recognition to state building efforts in the south¹³⁷ and has allowed two successive governments of the Somali Republic from Mogadishu to take the AU seat even though both demonstrated little local authority or power.¹³⁸ Furthermore, reports of the Chairman of the African Union Commission to the Secretary General of the UN¹³⁹ have stated that Somalia is a federal state, as enshrined in its Provisional Constitution. This supports a view that the international community engages with

¹²⁷ Poore (n 1) 142.

¹²⁸ International Crisis Group (n 10) 6.

¹²⁹ Clapham (n 13) 8.

¹³⁰ International Crisis Group (n 10) 2.

¹³¹ Eggers (n 7) 220; as discussed at chapters 1.3 and 3.6.5.

¹³² The Independent, ‘Somaliland: Africa’s Best Kept Secret’ (11 May 2009) <<https://unpo.org/article/9570>> accessed 22 April 2017.

¹³³ As discussed at chapter 1.3.3.

¹³⁴ Clapham (n 13) 9.

¹³⁵ African Union, ‘Communique 356th meeting PSC/PR/COMM(CCCLVI)’ (27 February 2013) 3 <www.peaceau.org/uploads/psc-comm-356-somalia-27-feb-2013.pdf> accessed 19 March 2016.

¹³⁶ HRC, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari (23 March 2010) UN Doc A/HRC/13/65, 21, paras 91-92.

¹³⁷ Clapham (n 13) 2.

¹³⁸ Arieff (n 9) 68.

¹³⁹ UNSC, ‘Letter dated 12 October 2012 from the Secretary-General addressed to the President of the Security Council’ (12 October 2012) UN Doc S/2012/764.

Somaliland as a de jure territory of Somalia. This is further supported by the AU's reference to the unresolved relationship between Somaliland and Puntland as being between territorial entities that are both "other self-declared and semi-autonomous states"¹⁴⁰ and specifically refers to their disputes such as boundary delineation, revenue collection, and social service delivery as issues at sub-state administrative level,¹⁴¹ which is a clear distinction from the federal level of the government of the Somali Republic.

References to Somaliland in AU reports also demonstrate the status given to Somaliland through the AU's engagement in Somalia. The Report of the Chairperson of the African Union Commission states that engagement with Somaliland in relation to constitutional issues is on the same basis as that of sub-states Puntland and Jubba. Reports of the Chairman of the African Union Commission to the Secretary General of the UN¹⁴² also confirm the AU's support of the federal government of the Somali Republic¹⁴³ but does not reference support for Somaliland.

However, the AU's engagement recognises the reality of Somaliland's territorial control as a de facto state which again leads to an inconsistency in its conduct with Somaliland. The AU peacekeeping force does not conduct peacekeeping operations in Somaliland due to the Somaliland authority not giving its consent. Somaliland has also attended events with the AU to which it has been invited, in an effort to lobby and elicit tacit or covert recognition of Somaliland.¹⁴⁴ The AU's engagement shows it has interpreted Somaliland independence as secession from the recognised sovereign state of Somalia. The legal dimension of whether Somaliland recognition sets a precedent for other African cases and its impact on the organisations' own internal politics is therefore important to the AU.¹⁴⁵

4.5.2 AMISOM

AMISOM is the African Union military mission that has been taking on Al Shabab in southern and central Somalia in support of the national forces of the Somali Republic and other allied militias. AMISOM has been militarily successful in its current AU mandated

¹⁴⁰ Ibid 8.

¹⁴¹ Ibid.

¹⁴² UNSC Letter (n 139).

¹⁴³ UNSC Letter (n 139) 11.

¹⁴⁴ Yusef M Hasan, 'Somaliland: Government Invited to Tana Forum Conference on Horn Africa Security' (*Somaliland Sun*, 25 April 2014) <www.somalilandsun.com/somaliland-government-invited-to-tana-forum-conference-on-horn-africa-security/> accessed 28 January 2015.

¹⁴⁵ International Crisis Group (n 10) 2.

mission to create stable conditions in which the Road Map to peace and the New Deal development process can be implemented¹⁴⁶ through coordination of protection actors in Somalia.¹⁴⁷ Although AMISOM is the AU's military mission, in terms of support the US is the biggest contributor and provides AMISOM with money, equipment and training. The UN provides logistical support, food, housing, an international mandate and training in how to avoid or respond to civilian casualties. The EU provides AMISOM with money¹⁴⁸ and the EU and the US also pay the Somali National Forces.¹⁴⁹ This international support for the government of the Somali Republic as the government of Somalia has been reiterated by the AU in calls to AU Member States and "international partners to provide the requisite support for stabilization and post-conflict reconstruction in Somalia and to be guided in their engagement by the priority framework elaborated by the Government of Somalia".¹⁵⁰ AMISOM has recognised the reality of Somaliland's territorial control as a de facto state as it has not conducted peacekeeping operations in Somaliland due to the Somaliland authority not giving its consent.

4.5.3 Ethiopia

Ethiopia, the major power in the Horn of Africa, is widely perceived to prefer a weak and divided Somalia.¹⁵¹ It is therefore thought to be comfortable with the current confusion in relation to Somaliland's status.¹⁵² As a consequence it has taken a contradictory approach to Somalia by supporting both Somaliland and the Somali Government.¹⁵³ Through its approach to engagement with the Somali Republic and Somaliland, Ethiopia hopes to secure maritime access through Somaliland whilst also reducing the possibility of a strong unified Somalia

¹⁴⁶ HRC (n 36) 17.

¹⁴⁷ UNSC Letter (n 139) 11.

¹⁴⁸ Jason Straziuso, 'Africa, West combine to rout militants in Somalia' (*Associated Press*, 17 October 2012) <<https://news.yahoo.com/africa-west-combine-rout-militants-somalia-131535043.html>> accessed 27 January 2016.

¹⁴⁹ Anne Backhaus and Johannes Korge, 'Success Uncertain for European Training Effort' (*Spiegel Online*, 22 October 2012) <www.spiegel.de/international/world/german-soldiers-help-train-somali-soldiers-at-camp-in-uganda-a-861885.html> accessed 16 December 2015.

¹⁵⁰ African Union, 'Communique 350th meeting - PSC/PR/COMM.1(CCCL)' (14 January 2013) 3 <www.peaceau.org/uploads/psc-com-350-somali14-01-2013.pdf> accessed 19 March 2016.

¹⁵¹ Wallis (n 15) 51.

¹⁵² Scott Pegg and Pål Kolstø, 'Somaliland: Dynamics of internal legitimacy and (lack of) external sovereignty' (2015) 66 *Geoforum* 193, 198; MV Hoehne, 'Mimesis and mimicry in dynamics of state and identity formation in Northern Somalia' (2009) 79 *Africa* 251, 273-274; S Kaplan, 'The Remarkable Story of Somaliland' (2008) 19 *Journal of Democracy* 143, 154; Wallis and Kibble (n 1) 51.

¹⁵³ Arieff (n 9) 70.

and the subsequent threat of separatist Somali movements within its own borders.¹⁵⁴ These aims have led to a level of involvement in Somalia by Ethiopia so that it is now considered to be difficult for Somalis to pursue a political career in their own country without first getting Ethiopia's blessing.¹⁵⁵

Ethiopia's troops had been in Somalia since 2007¹⁵⁶ after cross border incursions arising from the conflict in Somalia led to Ethiopia invading Somalia in 2006.¹⁵⁷ Ethiopia supported the Djibouti Agreement of 2008 between the Transitional Federal Government of Somalia (the government of the Somali Republic at the time) and the Alliance for the Re-Liberation of Somalia (ARS) to enable Ethiopia's withdrawal from the territory of the Somali Republic as it called for a cessation of armed confrontation.¹⁵⁸ As a consequence entry of Ethiopian forces into Somalia would now be contrary to the Djibouti agreement.¹⁵⁹ However, Ethiopia is now militarily involved in the Somali Republic through AMISOM.

The influence of Ethiopia within IGAD has led to a diplomatic intervention by IGAD which resulted in the signing of an agreement to form an interim administration (the IJA) in Jubba, (a region of Somalia that borders Ethiopia), an agreement which was of relevance to the constitutional debate in Somalia.¹⁶⁰ Ethiopia has also offered to mediate between Puntland and the Somali Government such actions confirm the view that Ethiopia would prefer to engage with several weaker stakeholders in Somalia rather than a single, strong, centralized government of Somalia.¹⁶¹

Despite the potential instability created by Ethiopia with its engagement with sub-state entities in Somalia, Ethiopia is conscious of its role as the home of the AU and does not want to push an issue that that could impact the borders and governance of any AU member states

¹⁵⁴ 'Somaliland: Trying to behave like a proper state' *The Economist* (Nairobi, 29 September 2005) <www.economist.com/node/4466050?story_id=4466050> accessed 16 June 2016; Poore (n 1) 142.

¹⁵⁵ Arman Abukar, 'Somalia: African solutions for African problems?' (*Al Jazeera*, 9 May 2014) <www.aljazeera.com/indepth/opinion/2014/05/somalia-african-solutions-africa-20145812280255662.html> accessed 12 June 2016.

¹⁵⁶ Afyare Abdi Elmi, 'Decentralization Options for Somalia' (Paper for Heritage Institute for Policy Studies, 2014) 2-3 <www.heritageinstitute.org/decentralization-options-somalia/> accessed 11 October 2014.

¹⁵⁷ James Verini, 'The Last Stand of Somalia's Jihad' (*Foreign Policy*, 17 December 2012) <<https://foreignpolicy.com/2012/12/17/the-last-stand-of-somalias-jihad/>> accessed 25 June 2015.

¹⁵⁸ HRC, 'Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin' (21 January 2010) UN Doc A/HRC/13/21/Add.2., 5

¹⁵⁹ *Ibid*

¹⁶⁰ Jason Mosley, 'Reality of Somali Federalism Doesn't Match "Vision"' (Chatham House Expert Comment, 16 May 2014) <www.chathamhouse.org/expert/comment/reality-somali-federalism-doesn-t-match-vision> accessed 7 October 2014.

¹⁶¹ Afyare (n 156) 2-3.

and thus may divide opinion amongst AU members.¹⁶² As such, due to the historic and ongoing involvement of Ethiopia in Somalia and the questions that might be raised regarding its motives in the region,¹⁶³ Ethiopia has been reluctant to recognise Somaliland first¹⁶⁴ as “Somalia would immediately attribute nefarious motives to Ethiopian recognition of Somaliland, arguing that it wishes to balkanize Somalia and weaken Somali unity”.¹⁶⁵

Ethiopia therefore continues to engage with the government of the Somali Republic¹⁶⁶ but also engages with Somaliland on the basis of cooperative relations in several areas.¹⁶⁷ Ethiopia is the most important ally of Somaliland both militarily and diplomatically.¹⁶⁸ Ethiopia was the first country that established diplomatic relations with Hargeisa by opening a Consulate which issues visas to Somaliland passport holders and has as such also recognises Somaliland passports. In addition to this, Ethiopia Airlines flies to Somaliland several times per week¹⁶⁹ with regular trade mission flights between Addis Ababa and Hargeisa.¹⁷⁰ Somaliland also maintains a diplomatic office in Addis Ababa which has resulted in the signing of agreements between Ethiopia and Somaliland aimed at enhancing trade and communications.¹⁷¹ These include Ethiopia’s agreement to ship goods through the Somaliland port of Berbera and establish customs offices at major border crossings.¹⁷² Such engagement by Ethiopia is on the basis of Somaliland’s status as being more than that of an internal sub-state territory and more akin to that of a State. However, even though Ethiopia is considered to be directly supportive of Somaliland’s independence claims, there are no signs that Ethiopia is ready to recognize Somaliland and has stated several times that Ethiopia would be the second country to recognize Somaliland.¹⁷³

4.5.4 Djibouti

¹⁶² Pegg (n 152) 198.

¹⁶³ Poore (n 1) 122.

¹⁶⁴ Somaliland Sun, ‘Somaliland: Re-Examining Relations with Neighboring States’ (13 May 2014) <www.somalilandsun.com/somaliland-re-examining-relations-with-neighboring-states/> accessed 9 October 2014.

¹⁶⁵ Shinn (n 24) 4.

¹⁶⁶ Sabahi, ‘Somalia: Ethiopia, Somalia to Form Joint Ministerial Commission’ *AllAfrica* (Washington DC, 30 January 2013) <<https://allafrica.com/stories/201301310913.html>> accessed 17 April 2015.

¹⁶⁷ Pegg (n 152) 198.

¹⁶⁸ Human Rights Watch (n 122) 53; Somaliland Press, ‘Somaliland: SL/Ethiopia Sign Trade and Security Treaty’ (15 November 2014) <<https://mereja.com/news/505059>> accessed 21 May 2015.

¹⁶⁹ Somaliland Sun (n 164).

¹⁷⁰ The Economist (n 154); Shinn (n 24) 4; Human Rights Watch (n 122) 53.

¹⁷¹ Somaliland Sun (n 164).

¹⁷² The Economist (n 154); Arieff (n 9) 70.

¹⁷³ Somaliland Sun (n 164).

Djibouti does not recognise the sovereign independence of Somaliland, however, Djibouti is an important neighbour to Somaliland for several reasons. Firstly, Djiboutians and Somalilanders have common ancestral lineage and geographical tenancy, since the clans of Somaliland live both in Djibouti and Somaliland. Secondly, more recently, Djiboutian businessmen, especially from the circles of the ruling family, have invested significantly in Somaliland with large scale business projects.

Due to the economic and thus political importance of Somaliland to Djibouti, it has and does engage in bilateral state like agreements with Somaliland. Djibouti has positioned itself as neutral and allowed Somaliland diplomatic representatives in its capital.¹⁷⁴ Formal diplomatic relations between Somaliland and Djibouti started early in 1999 when Somaliland's diplomatic office in Djibouti officially opened, however Djibouti has not opened any diplomatic office in Hargeisa. The Somaliland diplomatic office in Djibouti is confined to minor activities, such as welcoming Somaliland delegates to Djibouti. This low-key diplomatic relationship deteriorated in early 2000, when Djibouti hosted the Somali Peace Conference in Arta, which the Somaliland authority has boycotted ever since. Although Djibouti fears competition from the port of Berbera¹⁷⁵ and the access to trade that it can provide to the Horn of Africa, Djibouti agreed to diplomatic relations being re-established and to co-operation on trade and border controls being started in 2003.¹⁷⁶ Bi-lateral co-operation on such state-like issues can be seen as an acknowledgement of the effectiveness of Somaliland's control of its territory and evidence of the recognition of the stability of the Somaliland authority's governance and its ability to exercise all aspects of self-determination.

Djibouti's political position on Somaliland's recognition has been ambivalent at best and hostile at worst. Djibouti has not supported Somaliland's quest for recognition at any international forum, such as IGAD, AU or the Arab League. By contrast, Somaliland has cooperated with Djibouti in securing the Djibouti-Somaliland border since it declared independence.

4.5.5 Kenya

Security is the prime concern of Kenya as the population of northeast Kenya is largely Somali. Such security concerns mean that Kenya does not want to reduce stability in Somalia.

¹⁷⁴ Arieff (n 9) 71.

¹⁷⁵ Shinn (n 24) 4-5.

¹⁷⁶ Jhazbay (n 22) 78.

To this end Kenya has also positioned itself as neutral with regards to the situation between Somaliland and Somali Republic and has allowed Somaliland diplomatic representatives in its capital.¹⁷⁷ However, Kenya has not taken a neutral stance with regard to the conflict in Somalia as security and humanitarian problems caused by the conflict in Somalia have become an important public and political concern in Kenya as decolonisation split the tribal domains that span Somalia and Kenya leaving long-running border disputes.¹⁷⁸

In combination with concerns about border security there is some anxiety within Kenya about the rise of Rwanda and Uganda (which have contributed to and have lost the highest number of troops in Somalia) and whose ‘soldiers turned Presidents’ have turned their countries into economic performers and “darlings of the West” as poverty and corruption have increased in Kenya.¹⁷⁹ Such security and political concerns encouraged Kenya to train and equip militia in Somalia in 2008 despite US and EU discouragement and in October 2011 the Kenyan Defence Force (“KDF”) entered Somalia to remove al-Shabaab from several cities of the Jubba regions, including the port city of Kismayo¹⁸⁰ and to annex Somalia’s southern borderland.¹⁸¹

In making a military intervention, Kenya was not interested in a battle for Mogadishu it wanted to get in and get out and create a kind of Kenyan protectorate called Jubaland. The ongoing security problems for Kenya resulting from infiltration by Al Shabab in Kenya led the KDF to be formally admitted into AMISOM in February 2012 and in late 2012 the KDF took Kismayo the source of the majority of Al Shabab’s funding.¹⁸² In doing so, “Kenya has openly admitted to supporting the creation of a buffer-state in southern Somalia to protect its interests”¹⁸³ and arguably undermined the federal government of the Somali Republic “by actively supporting the establishment of a sub-national administration in the Jubba regions against its will”.¹⁸⁴ The government of the Somali Republic accused Kenya of violating Somalia’s territorial sovereignty and said, “[t]he appointed representative to Jubba is not a consular to Kismayo, but he is a Kenyan governor to the region, so as for Kenya to take the

¹⁷⁷ Arieff (n 9) 71.

¹⁷⁸ Verini (n 157).

¹⁷⁹ Ibid.

¹⁸⁰ Afyare (n 156) 3.

¹⁸¹ Verini (n 157).

¹⁸² Verini (n 157).

¹⁸³ Afyare (n 156) 3; Somali Current, ‘Somali Diplomatic Row Heats up as Kenya Appoints a New Representative to Somali Region’ (1 May 2015) <www.somalicurrent.com/2014/05/01/somalia-diplomatic-row-heats-up-as-kenya-appoints-a-new-representative-to-somali-region/#sthash.c7vAF8UU.dpuf> accessed 25 June 2015.

¹⁸⁴ Ibid; Ibid.

control and the ownership of land of this region”.¹⁸⁵ This approach of Kenya to Somalia demonstrates a focus on political self-interest. As such, it is difficult to infer anything regarding the legal status of Somaliland but highlight to other states the wider political sensitivity of action taken regarding the exercise of self-determination by Somaliland.

4.6 Middle East and North Africa Region

The United Arab Emirates’ (UAE) engagement with Somaliland has been in relation to commercial issues and the development of close cooperation in the areas of trade, investment, the fight against piracy and regional affairs.¹⁸⁶ UAE engagement, does suggest the possibility of engagement by Somaliland with the international community on a basis that is not strictly that of an internal territory of a greater sovereign state of Somalia but rather as a territorial unit exercising a degree of external self-determination of its Peoples in their own right. Therefore, as with other international conduct towards Somaliland, there is inconsistency between official status given to Somaliland and informal engagement with it. For example, Somaliland's Foreign Minister has led a Somaliland delegation to the UAE which included the Minister of the Presidency, the managing director of Berbera Port and the Somaliland Energy Minister. The delegation met with the UAE Minister of State for Foreign Affairs and discussed issues such as UAE investment in Somaliland, development cooperation as well as talks between Somaliland and the Somali Republic.¹⁸⁷ The UAE has therefore engaged with Somaliland on the basis that it has a separate personality from Somalia but without recognising Somaliland as an independent State. The UAE has also made diplomatic efforts to bring together a dialogue between Somaliland and the Somali Republic. In 2012¹⁸⁸ and 2013¹⁸⁹ the UAE brought the Presidents of Somaliland and the Somali Republic together to agree a framework for dialogue for future relations between the two countries.¹⁹⁰

Egypt remains a hurdle for Somaliland because it is an influential member of the AU. The engagement of Egypt with Somaliland is largely based on political concerns as it regards a powerful Somalia as a bulwark against Ethiopia in any future dispute involving the vital

¹⁸⁵ Ibid; Ibid.

¹⁸⁶ Somaliland Sun, ‘Somaliland: Minister Of Foreign Affairs Arrives In Dubai On Diplomatic Visit’ (16 January 2013) <www.unpo.org/article/15372> accessed 16 March 2015.

¹⁸⁷ Government of Ethiopia, ‘Somalia: Somaliland Delegation Visits the United Arab Emirates’ *AllAfrica* (Addis Ababa, 21 January 2013) <<http://allafrica.com/stories/201301212625.html>> accessed 16 March 2015.

¹⁸⁸ Somaliland Sun (n 186).

¹⁸⁹ Government of Ethiopia (n 187).

¹⁹⁰ Somaliland Sun (n 186).

resources of the Nile. Egypt therefore promotes Somali unity¹⁹¹ as a counterweight to Ethiopian influence in the Horn of Africa¹⁹² and is reluctant to empower Somaliland with recognition because it is seen as an Ethiopian ally and Egypt does not want to strengthen Ethiopia's position.¹⁹³ To this end Egypt is not supportive of the Somaliland authority and has previously blocked Somaliland's recognition by the Arab League.¹⁹⁴

Along with Egypt, Saudi Arabia and Yemen have supported a view of the dispute between the Somali Republic and Somaliland as being between the Muslim Horn of Africa and Christian Ethiopia.¹⁹⁵ This view is reflected by the Arab League's financial support of governments of the Somali Republic (which has been a member of the League of Arab States since 1974) and Arab pressure in 2006, on the AU to put off its decision on Somaliland's observer status, after an International Crisis Group report recommended that Somaliland be granted short-term interim observer status of the AU.¹⁹⁶ Somaliland's relations with Yemen soured when it recognised the Transitional Federal Government of Somalia (the government of the Somali Republic at the time) after the Arta process. However, in 2006 the Yemeni Government negotiated agreements with Hargeisa over fishing resources and anti-piracy campaigns in the Red Sea¹⁹⁷ demonstrating a preparedness to engage with Somaliland on a basis of external self-determination and an inconsistent approach between its official position and its informal conduct.

Sudan has also had low level contact with Somaliland with flights between Khartoum and Hargeisa and FM radio relays between the two territories.¹⁹⁸ As with Somaliland's relations with states such as Yemen, this demonstrates the willingness to engage with Somaliland on a basis that reflects a level of external self-determination that is greater than that of an internal sub-state territory if it benefits the engaging State.

Turkey has promised to open regional development offices in Somaliland and Puntland¹⁹⁹ and is also one of the biggest investor developers in the Somali Republic and has undertaken

¹⁹¹ The Independent (n 132).

¹⁹² Shinn (n 24) 4-5; Ibid.

¹⁹³ Human Rights Watch (n 122) 51.

¹⁹⁴ Arieff (n 9) 71.

¹⁹⁵ Poore (n 1) 121.

¹⁹⁶ Wallis (n 15) 48.

¹⁹⁷ Arieff (n 9) 71.

¹⁹⁸ Arieff (n 9) 71.

¹⁹⁹ International Crisis Group, 'Assessing Turkey's Role in Somalia' (Policy Briefing, Africa Briefing No 92, 8 October 2012) 6 <<https://d2071andvip0wj.cloudfront.net/b092-assessing-turkeys-role-in-somalia.pdf>> accessed 16 November 2014.

many tangible and visible projects in the country that has improved the quality of life for many in the Somali Republic.²⁰⁰ The Turkish Prime Minister visited famine devastated people in Somalia in 2011 accompanied by a large contingent of humanitarian agents who then continued to serve the famine-afflicted population years after his visit.²⁰¹ Turkish public and non-governmental sectors have also been very active in rebuilding schools, hospitals, water systems and roads in and around Mogadishu and providing supplies for internally displaced people in the capital. Additionally, Turkey has provided scholarships for hundreds of Somali students to study in Turkish schools and universities and has offered to help rebuild security forces of the government of the Somali Republic.²⁰² Turkey's engagement in Somalia with both the Somaliland authority and the government of the Somali Republic reflect the confused basis upon which Somaliland can claim to engage with the world.

As discussed, there are dynamics amongst members of the region that affect individual members' engagement with Somaliland. As with Somalia's Horn of Africa neighbours the importance of the status afforded to Somaliland in its engagement with International actors in the Middle East and North Africa region is the impact this has with members of the wider international community who are influenced in their engagement in Somalia by Somalia's near neighbours, before clear diplomatic action is taken to recognise Somaliland's independence. This in turn has an impact on the engagement that may arise from Somaliland's participation in international organisations and the links they have to the international human rights system as will be discussed in the next chapter.

4.7 Other International Actors

4.7.1 European Union

There is no common policy from the EU towards Somaliland. Individual European state policies vary with Norway, Denmark and Sweden supporting recognition of Somaliland and Somaliland institutions²⁰³ and Italy and France being pro unification,²⁰⁴ with Italy avoiding any engagement with Somaliland at all.²⁰⁵ The different approaches taken by different EU

²⁰⁰ Abdi Ismail Samatar, 'A new deal for Somalia: How can it work?' (*Al Jazeera*, 12 October 2013) <www.aljazeera.com/indepth/opinion/2013/10/a-new-deal-for-somalia-how-can-it-work-20131021392150694.html> accessed 16 March 2015.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Human Rights Watch (n 122) 55.

²⁰⁴ International Crisis Group (n 10) 13.

²⁰⁵ Human Rights Watch (n 122) 55.

Member States are for a variety of reasons and some of these reasons are due to a historical legacy.²⁰⁶ As such, Italy, as the former colonial power of the territory that Somaliland regards as being the Somali Republic, supports the Somali Republic's recognition as the state authority of Somalia. The UK, the former colonial power of the territory which forms Somaliland, supports the Somaliland authority's desire for sovereign statehood.

As an organisation the EU engages with the Somaliland authority directly in matters relating to the EU's cooperation and intervention in Somaliland.²⁰⁷ Examples of such engagement include the EU envoy to Somalia/Somaliland meeting the Somaliland President and Foreign Minister in relation to Somaliland's engagement with the New Deal program²⁰⁸ as the New Deal is the program that facilitates partnership and interaction between the EU, Somaliland and the Somali Republic in relation to aid, security, politics and other areas.

The EU, as well as other international partners, channel aid and investment directly to Somaliland through the Somaliland Development Fund which the Hargeisa administration jointly operates together with the governments of the UK and Denmark under the Somaliland Arrangement and funding from the EU is used according to the Somaliland authority's development plan.²⁰⁹ As with engagement with regional actors, engagement with the EU on this basis demonstrates an acceptance of the Somaliland authority as having a level of control in Somaliland that the de jure State authority over Somaliland, the government of the Somali Republic, does not and therefore an inconsistency as to the status of the self-determination that is exercised in Somaliland. Individual EU Member States (Holland) and non-EU Member States (Norway and Australia) have also demonstrated a willingness to support the Somaliland authority in relation to improving the justice law & order sectors and reforming correctional facilities.²¹⁰ Even though the EU does not recognise Somaliland as a state it has still supported Somaliland's democratisation and thus its argument for political legitimacy,²¹¹

²⁰⁶ As discussed at chapter 1.3.

²⁰⁷ Yusef M Hasan, 'Somaliland: "EU to Continue Direct Engagement with Hargeisa" Amb D'Urso' (*Somaliland Sun*, 21 May 2013) <www.somalilandsun.com/somaliland-eu-to-continue-direct-engagement-with-hargeisa-amb-durso/> accessed 21 June 2017.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ AM Osman, 'Somaliland: Arrival of Diplomatic Mission in Hargeisa' (*Somaliland Sun*, 1 April 2014) <www.somalilandsun.com/somaliland-arrival-of-diplomatic-mission-in-hargeisa/> accessed 21 June 2017.

²¹¹ Arieff (n 9) 69.

by giving it funding for elections and the greatest share of the Somali Democratisation Fund.²¹²

There is also a contradiction in the EU's engagement, as the Somali Republic's largest, multilateral donor is the EU.²¹³ The EU's High Representative for Foreign Affairs, the President of the European Commission, and the EU Council President, as well as EU Foreign Ministers and members of the European Parliament's Development Committee have had meetings with the President of the Somali Republic.²¹⁴ The Council of the European Union has also supported EU training missions in Somalia (EUTM Somalia) which has contributed to the strengthening of the armed forces of the Somali Republic since 2010. All of this has been as part of an EU strategy for a stable, democratic and prosperous Somalia embedded in an EU strategic framework for the Horn of Africa.²¹⁵ The EU and its Member States are key security partners for the Somali Republic as the EU is the main donor to AMISOM, and bilateral support from individual EU Member States is crucial in helping to rebuild the Somali Republic's security sector this includes support and engagement with the Somali National Army, AMISOM, Somali police, maritime security and stabilisation efforts.²¹⁶

The difference in the approaches of states within the EU demonstrate the lack of agreement and an inconsistent approach to Somaliland self-determination. As such, this approach enforces the potential for an informal engagement with Somaliland as a self-determining entity that recognises a capacity to exercise external self-determination that is beyond that of an internal territory of a federal Somalia but is not that of a recognised sovereign state.

4.7.2 The United Kingdom

The UK is of particular importance to the status given to Somaliland due to it being the former colonial power of the territory which the Somaliland authority claims falls within its borders. Because of the strong historical based links, the Somaliland diaspora within the UK

²¹² Wallis (n 15) 48.

²¹³ Verini (n 157).

²¹⁴ Human Rights Watch, 'Somalia: Alleged Rape Victim Charged' (29 January 2013) <www.hrw.org/news/2013/01/29/somalia-alleged-rape-victim-charged> accessed 28 November 2014.

²¹⁵ Delegation of the European Union to the United Nations, 'Action in Somaliland' <https://eeas.europa.eu/delegations/un-new-york/search/site/somaliland_en?search_token=o723U8OfUGuCIx6p-1rePhvLcUTgHe1WG3IBGatQGxA> accessed 21 June 2016.

²¹⁶ Somalia Current, 'EU to continue to be key security partners for Somalia' (29 April 2014) <www.somalicurrent.com/2014/04/29/eu-to-continue-to-be-key-security-partners-for-somalia/> accessed 16 June 2016.

has used pressure to get public bodies such as individual councils to recognise the independence of Somaliland which, although has no legal bearing on the recognition of Somaliland as a sovereign state, demonstrates the strength of feeling towards the recognition of Somaliland independence.

As with other states concerned with being viewed as imperialist the UK regards recognition of Somaliland as a matter for the AU²¹⁷ and as such refuses to recognise Somaliland before the AU does.²¹⁸ The lack of Arab support for the recognition of Somaliland has also added to the UK reluctance to give Somaliland recognition.²¹⁹ However, the UK treats Somaliland “tacitly as an independent state”²²⁰ with diplomatic relations with Hargeisa and Mogadishu handled through different offices.²²¹ UK support of the Somaliland authority has also included several bilateral agreements with Somaliland upon its independence in 1960,²²² generous financial aid and the granting of observer status in the Commonwealth.²²³ The UK Minister of State for African Affairs has also addressed Somaliland’s parliament and Somaliland’s president has met with the UK Prime Minister in Downing Street.²²⁴ Somaliland officials have also attended ministerial level meetings²²⁵ with the UK Government.

The UK’s policy is to “support international efforts to develop peaceful and sustainable democracy in Somaliland” and encourage negotiations with the Somali Republic’s government.²²⁶ To this end the British government has played a major part in promoting talks hosting, separately, the foreign ministers of Somalia and Somaliland.²²⁷ The mixed nature of the approach of Somaliland’s former colonial power in itself adds to the lack of certainty of the status given to the self-determination exercised in Somaliland and the concerns of balkanisation that may arise from the potential recognition of Somaliland independence.

²¹⁷ Eggers (n 7) 214.

²¹⁸ Poore (n 1) 121.

²¹⁹ Poore (n 1) 121.

²²⁰ Arieff (n 9) 70.

²²¹ Ibid.

²²² As discussed at chapter 1.3.1.

²²³ MA Egge, ‘Hargeisa district elections results at last’ (*Somaliland Press*, 15 December 2012) <<http://somalilandpress.com/somaliland-hargeisa-district-elections-results-at-last-38659>> accessed 21 June 2016.

²²⁴ Nina Caspersen, ‘Degrees of legitimacy: Ensuring internal and external support in the absence of recognition’ (2015) 66 *Geoforum* 184, 187; Ibid.

²²⁵ Arieff (n 9) 73; Eggers (n 7) 213.

²²⁶ Arieff (n 9) 70.

²²⁷ Yusef M Hasan, ‘Somaliland: Somalia PM Informs of Imminent start of Talks’ (*Somaliland Sun*, 31 December 2012) <www.somalilandsun.com/somaliland-somalia-pm-informs-of-imminent-start-of-talks/> accessed 22 March 2015.

4.7.3 The United States

Like the UK, the US regards recognition of Somaliland as a matter for the AU.²²⁸ US reluctance to recognise Somaliland is also increased by the lack of Arab support for recognition.²²⁹ The US explicitly supports a one state solution, the US along with Italy has been paying the salaries of the Somali Republic's armed forces²³⁰ and the government of the Somali Republic's largest bilateral donor is the US.²³¹ However, the US has also developed a 'dual-track' process²³² for supporting the central government in Mogadishu in addition to authorities in Somaliland, Puntland, and other emerging entities in Somalia.²³³ The dual track of the US is to engage with the government of the Somali Republic and the Somaliland authority separately but not to recognise Somaliland as an independent state. As such, although the US did not officially recognise any of the transitional authorities in Mogadishu as the sovereign government of Somalia²³⁴ it did recognise the government of the Somali Republic as the national government of Somalia in January 2013.

The priorities of US engagement with Somalia have shifted from targeting high value Al Qaeda figures in East Africa to degrading Al Shabab and shoring up public authority in Somalia.²³⁵ To this end the U.S. sees a "unified Somalia" in which the federal government of the Somali Republic, that is stable enough to help facilitate a negotiated political settlement throughout Somalia as being in the US best interests.²³⁶ In contradiction to this the US also wants to preserve the strengths of the regional administrations while reconciling them with Somalia's national identity which includes engaging with a wide range of political actors in Somalia²³⁷ in an effort to maintain any stability that can counter sources of extremism in the area. Through this policy the US has continued to fund humanitarian assistance and civil

²²⁸ Eggers (n 7) 214.

²²⁹ Poore (n 1) 121.

²³⁰ Heritage Institute for Policy Studies, 'Reviewing the Somali Government's First 100 days' (Policy Briefing, 2013)

<http://gallery.mailchimp.com/19679cf7708fe9b4e9f72c846/files/HIPS_Briefing_002_2013_ENGLISH.pdf> accessed 12 November 2016.

²³¹ Verini (n 157).

²³² Chitiyo (n 107) 6.

²³³ David Shinn, 'US "Dual Track" Policy in Somalia' (15 October 2013)

<<http://davidshinn.blogspot.co.uk/2013/10/us-dual-track-policy-in-somalia.html>> accessed 26 October 2015.

²³⁴ Pham (n 23) 7.

²³⁵ Verini (n 157).

²³⁶ Arman Abukar, 'American-Somali relations: What's in the words?' (*Foreign Policy Association*, 13 June 2014) <<http://foreignpolicyblogs.com/2014/06/13/american-somali-relations-whats-in-the-words/>> accessed 26 October 2015.

²³⁷ Ibid.

society programs in Somaliland and Puntland, with an objective of improving regional collaboration towards federalism.²³⁸

The US dual track policy is symptomatic of the confused basis of engagement and thus legal status accorded to Somaliland by the international community. By unilaterally engaging all clan-based entities, proxy militias loyal to Ethiopia and Kenya, Puntland and Somaliland, U.S. policy has appeared to inadvertently endorse perpetual division and conflict.²³⁹ This in turn means the external status of different Somali territorial entities is unclear. The US approach to Somalia also demonstrates the trumping of a consistent approach to Somaliland regarding the status of its exercise of self-determination under international law, for those of political, security, economic or other concerns of states.

4.8 International Financial Institutions

The International Financial Institutions such as the World Trade Organisation (“WTO”), the World Bank and the International Monetary Fund (“IMF”) are important to Somaliland’s status because they are important to accessing international resources for development in Somaliland that include resources for systems and structures to protect human rights. The International Financial Institutions may also be an indicator of the possibilities for Somaliland’s international engagement as an unrecognised state because territorial entities that are not states are able to engage with the WTO on the basis, not of statehood but on the basis of having a separate customs boundary such as Taiwan. Engagement with the WTO on the basis of being a separate customs entity does however require the permission of the parent state to allow external self-determination in this area and Somaliland does not have that.

The WTO, World Bank, IMF and African Development Bank all engage with the government of the Somali Republic as a member.²⁴⁰ However, for twenty years, the conflict, instability and absence of an effective government in Mogadishu has meant that the World Bank, the IMF and the African Development Bank have been unable to provide any tangible, sustained support in Somalia.²⁴¹ In recent years the President of the Somali Republic has held

²³⁸ Shinn (n 233).

²³⁹ Arman Abukar, ‘Former Somali special envoy to the US Abukar Arman: Getting US-Somali relations on the right track’ (*The Hill*, 14 October 2013) <<http://thehill.com/policy/international/328191-former-somali-special-envoy-to-the-us-abukar-arman-getting-us-somali-relations-on-the-right-track>> accessed 2 April 2016.

²⁴⁰ IMF, ‘Press Release: IMF Recognizes the Federal Government of Somalia After 22-year Interval’ (Press Release No 13/119, 12 April 2013) <www.imf.org/external/np/sec/pr/2013/pr13119.htm> accessed 8 July 2016.

²⁴¹ Matt Baugh, ‘Somalia and the G8: Push to start’ (*Foreign & Commonwealth Office*, 10 April 2013) <<http://blogs.fco.gov.uk/mattbaugh/2013/04/10/somalia-and-the-g8-push-to-start/>> accessed 19 August 2017.

talks with high ranking officials from the World Bank in Mogadishu in order to urge the bank to help with a recovery in the Somali Republic from decades of conflict. Recognition of the federal government of the Somali Republic means the IMF could offer technical assistance and policy advice and could also mean the Somali Republic's qualification for official development grants from the World Bank, IMF, and USAID,²⁴² however, the Somali Republic is currently ineligible to borrow from the IMF due to its outstanding arrears.²⁴³ The African Development Bank has also engaged with governments of the Somali Republic in relation to economic and institutional development.²⁴⁴

Under the New Deal the Somali Development and Reconstruction Facility (SDRF) has brought together several funds to be administered by the UN, the World Bank, and the African Development Bank. The separate funds will agree operating procedures with the government of the Somali Republic and development partners to ensure compatibility with the principles of the SDRF.²⁴⁵ The government of the Somali Republic, UN and the donor community including the EU, UK, Sweden, Norway, Denmark and Italy have pledged to the SDRF under the New Deal Framework. The SDRF will not be the only mechanism to be used under the agreement as "the SDRF will initially run in parallel to on-going activities funds and programmes".²⁴⁶ However, "Over time, financing may increasingly transition towards the SDRF framework as a preferred channel".²⁴⁷

The World Bank has engaged with Somaliland through the Somaliland Business Fund through which grants are provided to the private sector²⁴⁸ as part of the World Bank's Private Sector Re-Engagement Project Phase II that supports the investment climate, including the development of Berbera port and financial sector in Somaliland. The program is financed by the Danish International Development Agency, the (UK) Department for International Development, and the World Bank State and Peace-building Fund.²⁴⁹ Although, this engagement is recognition of Somaliland's autonomy from the Somali Republic, the World

²⁴² Benjamin Powell, 'U.S. Recognition Doesn't Bode Well for Somalia' (*Huffington Post*, 25 March 2013) <www.huffingtonpost.com/ben-powell/us-recognition-doesnt-bod_b_2536655.html> accessed 12 August 2017.

²⁴³ IMF (n 240).

²⁴⁴ All Africa, 'AfDB Re-engages with the Federal Government of Somalia' (25 February 2013) <www.afdb.org/en/news-and-events/afdb-re-engages-with-the-federal-government-of-somalia-11527> accessed 14 August 2017.

²⁴⁵ The Somali Compact (n 41) 17.

²⁴⁶ The Somali Compact (n 41) 17.

²⁴⁷ The Somali Compact (n 41) 17.

²⁴⁸ Yumoha Pasha, 'Somaliland SPSDF Accuses the SBF of Corrupt Practices' (*Somaliland Sun*, 29 March 2013) <www.somalilandsun.com/somaliland-spsdf-accuses-the-sbf-of-corrupt-practices/> accessed 16 April 2016.

²⁴⁹ Powell (n 242).

Bank is engaging with the private sector in Somaliland and not the Somaliland authority so inferences of a separate international legal personality of Somaliland are more difficult to make.

The overlap of donors and their approach of both engaging with a government of the Somali Republic recognised as the government of Somalia and thus the de jure government of Somaliland and engagement with Somaliland as a separate territorial entity, again shows confusion as to the international community's approach to the self-determination Somaliland.

4.9 The international community and negotiations between Somalia and Somaliland

The international community has tried to facilitate discussions between Somaliland and the Somali Republic. In April 2011, the UN-sponsored high-level consultative meeting in Nairobi was a meeting attended by the Speaker of the Transitional Somali Federal Parliament, the Presidents of Puntland and Galmudug regions and representatives of key partners, including the AU, EU, League of Arab States, Organisation of the Islamic Conference (OIC), Ethiopia, Kenya, Sudan and Uganda.²⁵⁰ The purpose of the meeting was to reinvigorate dialogue, consultation and cooperation among Somali institutions and other stakeholders, with a view to agreeing a way forward to end the transition and determine post-transition arrangements and respective responsibilities of all stakeholders. The President and the Cabinet of the Somali Republic attempted to cancel the consultation and refused to attend on the basis that it could lead to further the factionalisation of Somalia.²⁵¹

There were further consultative constitutional conferences in Garowe in Puntland, known simply as Garowe I & II.²⁵² The 1st National Consultative Constitutional Conference or Garowe I was in December 2011 and Somaliland was not invited.²⁵³ There were further international efforts to move the Road Map forward at a meeting of IGAD in January 2012 and a meeting of the International Contact Group on Somalia in Djibouti in February 2012.²⁵⁴ At the second Garowe conference, in February 2012, the "Garowe II Principles"²⁵⁵ were agreed. These resulted in consensus from those attending on a federal structure of

²⁵⁰ Report of the Chairperson of the Commission on the Situation in Somalia (Peace and Security Council, 273th Meeting, 21 April 2011) 7 <<https://reliefweb.int/report/somalia/report-chairperson-commission-situation-somalia-0>> accessed 6 May 2015.

²⁵¹ Ibid.

²⁵² HRC (n 36) 6.

²⁵³ AMISOM, 'Somalia's New Beginning' (2012) 7 ANISOM Magazine, 9.

²⁵⁴ HRC (n 36) 15.

²⁵⁵ AMISOM (n 253) 9.

Somalia.²⁵⁶ The Garoowe II Principles were amended by the Galkayo Amendment on 29 March 2012 when signatories of the Garoowe II Principles and the earlier Mogadishu Road Map met and agreed to decrease the number of Constituent Assembly Members.²⁵⁷

Since the Garowe II conference international efforts to take the Road Map forward have continued. On 23 February 2012 the London Conference on Somalia,²⁵⁸ which was attended by 40 heads of state, was, although not stated publicly, the start of a multi-lateral political process.²⁵⁹ The process has had baggage from other state building processes such as in Iraq, Afghanistan, Bosnia and Somalia 1992-95 and many in Somalia regard such a multi-lateral process as de facto partition of Somalia by regional and global players.²⁶⁰ The London Conference led to the Istanbul Conference on Somalia on 31 May 2012 –1 June 2012²⁶¹ in which Somali representatives took part. This was preceded by a gathering of civil society organisations from 26 to 31 May 2012 in Istanbul,²⁶² to which Somaliland organisations were also invited²⁶³ and was preceded by a meeting of the International Contact Group on Somalia in Dubai from 27-28 June 2012 the aim of which was to take the Road Map forward by bringing groups together to resolve disagreements.²⁶⁴ These constitutional arrangements and discussions focussed on the peaceful stability of Somalia rather than effectiveness of governance such as the impact of constitutional arrangements on human rights protection.

The Somali Republic's Constituent Assembly was inaugurated in Mogadishu on 25 July 2012²⁶⁵ to adopt a provisional constitution.²⁶⁶ Eighteen Somali regions participated in the Constituent Assembly but Somaliland was not among them.²⁶⁷ This ignoring of Somaliland could be viewed as an example of a passive acceptance by the parent state of Somaliland's exercise of external self-determination. On 20 August 2012 the Somali Republic's Parliament was inaugurated.²⁶⁸ In support of a Somali Republic's Constitution of Somalia the UN Development Programme operates the Somalia Constitution Making Support Project which is

²⁵⁶ HRC (n 36) 6.

²⁵⁷ AMISOM (n 253) 9.

²⁵⁸ HRC (n 36) 15.

²⁵⁹ Chitiyo (n 107) 7.

²⁶⁰ Ibid.

²⁶¹ HRC (n 36) 15.

²⁶² International Crisis Group (n 199) 5.

²⁶³ Ibid 14.

²⁶⁴ HRC (n 36) 15.

²⁶⁵ Ibid 6.

²⁶⁶ AMISOM (n 253) 9.

²⁶⁷ HRC (n 36) 6.

²⁶⁸ AMISOM (n 253) 9.

working towards development of a Somali National Federal Constitution.²⁶⁹ The National Stabilization Plan adopted by the Somali Republic in February 2013 “includes a roadmap on the establishment of local administrations across the country”.²⁷⁰ However, it is also unclear whether ‘local administrations’ includes those in Somaliland and Puntland and thus adds to the lack of clarity as to what the Somali Republic’s view is of the form the exercise of self-determination by Somaliland takes.

There have been further international conferences in relation to Somalia. In May 2013 there was a conference in London but the conference did not reflect Somaliland’s aims and goals, as such, the Somaliland authority rejected an invitation to attend. In September 2013 there was a conference in Brussels which “encouraged an inclusive national dialogue between the Federal Government of Somalia and existing and emerging administrations”²⁷¹ with a view that it would establish “local and regional authorities and federal units...as building blocks for a viable, united, sovereign and stable Somali state”.²⁷² This demonstrates a general international approach to engagement with Somaliland on the basis that it is a de jure part of a state of Somalia. The conference went on to confirm that this commitment to the Somali Republic was on the basis of federalism and that the Somali Compact and the promotion of “dialogue and reconciliation”²⁷³ and “the strengthening of relations and cooperation between the Federal Government and the regions”²⁷⁴ was also on a federalist basis. However, at a conference in January 2014 in Istanbul a commitment was made in the Istanbul II communique to dialogue “between the Government of Somaliland and the Federal Government of Somalia”²⁷⁵ which suggests an equal status between the Somali Republic and Somaliland. This equality of status is also highlighted by the lack of a similar status given at the talks to Puntland, which claims autonomy within a federal Somalia but not independence like Somaliland.²⁷⁶

²⁶⁹ OHCHR, ‘UNDP inputs to the Universal Periodic Review – Somalia’ para 5 <http://lib.ohchr.org/HRBodies/UPR/Documents/Session11/SO/UNDP_UNDevelopmentProgramme-eng.pdf> accessed 16 March 2017.

²⁷⁰ Ibid.

²⁷¹ <http://eeas.europa.eu/archives/new-deal-for-somalia-conference/sites/default/files/somalia_new_deal_conference_communique.pdf> accessed 16 November 2016; <http://www.somalieconomicforum.org/news/4/COMMUNIQUE-A-NEW-DEAL-FOR-SOMALIA-BRUSSELS-16-SEPTEMBER-2013.html>> accessed 25 July 2020

²⁷² Ibid

²⁷³ Ibid

²⁷⁴ Ibid

²⁷⁵ ‘Istanbul II Communique - Somaliland and Somalia talks’ (2014) <www.somtribune.com/wp-content/uploads/2017/12/Istanbul-II-Communique.pdf> accessed 12 June 2015.

²⁷⁶ Pegg (n 152) 198.

Subsequent talks since the Istanbul conference with the UN, EU and IGAD have also focussed on building a federal Somalia and the implementation of a constitution for a federal Somalia²⁷⁷ for example in 2019 the UN participated in a technical working group to develop a possible political settlement in Somalia which focussed on the Provisional Federal Constitution.²⁷⁸ The focus of these talks reflects a general approach of the UN but with inconsistencies in its engagement regarding human rights.²⁷⁹ EU engagement in the talks contrasts with EU direct engagement in Somaliland, including investments with the Somaliland authority but reflects the different views amongst the individual members of the EU. IGAD's participation in the talks is consistent with the organisations approach to engagement but not the engagement of its individual members.²⁸⁰ As such, international efforts to facilitate dialogue between the Somaliland authority and the government of the Somali Republic and the basis upon which the international community has engaged with Somaliland and the Somali Republic has been confusing. Despite this the efforts by sections of the international community to encourage discussion between the Somaliland authority and the government of the Somali Republic to reach an agreement do suggest an openness to Somaliland exercising a form of self-determination from a broader range of potential arrangements for exercise of self-determination than the two ends of the spectrum of a federal Somalia and an independent state of Somaliland which the two parties represent.

4.9.1 Somaliland's status and negotiations

Despite the confused approach by the international community to discussions between the Somali Republic and Somaliland, such negotiations do impact engagement that the international community has with and thus the status given to Somaliland because what is agreed between the Somali Republic and Somaliland the international community accepts. This is because a strategy for increased engagement by Somaliland with the international community on the basis of external self-determination, which appears to be effective, is to retain links with the parent state. As the parent state the Somali Republic can and does act as a gate keeper to formal engagement by Somaliland with the international community with engagement limited by what the Somali Republic, as the parent state accepts or at least does

²⁷⁷ UN News, 'UN and international partners call for resolution of Somali political crisis' (27 May 2014) <www.un.org/apps/news/story.asp?NewsID=47899#.VQhOvI7kFYg> accessed 21 July 2016.

²⁷⁸ UNSC, 'Report of the Secretary-General on Somalia' (20 August 2019) UN Doc S/2019/661 para 24.

²⁷⁹ As discussed in chapter 6.

²⁸⁰ As discussed above at chapter 4.5.

not openly oppose.²⁸¹ However, this could be considered to conflict with Somaliland's efforts to gain recognised statehood.

An example of this approach is Taiwan which has not declared independence and has membership of international organisations, such as the Asian Development Bank and observer status in the World Health Assembly²⁸² on the basis of accepting the name 'Chinese Taipei'²⁸³ which is acceptable to the People's Republic of China, which is regarded as the parent state. The problem for Taiwan in doing this is that any international engagement is increasingly dependent on Chinese approval due to the increased recognition this gives to Chinese claims of sovereignty over Taiwan. A similar example is the unrecognised self-proclaimed State of Transnistria which is also able to trade, due to the parent state Moldova engaging with Transnistria with the consequence being Transnistria's engagement with the international community depending on Moldova's approval.²⁸⁴ As such, Somaliland's links with the Somali Republic could be viewed as affirming its status as a de jure part of the state of Somalia.

An alternative to the dampening effect on the recognised exercise of external self-determination resulting from the maintenance of links with the parent state is the example of Cyprus.²⁸⁵ Cyprus as the parent state of the de facto state of the Turkish Republic of Northern Cyprus ("TRNC") did not actively object²⁸⁶ to the TRNC's observer status in the OIC.²⁸⁷ However, this led to the TRNC's status being raised from 'community' to 'state' in 2004, which could be argued to be a degree of de facto recognition of the TRNC's status.²⁸⁸ In contradistinction to maintaining relations with the parent state is Azerbaijan's rejection of any kind of engagement with Nagorno Karabakh. As a result, Nagorno Karabakh "faces almost complete international isolation with its only link with the outside world, and trade only possible through its patron state Armenia".²⁸⁹

²⁸¹ Caspersen (n 224) 189.

²⁸² UNPO News (Issue 1, 9 February 2009) <https://unpo.org/images/unpo_news_2009_issue_1.pdf> accessed 12 August 2016.

²⁸³ UNPO News (Volume 2, Issue 1, 7 July 2008)

<https://unpo.org/images/unpo_news_vol_%202_issue_1.pdf> accessed 12 August 2016.

²⁸⁴ Caspersen (n 224) 189.

²⁸⁵ See also the discussion chapter 3.

²⁸⁶ Caspersen (n 224) 189.

²⁸⁷ Caspersen (n 224) 187.

²⁸⁸ International Crisis Group, 'Cyprus: Reversing the Drift to Partition' (Europe Report No 190, 10 January 2008) <www.crisisgroup.org/europe-central-asia/western-europemediterranean/cyprus/cyprus-reversing-drift-partition> accessed 4 November 2017.

²⁸⁹ Caspersen (n 224) 189.

Alternatively, the “Ethiopian model” or “the Meles formula” variant of limited acceptance “seeks to reassure aid agencies, investors and outside governments by proactively removing the existing sovereign state’s objections to contacts with the de facto entity”²⁹⁰ without impacting on or determining the course of future events. This has the advantage of limited acceptance without angering the recognised sovereign state. Few governments of sovereign states, such as the government of the Somali Republic, are willing to allow or implement such a model²⁹¹ due to the political and emotional sensibilities discussed.

Considering the important role a parent state can play in the status accorded to a territorial entity by the international community, Somaliland finds itself at an impasse because it has lacked an effective parent state from which to apply for secession.²⁹² Neither is there sufficient economic incentive for international partners to cooperate with Somaliland to the degree²⁹³ to which they have with a de facto state such as Taiwan. This has a knock-on effect in relation to engagement on all issues including human rights protection in Somaliland. Somaliland has therefore had no alternative but to unilaterally declare of independence.²⁹⁴

4.10 Conclusion

The stability of the authorities in Somaliland and the control of Somaliland territory in comparison to the lack of capacity of the government of the Somali Republic has meant that Somaliland has engaged in state-like activities with the international community that entail the exercise of a degree of external self-determination. This de facto status has been acknowledged by international organisations such as the UN, AU and individual states through their engagement with the Somaliland authority. However, in contradiction to this engagement the official position of all these international actors is that Somaliland is a de jure part of Somalia under the government of the Somali Republic in which no exercise of external self-determination is recognised.

International processes (the Somali Compact and the Somaliland Arrangement) through which much of the international community has engaged in Somalia has been confused as to the basis on which engagement with the Somaliland authorities is to be conducted. The processes have both recognised a high level of self-determination exercised by Somaliland,

²⁹⁰ International Crisis Group (n 10) 8.

²⁹¹ Ibid.

²⁹² Eggers (n 7) 217.

²⁹³ Pegg (n 3) 9-11.

²⁹⁴ Eggers (n 7) 217.

with the acknowledgement of many of its governing responsibilities. However, the processes have also been consistent in making a point of maintaining that the territorial integrity²⁹⁵ of the Somali Republic is that of the territory of Somalia as claimed by the Somali Republic. The confusion as to the international status of Somaliland is further illustrated by the international community's engagement with Puntland, as unlike Somaliland, Puntland is not claiming statehood. However, Puntland has been engaged with by parts of the international community on a similar basis as the international community's engagement with Somaliland.

Despite the confusion regarding Somaliland's status, Somaliland has been able to engage with the international community in its own right with international agreements reached being a clear sign of de facto recognition of Somaliland's international personality.²⁹⁶ This chapter demonstrates it is the political concerns and vested interests of individual states and international actors such as security, economic or political concerns and diplomatic caution that are the dominant influence in the status afforded to Somaliland. The combination of acknowledgement of Somaliland's successful control of its territory and the individual concerns of the international community has resulted in confusion as to Somaliland's international status and the subsequent engagement with the international human rights system. This is because it has been shown that engagement with Somaliland's regional neighbours is important to addressing many of the issues preventing the international community from furthering the exercise of external self-determination in Somaliland.

Negotiations between Somaliland and the Somali Republic are not helped by the confused status of Somaliland. This is because Somaliland does not want to lose any advantages to the exercise of self-determination in Somaliland and the current international engagement that arise from the international community's acknowledgement of Somaliland's role as a de facto state. Whereas, negotiations pursued by the Somali Republic are with the international community's support of a federal Somalia and without acknowledgement of Somaliland's current exercise of responsibilities associated with the exercise of external self-determination.

The inconsistent engagement with Somaliland by the international community and thus the unclear legal status that Somaliland can claim to exercise means that it is difficult to identify a measure for Somaliland's current exercise of self-determination, against which different constitutional arrangements for the exercise of self-determination by Somaliland and how

²⁹⁵ As discussed at chapter 3.6.3.

²⁹⁶ Vines (n 2) 6.

they may impact Somaliland's engagement with the international human rights system can be assessed. The lack of a legal status of Somaliland's current exercise of self-determination also means that reaching an agreement between the government of the Somali Republic and the Somaliland authority, to a constitutional arrangement that allows Somaliland to exercise a form of self-determination that enables the international human rights system to engage in Somaliland separately from the Somali Republic, will also be affected. This is because although engagement as a de facto state is limited, Somaliland does not want to agree to a constitutional arrangement with a level of recognition that would reduce its ability to engage with the international human rights system in its own right.

Chapter 5

International Human Rights Obligations and Responsibilities in Somaliland

5.1 Introduction

This chapter concerns the international human rights obligations which apply in Somaliland and the responsibility for protecting them. The obligations under international human rights treaties that apply to Somalia cannot be implemented by the government of the Somali Republic, as the recognised state of Somalia, as it does not have control in Somaliland, and the international human rights treaty bodies cannot engage with the Somaliland authority, which does have control in Somaliland, regarding those obligations as the Somaliland authority is not bound by them.

Somaliland as a de facto state/non-state actor may subject itself to an international legal regulatory system by expressly accepting its authority through a unilateral declaration.¹ Violations of international human rights law by a non-state actor such as the Somaliland authority “attract state responsibility if elements of governmental authority are exercised in the absence or default of official authorities and in circumstances of a power vacuum in which the assumption of de facto authority appears necessary”.² This suggests that 'states' obligations are triggered by the exercise of effective territorial control, reflecting the notion that power comes with responsibility.³ De facto states that result from the assumption of state authority can exist above and below state level but “[r]ejection of state authority must be accompanied by the establishment of a new effective power that is, by its extent and degree comparable to state power”.⁴ “In addition the entity must be minimally self-sufficient or at least aspire to become so”,⁵ so there must be legal personality as understood by state-centred public international law.⁶ Therefore, for reasons of effectiveness, public international law can

¹ Anthony Cullen and Steven Wheatley, ‘The Human Rights of Individuals in De Facto Regimes under the European Convention on Human Rights’ (2013) 13(4) Human Rights Law Review 691, 727.

² HRC, ‘Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin’ (21 January 2010) UN Doc A/HRC/13/21/Add.2, 12.

³ *Al-Skeini v United Kingdom* App no 55721/07 (ECtHR, 7 July 2011).

⁴ Rudolf Beate, ‘Governance Without Government? – Non-State Actors and International Law’ (APSA 2009 Toronto Meeting Paper, 13 August 2009) 135 <<https://ssrn.com/abstract=1449182>> accessed 16 May 2017.

⁵ *Ibid.*

⁶ *Ibid.*

give de facto states a limited legal personality with the capacity to sign treaties “to fulfil the need of the international community”.⁷

As a de facto state, Somaliland may reference its acceptance of international human rights standards in its domestic constitutional framework or manifest acceptance in its conduct.⁸ However, although a de facto state can make a unilateral declaration that a human rights treaty is applicable, the de facto state’s authority cannot be held to account under the treaty when this is done.⁹ The consequence of this is Somaliland “is effectively in political limbo as no outside government will interact with it on a formal level”.¹⁰ Somalilanders are therefore effectively bound to the instability of Somalia¹¹ and the governance of the Somaliland authority, as individual complaints mechanisms do not work on the Somaliland authority as they are for individuals claiming to be victims of State action. Attribution of the act is only possible where the State has ceded power or territory or where the de facto state authority is an agent of necessity.¹²

In order to explore the relevance of this issue to the overall thesis I will discuss how human rights obligations under treaties the government of the Somali Republic has ratified and customary international law, apply in Somaliland. These obligations and responsibility for them will be discussed in the context of Somaliland being a de facto state, as a de jure part of Somalia and the effect of Somaliland’s claim to statehood and international engagement with Somaliland in relation to human rights.

The chapter is important in addressing what the impact engagement by the international human rights system in Somaliland and/or the lack of it, may be. This is due to the lack of clarity as to with which authority responsibility for the protection of human rights in Somaliland lies. This coincides with the lack of clarity as to the status accorded to Somaliland by international actors and the inconsistency of engagement with Somaliland¹³ which links to consideration of the international human rights obligations and subsequent protections that could be advanced in Somaliland if a basis for the exercise of self-determination in Somaliland were agreed between the Somaliland authority and the government of the Somali

⁷ Ibid 135-136.

⁸ Cullen (n 1) 727.

⁹ Beate (n 4) 137.

¹⁰ A Kreuter, ‘Self-determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession’ (2010) 19 Minnesota Journal of International Law 363, 364.

¹¹ Ibid 393.

¹² Beate (n 4) 29-30.

¹³ As discussed in chapter 4.

Republic. This relates to the idea that an agreement with the Somali Republic government is required in order for the Somaliland authority to exercise a form of self-determination that would enable the international human rights system to engage directly with Somaliland authorities and other actors in Somaliland, in relation to the international human rights standards applicable within Somaliland.

5.2 De facto state authorities and customary international law

It can be said that “Since the emergence of the international human rights regime”¹⁴ the structure of the international human rights system has evolved¹⁵ so that the international legal structure, under which International human rights law imposes obligations on states only,¹⁶ “is neither self-evident nor immutable”.¹⁷ Therefore, although it is the government of the Somali Republic, as the government of the recognised state of Somalia, that has responsibilities under the international treaties the state of Somalia has ratified, it could be argued that other actors could also be bound by international human rights law.¹⁸

There is a mixed view as to how or whether obligations under treaties such as those of Somalia can apply to a de facto state authority such as the Somaliland authority. Part of the dispute arises over whether the necessary exercise of control that trigger human rights obligations is that of territorial, or control over a person.¹⁹ Although, there is a growing opinion that any control, whether or not it is territorial,²⁰ may give rise to obligations because in situations such as that in Somalia life continues despite a breakdown of the state government control as other actors appear to be in de facto control.²¹ However, those other actors do not enjoy any status in international law and are therefore not controlled if they exploit the population.²² Therefore, a legal system needs to take into account social realities or it may lose the moral basis for its claim to be respected.²³ It is this realization that “has led to

¹⁴ Yael Ronen, ‘Human Rights Obligations of Territorial Non-State Actors’ (2013) 46 Cornell International Law Journal 21, 22.

¹⁵ Ibid.

¹⁶ Cullen (n 1) 692.

¹⁷ Ronen (n 14) 22.

¹⁸ Cedric Ryngaert and Math Noortmann, ‘New Actors in Global Governance and International Human Rights Law’ (2010) 4(1) Human Rights & International Legal Discourse 5, 6.

¹⁹ Ronen (n 14) 25-26.

²⁰ *Al-Skeini* at 57-59.

²¹ Olivier Michèle, ‘Exploring Approaches to Accommodating Non-State Actors Within Traditional International Law’ (2010) 4 Human Rights and International Discourse 15, 27.

²² Ibid.

²³ Beate (n 4) 128.

the development of new bodies of law establishing the accountability of non-state actors for acts that essentially constitute violations of human rights”.²⁴

Part of the dispute as to the responsibilities of a de facto state is due to differences in the definition of de facto states. Although this dispute does not arise in relation to participation in treaties, because no matter the view of whether a political entity is considered to have responsibilities under general and customary international law, other states will not conclude treaties or participate in treaty regimes with them.²⁵ Treaty rights in de facto systems can be highlighted, as the ECtHR did when it was prepared to accept that rights under the ECHR can be realised through the institutions of the de facto state authority of the Turkish Republic of Northern Cyprus.²⁶ It is unclear if such responsibilities can be impugned on the basis of the de facto state authority being a non-state actor responsible for territory with human rights responsibilities opposable to it or on the basis of the responsibilities of the state the de facto state authority claims to be.²⁷

As with issues regarding the status given by, and engagement between, the international community and Somaliland, the political interests of other states play a part in the international human rights standards for which Somaliland is held to be responsible. This is because a reason for the reluctance to accept authorities exercising the right to self-determination of Peoples, such as the Somaliland authority are bound by international human rights obligations is the potential impact on its claim for recognition as a state.²⁸ Therefore, actors within the international community may consider whether acknowledging human rights responsibilities could contribute to the weakening of Somalia as a state, as such, the approach taken maybe to acknowledge the Somaliland authority’s responsibility for those obligations which would not “entail a permanent replacement” of Somalia as the state of which Somaliland is a de jure part.²⁹

5.3 Human rights responsibilities and Somaliland governance

The non-recognition of Somaliland’s claim to be a sovereign independent state means it cannot be party to international human rights treaties or a member of the UN (which has

²⁴ Ronen (n 14) 23.

²⁵ Cullen (n 1) 697.

²⁶ Cullen (n 1) 714.

²⁷ Ibid.

²⁸ Beate (n 4) 129.

²⁹ Beate (n 4) 128.

adopted certain human rights standards).³⁰ As it is not the government of a recognised state, the Somaliland authority, therefore, does not have any obligations under international human right law. The international human rights obligations that do apply in Somaliland are those that arise from the international human rights treaties which the state of Somalia has ratified, of which Somaliland is considered a de jure part. However, the government of the Somali Republic in Mogadishu which is the government of the state of Somalia does not control the territory of Somaliland. The Somaliland authority could have responsibility as part of the state apparatus of the state of Somalia under the government of the Somali Republic. This is because sub-state entity's, including provinces or federal units such as Puntland or supranational actors, do not create conceptual problems to responsibility for international human rights obligations as they deal with instances where state sovereignty has been conferred or transferred and “do not challenge the confines of state consent”.³¹ However, the status and responsibilities arising from the exercise of self-determination in Somaliland within a Somalia as a state have not been established.

An effect of the factual situation in Somaliland is that although responsibility under human rights treaties lay with the government of the Somali Republic, it is the Somaliland authority that provide governance with greater political stability that controls the territory of Somaliland. As such, it is the Somaliland authority that is in a better position to implement the international human rights obligations applicable in Somaliland. However, as the government of the Somali Republic is the recognised state authority of Somaliland, any benefit to the protection of the human rights under treaties ratified by the State of Somalia that may come from engagement with the international human rights system can only come through the ineffective government of the Somali Republic.

5.4 Human rights responsibilities in Somaliland and governments of the Somali Republic

The international human rights obligations that apply in Somaliland arise from international treaties that governments of the Somali Republic have become party to.³² Somalia is party to over 200 bilateral and multilateral treaties which include treaties on, human rights and other issues relevant to the international human rights system such as refugees, health, educational

³⁰ Human Rights Watch, ‘Hostages to Peace’: Threats to Human Rights and Democracy in Somaliland’ (July 2009) 28 <www.hrw.org/sites/default/files/reports/somaliland0709web.pdf> accessed 4 December 2016.

³¹ Olivier (n 21) 31.

³² See Annex 1 with full list of human right treaties applicable in Somalia.

and cultural matters, the status of women, criminal matters, and the environment.³³ As Somaliland is a de jure part of the territory of Somalia of which the government of the Somali Republic is the recognised government, the obligations of these legally binding treaties apply to Somaliland.³⁴ However, there are problems and opportunities regarding responsibility for protection of the human rights obligations that may arise from the lack of territorial control of the governments of the Somali Republic in Somaliland and the control of Somaliland territory by the Somaliland authority.

Although governments of the Somali Republic have signed and/or ratified human rights treaties,³⁵ they have had no control or authority in the territory of Somaliland since Somaliland declared independence. The governments of the Somali Republic have therefore not implemented in Somaliland any of the human rights treaties they have ratified. As human rights instruments are formulated in terms of the obligations of states there is no treaty law on the international human rights obligations of non-state actors³⁶ exercising a state function. There is therefore a gap in public international law with regard to the control of territory exercised by the Somaliland authorities and other public bodies in Somaliland. Treaty bodies cannot hold the Somaliland authority or other public bodies to account because they are not a signatory to treaties as states. The lack of clarity as to the status afforded them by the Somali Republic³⁷ also means that it is unclear whether the Somaliland authority could be held responsible as part of the state apparatus of the Somali Republic. Individuals are therefore impacted by the status of the authorities exercising power in Somaliland if they seek protection of human rights or wish to hold human rights violators to account, due to the potential lack of remedies available for violations by non-signatories to applicable treaties.

There are not only problems regarding responsibility for human rights but potential developments or improvements to human rights protection as well. The extent of the Somaliland authority's control and its desire for its claims to Somaliland's statehood to be recognised provide an opportunity to advance the protection of those human rights obligations applicable in Somaliland. There are international human rights obligations that the Somaliland authority has stated it would adopt if it exercised a sufficient level of

³³ Chiara Giorgetti, 'Using International Law in Somalia's Post-Conflict Reconstruction' (2014) 53 *Columbia Journal of Transnational Law* 48, 74.

³⁴ HRC, 'National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Somalia' (11 April 2011) UN Doc A/HRC/WG.6/11/SOM/1, 8-45.

³⁵ See Annex 1 with full list of human right treaties applicable in Somalia.

³⁶ Ronen (n 14) 35-36.

³⁷ As discussed at chapter 1 and 3.

recognised self-determination but it is unable to because the governments of the Somali Republic have been the recognised state governments of the territory of Somaliland. Therefore, there is a practical impact that the exercise of self-determination by a Somaliland authority separate from government of the Somali Republic may have. There are potential improvements to human rights protection that could result from an agreed exercise of self-determination that made clear the responsibilities in Somaliland for the implementation of human rights standards applicable in Somalia.

5.5 Human rights responsibilities inferred by Somaliland's status

Legal personality to which de facto states aspire can be demonstrated through interaction with the international community. The international community has interacted with Somaliland authorities for many different purposes and the Somaliland authority has signed agreements in relation to combatting piracy and the use of Berbera Port with states³⁸ (although not in relation to human rights issues) indicating there is some recognition of Somaliland's legal personality. As such, there is evidence of Somaliland having a personality that could potentially assume responsibility for human rights protection.

A state's responsibility for a breach of international law depends on its international obligations³⁹ as a "state is only in breach of an obligation if the state is bound by the obligation at the time the breach occurs".⁴⁰ Conduct of any state organ will be considered an act under international law that could be a breach.⁴¹ The scope of state responsibility is therefore broad as the definition of an 'organ' of the state includes any person or entity accorded such status by international law and is "all the individual or collective entities which make up the organisation of the State and act on its behalf".⁴² This includes de jure and de facto organs for example in the ICJ judgement *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* the Court the ICJ considered whether acts were wrongful state acts by looking at whether they were de facto organs of the respondent state. The circumstance in which responsibility arises is widened further as responsibility also arises from actors with delegated responsibility⁴³ and includes a "person or

³⁸ As elaborated in chapters 4 and 4.5.3.

³⁹ J Crawford and S Olleson, 'The Nature and Forms of International Responsibility' in M Evans (ed) *International Law* (5th edn, Oxford University Press, 2018) 419.

⁴⁰ Ibid 436.

⁴¹ Ibid 426.

⁴² Ibid.

⁴³ Olivier (n 21) 29.

groups acting under the instruction, direction or control of a state”.⁴⁴ Where non-state actors are empowered by and/or act in accordance with a state’s directions or control, effectively replacing the state or the state endorses such actions, the state is internationally responsible for those acts.⁴⁵

Where a state is too weak and non-state actors assume state functions without or against state consent often demonstrating a “capacity to act beyond the control of states”⁴⁶ then “the law of state responsibility and its rules on attribution are of little help”.⁴⁷ Public international law rules on state responsibility would not allow the attribution of the actions of the non-state Somaliland authorities to the state government of the Somali Republic which is too weak either, to stop the non-state Somaliland authority from exercising responsibility for human rights⁴⁸ or reassume the responsibilities of the state that the Somaliland authority is undertaking. Thereby demonstrating again, a gap in the protection of human rights.

There is a problem that arises from the lack of clarity of Somaliland’s status both within Somalia and in relation to the government of the Somali Republic. The government of the Somali Republic does not accept the Somaliland authority’s and other public bodies claim of statehood which would suggest that those bodies are not de facto organs of the government of the Somali Republic. However, the government of the Somali Republic’s acquiescence through its lack of attempted prevention of authorities in Somaliland exercising such a role could be viewed as acknowledgment of their de facto function as state organs in Somaliland. As such Somaliland, as a de facto state seeking recognition of its sovereignty, can enhance its international legal personality through engagement with the international community in relation to the human rights obligations that the Somali Republic should be responsible for as the government of Somalia which is the state of which Somaliland is a de jure part. There are examples of this as The UN Independent Expert on the human rights of Somalia has urged the Somaliland authorities to adhere to the human rights obligations that have been assumed by the Federal Republic of Somalia⁴⁹ and to ensure compliance with its human rights

⁴⁴ Ibid.

⁴⁵ Ronen (n 14) 23.

⁴⁶ Ibid.

⁴⁷ Ryngaert (n 18) 7.

⁴⁸ Ibid.

⁴⁹ HRC, ‘Report of the Independent Expert on the situation of human rights in Somalia’ (19 July 2018) UN Doc A/HRC/39/72 para 72.

obligations, by training the police force, to abide by human rights principles.⁵⁰ This enhancement of Somaliland's legal personality through undertaking such a role arises because it can be inferred from the government of the Somali Republic's acquiescence that it does not consider such international human rights obligations to be its responsibility.

The agency of necessity principle that acts of an insurrectionary movement are not attributable to the state unless the non-state considers itself as exercising power on behalf of the state would also not improve accountability for the protection of human rights in Somaliland. The Somaliland authority is claiming that Somaliland is a sovereign state and, therefore, the Somaliland authority's position is that it exercises power as a government of a state of Somaliland and is not exercising power on behalf of a state of Somalia. The agency of necessity principle may be argued to apply if Somaliland were to exercise self-determination in a way that is short of statehood, through a constitutional arrangement within Somalia.⁵¹ It may also apply to an authority such as that in Puntland which does not claim to exercise power as a sovereign independent state.⁵² This demonstrates again the importance the role which agreement of the Somali Republic, as the parent state, plays in the exercise of self-determination by Somaliland in a way that enables greater engagement with the international human rights system.

5.6 Human rights responsibilities and Somaliland's claims to statehood

Being a subject of international law with international legal personality⁵³ cannot be regarded as an absolute concept as it "can be described as the possession of international rights and duties and the capacity to seek redress for alleged violations and to be held accountable for non-fulfilment of duties"⁵⁴ as well as the ability to participate in the making of international law, participate in international organisations and conclude treaties.⁵⁵ A de facto state such as Somaliland can enjoy a form of international legal personality and "can be held responsible for violations of international law committed in the process of its emergence as a sovereign and independent State, with some form of retroactive allocation of personality and

⁵⁰ HRC, 'Report of the Independent Expert on the situation of human rights in Somalia' (16 September 2019) UN Doc A/HRC/42/62 para 114.

⁵¹ Beate (n 4) 143.

⁵² Ibid.

⁵³ Olivier (n 21) 26.

⁵⁴ Ibid.

⁵⁵ Ibid.

capacity”.⁵⁶ However, international human rights obligations are “by derivation or analogy from the human rights obligations accepted by States”.⁵⁷ State responsibility is therefore still the prime form of international legal personality.⁵⁸ If a rebel group becomes the government they may be responsible for their acts but if they fail to become a government the state against which they have rebelled is not responsible⁵⁹ and “any possibility of collective responsibility for their acts fails with them”.⁶⁰ If the insurgent movement becomes the government of the state then previous actions of that movement, when it was not the government of the state, will fall within the responsibility of the state.⁶¹ This demonstrates that even when non-state actors are claiming to be de facto states that exercise self-determination as a sovereign state there can still be a gap in responsibility for international human rights protection if such a claim is unsuccessful.

Territorial entities seeking statehood and exercising government-like functions over territory⁶² can be considered to automatically acquire international human rights responsibilities.⁶³ If a de facto state or non-state actor wants recognition then it needs to show it effectively takes on the responsibility of human rights obligations by demonstrating responsibility for public functions that a state would be responsible for and the human rights obligations applicable under international law regardless of whether they actually engage in the full scope of public functions. This is because “if territorial non-state actors claim to be states, or claim a right to become states by virtue of the right to self-determination, they cannot in good faith reject the applicability of norms that attach to statehood”.⁶⁴ The Somaliland authority would therefore need to take on the responsibility to respect international human rights obligations if it wants Somaliland to secede from Somalia as a recognised sovereign State. The Somaliland authority has demonstrated a preparedness to take on such responsibilities as it has stated it is “responsible for complying with universal norms of human rights in customary law as reflected in the Universal Declaration of Human

⁵⁶ Cullen (n 1) 724.

⁵⁷ Crawford (n 39) 416.

⁵⁸ Ibid.

⁵⁹ Draft Articles on Responsibility of States for Internationally Wrongful Acts - Article 10 Commentary in Yearbook of the International Law Commission (Vol II, Part Two, 2001) 116-120.

⁶⁰ Crawford (n 39) 418.

⁶¹ Ibid 427-428.

⁶² Ronen (n 14) 46.

⁶³ Cullen (n 1) 723.

⁶⁴ Ronen (n 14) 31.

Rights”.⁶⁵ The Somaliland Constitution also declares that it will uphold all of the international treaties that Somalia has ratified subject to future amendments by the Somaliland government.⁶⁶

5.6.1 Responsibilities inferred by Somaliland

The Somaliland authority has tried to infer Somaliland has an international legal personality by indicating it has assumed responsibility for human rights in pursuit of legitimising claims to Somaliland statehood. The desire for an international legal personality could be used to improve accountability for human rights for the population of Somaliland because unlike states, de facto states such as Somaliland that are seeking formal recognition of their status are susceptible to political pressure⁶⁷ as “compliance with human rights law becomes an increasingly visible criterion for recognition of international status”.⁶⁸ The Badinter Commission⁶⁹ (“the Commission”) established by the EU to examine the EU’s approach to recognition of states in the wake of the breakup of the Former Yugoslavia,⁷⁰ addressed the idea of morality and sovereign statehood. The Commission gave a series of opinions which provided guidelines⁷¹ that made recognition dependent on certain minimum standards including inter alia respect for the UN Charter and other international instruments particularly those in relation to the rule of law, democracy and human rights.⁷² For example there was a policy towards Kosovo of ‘standards before status’ which “linked achievements in institution-building and political reforms to the goal of independence”.⁷³ This means political entities seeking international recognition as a state can be assessed in part on their human

⁶⁵ Amnesty International, ‘Human Rights Challenges: Somaliland Facing Elections’ (2009) 15 <www.refworld.org/pdfid/49c897d42.pdf> accessed 16 December 2015.

⁶⁶ The Constitution of the Republic of Somaliland <www.somalilandlaw.com/somaliland_constitution.htm#Heading> accessed 14 November 2015.

⁶⁷ Ronen (n 14) 35.

⁶⁸ Roland Rich, ‘Recognition of States: The Collapse of Yugoslavia and the Soviet Union’ (1993) 4 European Journal of International Law 36, 42-43.

⁶⁹ The Arbitration Commission of the European Community’s Conference on Peace in Yugoslavia (“The Badinter Commission”) <<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e13>> accessed 16 June 2016.

⁷⁰ Alain Pellet, ‘The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples’ (1992) 3 European Journal of International Law 178.

⁷¹ Talmon (n 27)108.

⁷² International Crisis Group, ‘Somaliland: Time for African Union Leadership’ (Africa Report No 110, 23 May 2006) 4, 14.

⁷³ Nina Caspersen, ‘Degrees of legitimacy: Ensuring internal and external support in the absence of recognition’ (2015) 66 *Geoforum* 184, 189.

rights record.⁷⁴ De facto states have therefore tried to ‘earn’ recognition of their claims of statehood by establishing effective institutions.⁷⁵

Reflecting its claims to meeting the standards of a state, Somaliland’s Constitution, expresses directly its commitment to international human rights, humanitarian and refugee law.⁷⁶ On this constitutional basis the Somaliland authority is bound to these international laws, out of which specific obligations may arise. Under Article 10 of the Somaliland Constitution the ‘Government’ of Somaliland is committed to observe “all treaties and agreements entered into by the former state of Somalia with foreign countries or corporations”⁷⁷ ratified by the state of Somalia prior to 1991, when Somaliland declared independence,⁷⁸ “provided that these do not conflict with the interests and concerns of the Republic of Somaliland”.⁷⁹ These include the Universal Declaration of Human Rights,⁸⁰ the United Nations Charter,⁸¹ the International Covenant on Economic, Social and Cultural rights, the International Covenant on Civil and Political Rights (and Optional Protocol I which provides for individual petition to the UN Human Rights Committee), the Convention Related to the Status of Refugees, the Convention against Torture, and the African Charter on Human and Peoples’ Rights and Geneva Conventions.⁸² Somaliland’s constitution provides that the Somaliland authorities will act in conformity with international law, respect human rights guarantees and provides that those guarantees are interpreted consistently with international human rights conventions.⁸³

An agreement to the exercise of self-determination in Somaliland may also demonstrate the limits of the international human rights system if the Somaliland authority no longer needs to garner support for the self-determination it claims to exercise, an example of this is the death penalty. As Somaliland is a Muslim country that upholds principles of Sharia law, which ordains the use of the death penalty, Article 24 of the Somaliland Constitution⁸⁴ and the

⁷⁴ Iain Lewis and James Mayall, *A Study of Decentralized Political Structures for Somalia: A Menu of Options* (European Union, 1995) 58.

⁷⁵ Anne-Marie Gardner, ‘Beyond standards before status: democratic governance and non-state actors’ (2008) 34(3) *Review of International Studies* 531.

⁷⁶ Somaliland Constitution (n 66).

⁷⁷ Amnesty International (n 65) 15.

⁷⁸ HRC Somaliland, ‘Universal Periodic Review Somaliland Civil Society Organizations Submission’ (1 July 2015) Part IV, para 20 <<http://hrcsomaliland.org/universal-periodic-review-somaliland-civil-society-organizations-submission-2015/>> accessed 21 April 2016.

⁷⁹ Amnesty International (n 65) 15.

⁸⁰ Universal Declaration of Human Rights 1948.

⁸¹ Amnesty International (n 65) 15.

⁸² HRC (n 78) Part IV, para 20.

⁸³ Human Rights Watch, ‘Report - Threats to Human Rights and Democracy in Somaliland’ (July 2009) 28.

⁸⁴ Somaliland Constitution (n 66).

Somaliland Penal Code⁸⁵ both legitimize the death penalty. As such in 2015 six people were executed in Somaliland.⁸⁶ The deputy chairman of Somaliland Human Rights Commission⁸⁷ defended the execution of the six convicted prisoners on the basis it was part of judicial law enforcement and “supporting the maintenance of peace and promoting justice for the people of Somaliland.”⁸⁸

Despite international pressure from the UNPOS Human Rights Unit on the “regional government of ‘Somaliland’”⁸⁹ the Somaliland authority has rejected putting a moratorium on or abolishing the death penalty⁹⁰ and “has never formally abolished nor suspended the death penalty within its territory”.⁹¹ When defending the use of capital punishment within the territory of Somaliland, the Somaliland authorities have stated that the Republic of Somaliland respects its obligations as a member of the international community and adheres to the human rights enshrined in the Somaliland Constitution.⁹² However, the Somaliland authorities have also held “[i]t is the prerogative of every sovereign state to develop its own justice system within its prescribed authority as sanctioned by the will of its people. It is therefore a function of the Government of the Republic of Somaliland to adhere to and implement the laws of the country”.⁹³ The issues around capital punishment therefore demonstrate that there are potential opportunities and problems to the impact of engagement with the international human rights system arising from an agreed exercise of self-determination in Somaliland as even when Somaliland is trying to diplomatically and politically win friends it is still prepared to face down criticism of its human rights standards on the basis of its claims to sovereignty that result from the claims to the exercise of self-determination in Somaliland as a state.

⁸⁵ Penal Code <www.somalilandlaw.com/Penal_Code_English.pdf>.

⁸⁶ HRC (n 78) Part III, D at para 17.

⁸⁷ Mohamed Goth, ‘Somaliland: SL Human Rights Commission Defends Decision to Execute Prisoners’ (*Somaliland Current*, 18 April 2015) <www.somalilandcurrent.com/2015/04/18/somalilandsl-human-rights-commission-defends-government-decision-to-execute-prisoners/> accessed 27 February 2016.

⁸⁸ *Ibid.*

⁸⁹ HRC, ‘Report of the Secretary-General - United Nations support to end human rights abuses and combat impunity in Somalia’ (21 September 2012) UN Doc A/HRC/21/36, 11-12.

⁹⁰ HRC (n78) Part III, D at para 17.

⁹¹ Somaliland Press, ‘MoJ Press Statement on Somaliland’s Justice System (April 2015) <www.somalilandpress.com/wp-content/uploads/2015/04/MoJ-Press-Statement-on-Somaliland%E2%80%99s-Justice-System.pdf> accessed 16 March 2016; Goth (n 87).

⁹² *Ibid*; *Ibid.*

⁹³ Goth (n 87).

The Somaliland authority, has tried to take on obligations beyond those human rights obligations taken on by governments of the Somali Republic,⁹⁴ such as the Somaliland authority stating it will implement the Convention of the Rights of the Child in Somaliland.⁹⁵ However, due to Somaliland's international status, Somaliland cannot be held accountable by the international human rights system for those obligations which it has taken on separate from the Somali Republic. For Somaliland to be able to take on these obligations, Somaliland would need to exercise a degree of self-determination that would allow this and be recognised as doing so by Somaliland's parent state, the Somali Republic.

5.7 Gap in the law

A consequence of the lack of clarity of the status of the self-determination exercised in Somaliland and the basis of international engagement with the Somaliland authority leads to confusion as to the extent of the gap in relation to responsibility for human rights. The political motivations of the international community, the lack of clarity as to Somaliland's status and the unclear responsibility for international human rights standards in Somaliland can be factors that contribute to there being a gap in the protection of human rights. An example of the gap in responsibility for human rights protection is that highlighted above in which territory of a de facto state, such as Somaliland, is located within a state that is party to human rights treaties but it is outside the control of the government of the territorial state which is the government of the Somali Republic.⁹⁶ As a consequence the government of the Somali Republic is not able to guarantee to the population of Somaliland, the full enjoyment of human rights under treaties that have been ratified by the de jure State.⁹⁷

The government of the Somali Republic is reluctant to attribute human rights obligations to Somaliland or any responsibilities under international law,⁹⁸ because such an attribution can further Somaliland's efforts to acquire an international status.⁹⁹ As such, where public international law does oblige states to ensure certain results it can also prevent states from transferring responsibilities without appropriate controls. Therefore, public international law

⁹⁴ Somaliland Human Rights Law <www.somalilandlaw.com/somaliland_human_rights_law.html>; this is confirmed in the Somaliland Constitution; Somaliland Constitution (n 66) Art 10.

⁹⁵ Ibid.

⁹⁶ Cullen (n 1) 692.

⁹⁷ Cullen (n 1) 692.

⁹⁸ Ronen (n 14) 23-24.

⁹⁹ Beate (n 4) 128.

can accommodate situations where the state has consented to governance without it,¹⁰⁰ demonstrating that again as per the issues of status and engagement, agreement of the parent state is of great importance.

Although protection of human rights is a fundamental part of international law the conclusion of human rights treaties does not fall within the capacity of a de facto state but is usually open to states only.¹⁰¹ However, it is possible for de facto states to assume legal obligations by concluding treaties under international law¹⁰² but only with the binding element of such treaties becoming so through special agreements (e.g. Human Rights Advisory Panel for Kosovo) which is rarely done.¹⁰³ It is also usual that in such situations the political de facto obligations are played down and moral standards highlighted instead¹⁰⁴ of the protection of human rights and the enforceability of such obligations. A gap involving a difference in protection of human rights is still demonstrated, however, in agreements such as this due to a lack of obligations imposed on de facto state authorities to comply with monitoring mechanisms such as the provision of state reports within the UN framework of human rights treaties.

Treaty bodies and Special Procedures in relation to human rights violations by de facto regimes can only be targeted within the framework of “constructive dialogue” with the states and/or (if the states are reluctant) in shadow reports.¹⁰⁵ There is therefore a gap in enforcement of human rights obligations and their protection. This is because as the actions of de facto state authorities cannot be attributed to the state, it is unlikely a treaty body will make specific recommendations to the de facto state authority in case it is considered evidence of the de facto state authority as a state authority.¹⁰⁶

Although obligations under the ECHR are not relevant to a discussion of international human rights obligations in Somaliland, an analysis of the application of the treaty can be useful here as the ECtHR has confirmed that rights under ECHR apply “to individuals within the jurisdiction of a state party and that jurisdictional competence [is] presumed to be exercised

¹⁰⁰ Ibid 130.

¹⁰¹ Beate (n 4) 136.

¹⁰² Ibid 135.

¹⁰³ Ibid 136.

¹⁰⁴ Ibid 136.

¹⁰⁵ Beate (n 4) 29-30.

¹⁰⁶ Beate (n 4) 29-30.

throughout the entire territory of the State”.¹⁰⁷ This presumption can “be limited where the State was prevented from exercising its authority, including in cases of acts of rebellion and the actions of a foreign state supporting the installation of a separatist de facto regime within the territory”.¹⁰⁸ The factual situation thereby reduces the scope of the state’s jurisdiction to the “legal and diplomatic measures that the state party was able to take in support of the guarantee of the rights of those living in the territory.”¹⁰⁹ As such under the ECHR “the determination as to whether the territorial State has discharged its positive obligations in relation to territories outside of its effective control is made on a case-by-case basis”.¹¹⁰ The ECtHR’s position is that the territorial State retains an obligation under the ECHR to use all diplomatic means to secure the protection of ECHR rights in the territory of the self-proclaimed authority, including through diplomatic dealings with the occupying State or self-proclaimed authority and by peaceful attempts to re-establish effective control over the separatist territory”.¹¹¹ The ECtHR takes this position because it operates with the objective of avoiding a vacuum in the protection of rights under the European Convention of Human Rights “in circumstances that ‘would normally be covered by the Convention’”.¹¹² However, the approach of the ECtHR can be viewed as imposing those treaty obligations from which the state has been prevented from discharging onto the de facto state authority that governs the territory and international human rights treaties that apply in Somaliland do not have the enforcement mechanisms of the ECHR.

The problem with the gap created by the unclear position of de facto state authorities in public international law is that as they can “exercise powers similar to those of states” but can “remain unaccountable for their abuse of that power because their conduct does not amount to international crimes and is not related to an armed conflict”.¹¹³ There is therefore a need to extend the reach of international human rights obligations¹¹⁴ and bridge the gap between the control exercised by the Somaliland authority and the lack of accountability for its responsibilities. Closing the gap and “holding those responsible for violations committed accountable for their actions”¹¹⁵ is required to prevent retractions of human rights protection

¹⁰⁷ Cullen (n 1) 703-704.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Cullen (n 1) 692.

¹¹³ Ronen (n 14) 23-24.

¹¹⁴ Ronen (n 14) 23-24.

¹¹⁵ HRC (n 2) 12.

in Somaliland and Somalia more widely.¹¹⁶ However, such a solution to a gap in protection of international human rights standards in Somaliland may cause a tension between the normative basis of states as the exclusive holders of human rights obligations under public international law which may lead to an inadequate guarantee of these rights¹¹⁷ and the reality of territorial control in Somaliland.¹¹⁸

5.8 Human rights responsibilities inferred by conduct

Bringing together ideas of the application of human rights under customary international law and the claim of Somaliland to statehood, the conduct of governments of the Somali Republic and the Somaliland authority can be considered to infer an assumption of human rights responsibilities on the part of the Somaliland authority.

The Human Rights Committee has proposed that human rights treaties are of a special character¹¹⁹ and human rights belong to the people with rights being vested in individuals¹²⁰ and so remain with them in succession. This idea can be transplanted to an insurgent movement taking over a territory, binding the new state or regime that exercises effective control over a territory and population that did enjoy rights under customary and or treaty law,¹²¹ to the existing human rights obligations that already apply to the territory.¹²² This transference of obligations does avoid a legal vacuum, however, there is limited support for the conclusion as a matter of doctrine¹²³ as it depends on the problematic proposition that a territorial State can bind an effective autonomous territorial authority to an international legal regime “after the self-proclaimed authority has established its de facto independence”.¹²⁴ As such, it is not a settled matter of international law.¹²⁵

The Vienna Convention on Succession of States in Respect of Treaties establishes that newly independent States do not automatically secede to human rights treaties. Although when States separate succession to treaty obligations does automatically apply.¹²⁶ However,

¹¹⁶ Ibid.

¹¹⁷ Ronen (n 14) 23.

¹¹⁸ Beate (n 118) 128.

¹¹⁹ Cullen (n 1) 722.

¹²⁰ Ibid 720.

¹²¹ Beate (n 118) 139.

¹²² Cullen (n1) 722.

¹²³ Ibid 720.

¹²⁴ Ibid 718.

¹²⁵ Ibid 717-718.

¹²⁶ Ibid.

automatic transference of human rights obligations from the recognised territorial state to secessionist authority as a doctrine has limited support, “it appears to be an established rule of international law that the actions of an insurrectional or other movement that succeeds in establishing a new State in part of the territory of a pre-existing State will be considered to be an act of the new State”.¹²⁷

An unusual aspect of Somaliland’s situation is that it is an effective territorial authority that is prevented from binding itself to international legal regimes by an ineffective state. In some circumstances a state may be willing to recognise human rights obligations as being those of the non-state actor or de facto regime, as a means of evading responsibility by the state for violations of those obligations.¹²⁸ However, an informal recognition of the government of the Somali Republic’s own lack of responsibility, such as the absence of references to human rights issues in Somaliland by governments of the Somali Republic when engaging with the international human rights system, could be regarded as an informal delegation of responsibility to the Somaliland authority. As such, this could be viewed as recognition of the exercise of external self-determination by Somaliland and thus a basis for negotiating an agreed status between Somaliland and its parent state.

5.9 Conclusion

There are international human rights obligations that apply in Somaliland via both its de jure status as part of the state of Somalia and as its status as a de facto state administered by the Somaliland authority. The lack of clarity as to the status of Somaliland’s international legal personality leads to uncertainty regarding responsibility for the implementation and protection of international human rights obligations in Somaliland. A consequence of this is that there are international human rights obligations that apply in Somaliland which the international human rights system does not engage with. The Somaliland authority has shown a willingness to increase international human rights obligations in Somaliland and fill the gap in the law regarding human rights protection that is currently left by the lack of clarity regarding the status of the exercise of self-determination in Somaliland and its impact on responsibility for human rights protection in Somaliland.

¹²⁷ Ibid 713.

¹²⁸ Ronen (n 14) 25.

If Somaliland's international legal personality was enhanced, and the exercise of an external element to the self-determination exercised in Somaliland was recognised by the international human rights system, then a potential increase in the international obligations to protect human rights in Somaliland could be placed upon the Somaliland authorities and there could be practical impacts on interaction between the international human rights system and the human rights system in Somaliland. This supports the argument that an agreement from the government of the Somali Republic, as the government of the parent state of Somaliland, as to the level of external self-determination exercised by the Somaliland authority could have a beneficial impact on engagement by the international human rights system in relation to human rights protection in Somaliland. This is because an agreed arrangement between the Somaliland authority and the government of the Somali Republic will enable responsibility for protection of human rights obligations to be clearly established therefore allowing the direct engagement with the authority exercising more stable governance in Somaliland, which it is currently lacking.¹²⁹

¹²⁹ As discussed in chapter 6.

Chapter 6

Somaliland's Engagement with the International Human Rights System

6.1 Introduction

This chapter focuses specifically on engagement between the international human rights system and Somaliland and is an analysis which combines how the assessment of the legal status with which Somaliland engages with the international community¹ impacts engagement in relation to the human rights obligations and responsibilities applicable in Somaliland.²

As per the discussion of the status of Somaliland in its interaction with the different actors within the international community generally, there is a lack of clarity within the international human rights system as to how to engage with the protection of human rights within Somaliland. The lack of consistency in the international community's engagement with Somaliland and the unclear legal status of Somaliland that arises from it means there is uncertainty as to what responsibility the Somaliland authority has or should be regarded as having, for the implementation of human rights standards within Somaliland that arise from the international human rights obligations that apply to the territory of Somaliland as a de jure part of Somalia.

Depending on the international body, the basis upon which the international human rights system engages with Somaliland differs. Engagement in Somaliland can be direct engagement through reference to Somaliland separately or interaction with Somaliland public bodies or through the Somali Republic or not at all. This confusion means it is unclear whether Somaliland's engagement with the international human rights system is as an internal territory of a federal Somalia which upholds responsibilities of the Somali Republic to protect human rights by exercising internal self-determination through its legal structures or as a separate identifiable territorial entity exercising external self-determination by implementing international human rights standards Somaliland has taken on as an entity claiming its own legal personality.

¹ As discussed at chapter 4.

² As discussed at chapter 5.

The inconsistencies in the international human rights system's engagement with Somaliland can also result in Somaliland not being considered at all. When reference is made to Somaliland in international organisations reports it is included within reports on Somalia whilst also being identified as having an authority with responsibilities separate from those of the Somali Republic which is the de jure government of Somaliland, despite their being no constitutional agreement to the exercise of such responsibilities by the Somaliland authority. This difference in reference to human rights issues in Somaliland also reflects the different approach to the interaction bodies within the international human rights system have in Somaliland.

The impact of the inconsistencies in international human rights system's approach to engaging with different actors and systems in Somaliland to strengthen human rights protection, is due to the differences in the stability of the Somaliland authority and the government of the Somali Republic and their respective abilities to protect human rights. By considering engagement between different sections of the international human rights system and Somaliland authorities and contrasting this with engagement between the international human rights system and other governing bodies in Somalia, I will illustrate how the international human rights system engages with Somaliland.

6.2 The Somali Compact and Somaliland Arrangement and Human Rights

As discussed in earlier chapters the Somali Compact and Somaliland Arrangement are internationally agreed arrangements for the direction of aid in Somalia. They are separate political agreements that derive from the same Road Map and New Deal process that leave unclear the legal relationship between the international community and Somaliland and Somaliland and the Somali Republic. Both the Somali Compact and the Somaliland Arrangement address human rights issues within their separate processes but there is a contrast between the two processes as to the context in which responsibility for the protection of human rights are considered.

6.2.1 The Somali Compact and Human Rights

Engagement in Somalia by the international community under the framework of the Somali Compact is always in the context of maintaining a federal Somalia under a Mogadishu based government of the Somali Republic. When human rights protection is discussed in the

context of the Somali Compact this approach is maintained. However, some of the Somali Compact reference of actors relevant to human rights issues in Somalia is vague.

When discussing security, the Second Peace and Stability Goal (PSG) of the Somali Compact combines the idea of maintaining a federal Somalia and protecting human rights with the objective of establishing “unified, capable, accountable and rights based Somali federal security institutions providing basic safety and security for its citizen”.³ It goes on to say “with special attention to securing the rights of women, youth and children; increases equitable access to justice; contributes to the rule of law; applies human rights standards; adheres to international humanitarian law”.⁴ The Somali Compact does not however make such explicit reference to the constitutional structure of Somalia throughout. Priority three of the second PSG refers to combatants in Somalia being disengaged in line with international law and human rights⁵ and the federal government of ‘Somalia’s Action Plan’ to End the Recruitment and Use of Children in Armed Conflict.⁶ It does not state if reference to combatants in Somalia includes forces in Somaliland and Puntland and the violence that has arisen due to the disputed Sool and Sanaag region. Therefore, it is unclear if responsibility for meeting the international standards referred to is regarded by the Somali Republic and/or international community as extending to all of Somalia or to territory which the government of the Somali Republic controls and if so whether the parties to the Somali Compact, including the government of the Somali Republic, regard Somaliland as having responsibility for international law and human rights within the respective territories over which the Somaliland authority has control.

Engagement by the international community to uphold international human rights in Somalia is raised at priority one of the third Peace and Stability Goal for Justice, of the Somali Compact, with the stated aim of establishing a Legal Policy and Drafting Unit within the Ministry of Justice of the Somali Republic⁷ which it is to be “composed of well-trained experts on law-making, is gender-sensitive and upholds the Convention of the Rights of the Child and principles of juvenile justice”.⁸ The unit is also to ensure that the existing legal

³ ‘The Somali Compact’ (EU-Somalia New Deal Conference, Brussels, 16 September 2013) 6
<https://eeas.europa.eu/sites/eeas/files/20130916_the_somali_compact.pdf> accessed 16 November 2016.

⁴ Ibid.

⁵ Ibid 7.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

framework is coherent with the Somali Republic's constitution and international standards.⁹ Although, whether the legal framework applies to Somalia of the Somali Republic is not clarified. In contrast to support for the protection of international human rights by the government of the Somali Republic, the Somali Compact also recognised that “provision of most services in Somalia [are] by non-state actors and NGOs”.¹⁰ It does not clarify which actors are considered non-state actors and could include sub-state authorities due to the unclear nature as to which regional authorities are part of the constitutional structure of the Somali Republic state. Neither does the Somali Compact elaborate the role non-state actors or sub-state authorities, should play in the application of such international standards.

The aim of the third Peace and Stability Goal for justice is to “[e]stablish independent and accountable justice institutions capable of addressing the needs of the people of Somalia by delivering for all”¹¹ in order to establish “a sound legal framework compliant with human rights, ensuring access to justice and quality delivery of justice for the people of Somalia”.¹² Priority 2 of the third Peace and Stability Goal states the Somali Compact aims to increase the capacity of justice provision with the establishment of “regional courts, as foreseen by the Constitution, and other justice institutions”.¹³ It also sets out that the international community will increase human rights protection within the boundaries of the Provisional Constitution. The lack of clarity as to Somaliland's status within the federal Somalia which the Provisional Constitution upholds means that reference to the “the people of Somalia”,¹⁴ “regional courts”¹⁵ and “other justice institutions”¹⁶ does not make clear on what basis or even if, public bodies in Somaliland should be engaged in relation to human rights responsibilities.

The assertion of a focus on the Somali Republic guiding engagement by the international human rights system in Somalia is also shown in other parts of the Somali Compact. The Compact highlights that funds can be channelled to federal units through agreed mechanisms and in line with the federal constitutional framework.¹⁷ Although it also highlights a regard for the separate identity of regions and federal units but not the extent or form that the

⁹ Ibid.

¹⁰ The Somali Compact (n 3) 10.

¹¹ Ibid 7.

¹² Ibid.

¹³ Ibid 8.

¹⁴ Ibid 7.

¹⁵ Ibid 8.

¹⁶ Ibid 8.

¹⁷ Ibid 16.

exercise of that separate identity may take.¹⁸ This demonstrates the confusion as to the basis of human rights engagement in Somalia. Consideration of separate systems is also reflected in the idea of strengthening existing human rights mechanisms,¹⁹ which leaves open whether systems in Somaliland and Puntland would be included because the degree of self-determination they respectively claim to exercise has not been agreed by the Somali Republic. This is added to further by the reference to the protection of human rights through the establishment of a human rights commission of a centralised Somali Republic Government. Therefore, it leaves unclear whether Somaliland and Puntland are regions with separate legal systems that should operate with a form of internationally acknowledged external self-determination or legal systems which should be brought under a Mogadishu centred authority.

The Somali Compact states the “improvements in the lives of Somali people”²⁰ will be the measurement by which the Somali Compact assesses the success of the international community’s engagement with Somalia but who the Somali people includes is not made clear. The Somali Compact also adds that “the continued outreach to, and inclusion of, all regions and future Federal States, including Puntland,”²¹ are substantive contributions to this goal. Therefore, successful engagement with Somaliland under the Somali Compact will be on the basis of Somaliland being a de jure part of a federal Somali Republic but with the aim of maintaining Somaliland’s success as a de facto state which appears to ignore the role of self-determination in Somaliland’s current functioning as a de facto state.

6.2.1.1 Somali Compact and Gender

Continuing the discussion of human rights issues that are frequently raised by the international community,²² an example of a human rights issue which the international human rights system engages with through interaction under the Somali Compact, rather than engagement by reference to support for the government of the Somali Republic’s efforts to protect it, is the issue of gender. The Somali Compact states that responsibilities for women’s rights should ensure security policies include “a zero tolerance on gender-based violence,

¹⁸ Ibid.

¹⁹ The Somali Compact (n 3) 12.

²⁰ Ibid 4.

²¹ Ibid.

²² As discussed at chapter 2.

particularly sexual violence and exploitation, and other forms of abuse”.²³ Support in relation to gender is also provided under the Somali Compact for the participation of women in politics and dialogue.²⁴ The Somali Compact identifies the protection of women’s rights is the responsibility of state institutions. However, due to the unclear status of Somaliland and separate Somaliland Arrangement it is unclear whether Somaliland institutions would be included as part of the state under the Somali Compact.

The Somali Compact states that UN representatives and donors, through the Somali Compact, are “to ensure effective coordination of gender efforts across sectors”.²⁵ The Somali Compact seeks “to address contributing factors perpetuating gender inequality through strategic priorities, under all PSGs”.²⁶ This includes improved political and decision making participation, access to justice, protection from sexual and gender based violence, economic empowerment and access to health and education services.²⁷ The Somali Compact also aims to “take action to support...expanding gender responsive basic health, nutrition, water and sanitation and hygiene, and social work, to all regions within federal and regional government service delivery frameworks”.²⁸ However, the authorities with responsibility to uphold the human rights obligations, that the international community are trying to assist the implementation of, are not identified and whether those responsibilities that will be supported apply across Somalia or just in territory controlled by Somali Republic are not made clear. This is of particular significance to the reference to ‘all regions within federal and regional government service delivery frameworks’.²⁹ This indicates but does not make clear there maybe public authorities within regional government service delivery frameworks outside federal frameworks which UN representatives³⁰ and donors would support under the Somali Compact.³¹ Therefore, although the aim of engagement on gender and human rights is addressed under the Somali Compact, the status and/or role of Somaliland in relation to that aim is unclear.

6.2.2 Somaliland Arrangement

²³ The Somali Compact (n 3) 6.

²⁴ The Somali Compact (n 3) 5.

²⁵ Ibid 11.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid 10.

²⁹ Ibid.

³⁰ Ibid 11.

³¹ Ibid 10.

The Peace and Stability Goals of the Somaliland Arrangement (“PSGs”) address problems, issues and requirements for solutions that are relevant to how the exercise of self-determination in Somaliland may impact engagement with the international human rights system. The Somaliland Arrangement, in contrast to the Somali Compact, refers to supporting human rights protection within a Somaliland legal system. This is a contradiction to the idea of international engagement in relation to human rights maintaining a state encompassing all of Somalia as discussed in the Somali Compact. The “Matrix of Somaliland’s peace and statebuilding goals”³² also states “[t]he capacity of [Somaliland] parliamentarians to consult with and represent their constituencies on issues of public concern”³³ is to be scaled up³⁴ which is again a contradiction to the aim of the Somali Compact of enhancing a federal Somalia as those parliamentarians represent their constituencies in a Parliament that claims Somaliland is a state.

The first PSG for inclusive politics in the Somaliland Arrangement also states that in building a stable and democratic Somaliland there is a need for “state-level governance systems to ensure accountability and deepen bottom-up inclusivity, especially among women, youth, marginalized communities and underrepresented regions of Somaliland”.³⁵ The Somaliland Arrangement also “emphasised the importance of continued consultations across the country to seek the views of civil society, academics, women, youth, vulnerable groups such as refugees and IDPs, private sector and local administrations”.³⁶ The reference to different groups highlights that engagement by the international human rights system in Somaliland may not rely on public bodies alone but could also be with civil society as well. The reference to “state-level governance systems”, again adds to the confusion as to the basis of engagement. This is because under the Somaliland Arrangement state-level accountability for human rights issues can only be referring to the Somaliland authority which claims Somaliland statehood which again runs counter to the human rights aims of the Somali Compact of strengthening human rights protection within a federal Somalia.

³² ‘Annex 1: Results Matrix of Somali Peace and Statebuilding Goals’ in ‘The Somali Compact’ (EU-Somalia New Deal Conference, Brussels, 16 September 2013) 38

<https://eeas.europa.eu/sites/eeas/files/20130916_the_somali_compact.pdf> accessed 16 November 2016.

³³ Ibid.

³⁴ Ibid.

³⁵ Somaliland Special Arrangement (2013 – 2016) (updated November 2014) 22

<https://slministryofplanning.org/images/front-page/Somaliland_Special_Arrangement_Final.pdf> accessed 2 November 2016.

³⁶ Somaliland Arrangement (n 35) 3.

The first PSG of inclusive politics in the Somaliland Arrangement also highlights in Priority 1 “gaps in representation; and developing mechanisms for judicial and public oversight”.³⁷ The third PSG for justice did state that there were “challenges to the establishment of a fair, transparent, efficient and credible system”³⁸ and refers to a Justice Sector Reform Strategy as being “in line with the Somaliland development plan”.³⁹ The third PSG also highlighted that such a reform strategy would require “specialized, high-quality technical support”.⁴⁰ Such reforms would enhance external self-determination by further securing a separate justice sector that would interact with the international human rights system separately from a federal government of the Somali Republic, as has been suggested, with “Capacity development on legal drafting, integrating international best practice with the Somaliland legal system”.⁴¹

There are issues that cut across all PSGs of the Somaliland Arrangement, as there are with the Somali Compact, an example of this type of issue is gender. The Somaliland Arrangement states that “[g]ender mainstreaming will be built into projects, programming and sector strategies and progress in this area will be assessed as a specific theme through the joint aid coordination and monitoring mechanisms”.⁴² Gender issues are inherent to aid provided within the New Deal framework.⁴³ Therefore, although the Somaliland Arrangement considers engagement in Somaliland in relation to human rights and other issues, as interaction in an individual territorial entity, engagement is still linked to interactions in Somalia as a whole so engagement in relation to human rights is still over shadowed by Somaliland as de jure part of Somalia.

6.3 The UN Human Rights Council

Engagement between the Human Rights Council (“the HRC”) and governments and authorities in Somalia in relation to human rights issues, that fall under the purview of the HRC and which may affect the territory of Somaliland, focuses on the Somali Republic as being the federal government of the territory of Somalia and the de jure government of Somaliland. As per discussions in the previous chapters regarding trade and international

³⁷ Somaliland Arrangement (n 35) 23.

³⁸ Ibid 23.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Matrix (n 32); The Somali Compact (n 3) 39.

⁴² Somaliland Arrangement (n 35) 25.

⁴³ Ibid.

relations, the HRC demonstrates an intent, when addressing human rights issues, to maintain the territorial integrity and unity of a federal Somalia. This is even the case when discussing Somali stakeholders which include local stakeholders in Somaliland. This is expected from a point of view of officially adhering to international legal principles around statehood and sovereignty. However, it is not consistent with interactions by other sections of the UN⁴⁴ that blur the status conferred on Somaliland.

The HRC's approach to affirming the maintenance of a unified Somalia has been demonstrated in statements that the assessment of assistance and support for human rights in Somalia is on the basis that "respect for the sovereignty, territorial integrity, political independence and unity of Somalia"⁴⁵ would be reaffirmed. The HRC, also reiterates its support of a federal Somalia under the governments of the Somali Republic in promoting its support for human rights protection in Somalia.⁴⁶ The HRC has supported a federal government of Somalia's decision to establish a Directorate General for Human and Minority Rights and Rule of Law within the Office of the Prime Minister and acknowledged that it would play a role in holding the governments of the Somali Republic to account with regard to human rights obligations.⁴⁷ The HRC has not identified how Somaliland fits into those obligations in that it has not referred to the government of the Somali Republic being held to account for human rights obligations in Somaliland.

The HRC has hinted at some form of engagement with Somaliland bodies with meetings being held to explore how all stakeholders could "work more effectively on the realisation of human rights in Somalia"⁴⁸ which suggests the possibility of working with local Somaliland bodies and authorities. The HRC has also discussed subnational levels in Somalia but this was for the purpose of the implementation of human rights under the Road Map and facilitation of its effectiveness.⁴⁹ This adds to the confusion as the Road Map links to the Somali Compact and the Somaliland Arrangement and their contrasting approaches to Somaliland's self-determination. Therefore, a preparedness to work with all stakeholders and sub-state levels in Somalia and links to the Road Map and external self-determination

⁴⁴ As referred to in earlier chapters and below.

⁴⁵ UNGA, 'Decision adopted by the Human Rights Council – 23/114 Assistance to Somalia in the field of human rights' (28 June 2013) UN Doc A/HRC/DEC/23/114.

⁴⁶ UNGA, 'Draft decision 23/ Assistance to Somalia in the field of human rights' (7 June 2013) UN Doc A/HRC/23/L.11.

⁴⁷ UNGA (n 45).

⁴⁸ Security Council Report, 'September 2013 Monthly Forecast – Somalia' (29 August 2013)

<www.securitycouncilreport.org/monthly-forecast/2013-09/somalia_10.php> accessed 14 January 2014.

⁴⁹ UNGA (n 45).

acknowledged in the Somaliland Arrangement and the confused status given to Somaliland within these agreements demonstrate a potential recognition by the HRC, not of statehood but of the exercise of self-determination in Somaliland beyond that of a de jure federal state of a federal Somalia as the government of the Somali Republic claims it to be.

6.4 Independent Expert on human rights in Somalia

The Independent Expert on the situation of human rights in Somalia (“The Independent Expert”) is a specific procedure country mandate for Somalia. Unlike the HRC the Independent Expert does address Somaliland as having human rights issues that are distinct from the rest of Somalia. As such, engagement by the Independent Expert in Somaliland demonstrates that direct interaction between Somaliland and the international human rights community is possible but does not help clarify what status if any this infers upon Somaliland’s exercise of self-determination or its relationship with the international human rights system in general. This is because although the Independent Expert addresses Somaliland’s human rights issues as being distinct from the rest of Somalia those distinct Somaliland issues are still approached within the context of Somaliland being part of Somalia⁵⁰ and/or encourages the strengthening of federal Somalia.⁵¹ Therefore, the approach is consistent with regard to acknowledging the sovereignty of Somalia but is unclear as to the status of the form of self-determination the Independent Expert regards Somaliland as exercising.

The Independent Expert has stated serious concerns about hostilities in the Sool, Sanaag and Cayn region of Somaliland/Somalia and in discussions about Sool Sanaag and Cayn the Independent Expert refers to reports by local non-governmental organisations in Somaliland and the UNPOS Human Rights Unit in Hargeisa.⁵² The Independent Expert has urged the UN and international community to monitor the matter in order to reach a negotiated settlement⁵³ and also urged the Somaliland authorities and non-state parties not to escalate violence and peacefully settle their dispute. The Independent Expert has urged the parties to comply with international standards prescribed in the Basic Principles of the Use of Force and Firearms by

⁵⁰ HRC, ‘Report of the Independent Expert on the situation of human rights in Somalia’ (19 July 2018) UN Doc A/HRC/39/72 para 23.

⁵¹ Ibid paras 17, 21, 24, 62.

⁵² HRC, ‘Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari’ (16 August 2013) UN Doc A/HRC/24/40, 16.

⁵³ Ibid.

Law Enforcement Officials, not military governance rules.⁵⁴ Through this engagement the Independent Expert is interacting with the Somaliland authority and not the government of the Somali Republic. The rules that the Independent Expert encouraged the Somaliland authority to be upheld are those of internal law enforcement that apply to the public authority of a state and not external military governance which may apply to a non-state actor suggesting a view on the part of the Independent Expert that Somaliland is the relevant de facto state authority. The issues are also discussed in a Somaliland specific section of a report on Somalia as a whole both simultaneously accepting the de facto role of Somaliland as a state and Somaliland's status as a de jure part of a federal Somalia.

Further confusion as to the status of the form of self-determination exercised by Somaliland and the basis of engagement between the Independent Expert and Somaliland is shown by the Independent Expert's concern for politicians, community leaders and businessmen being arrested in Somaliland after visiting Mogadishu. The Independent Expert said it limits freedom of movement, expression and political participation and urged the Somaliland authority to abide by national and international law⁵⁵ which would indicate the Independent's Experts understanding that Somaliland is a territorial unit of Somalia and thus subject to national law of the Somali Republic but also that it exercises a level of authority which entails responsibility for international standards that apply to states. In contrast to this the Independent Expert has commented on the extensions of tenure of a Somaliland Parliament⁵⁶ encouraged the Somaliland authorities to secure the right to freedom of expression and opinion as expressed in the Somaliland Constitution.⁵⁷

The Independent Expert has engaged with human rights in Somaliland through visits to Hargeysa⁵⁸ and meeting with Somaliland civil society organisations and politicians, whose official titles such as Speaker of the Somaliland Parliament, were used and reference to Presidential elections used.⁵⁹ Reference to human rights issues in Somaliland have also been dealt with in separate sections on an equal footing to the Somali Republic and not on the

⁵⁴ HRC (n 52) 20, 107.

⁵⁵ Ibid 106.

⁵⁶ Ibid 15.

⁵⁷ HRC, 'Report of the Independent Expert on the Situation of Human rights in Somalia' (22 August 2012) UN Doc A/HRC/21/61, 18.

⁵⁸ UNSC, 'Report of the Secretary-General on Somalia' (20 August 2019) UN Doc S/2019/661 para 50.

⁵⁹ HRC, 'Report of the Independent Expert on the situation of human rights in Somalia' (16 September 2019) UN Doc A/HRC/42/62 para 82.

same basis as Puntland.⁶⁰ Recommendations are also made to comply with the Somaliland Constitution (which declares Somaliland independence).⁶¹

In commenting on the procedure of the Somaliland Parliament the Independent Expert is acknowledging an institution which claims Somaliland is a sovereign independent state. In asserting the relevance of the Somaliland Constitution, the Independent Expert is asserting obligations for international human rights standards contained within a document created by Somaliland with no contribution from the government of the Somali Republic, the parent state, and a document which claims Somaliland self-determination as a sovereign state. Although the Independent Expert's acknowledgement of the Somaliland Parliament and assertion of responsibilities on the part of Somaliland arising from the Somaliland Constitution may not be official recognition by the UN of Somaliland statehood it is acknowledgment by a UN body of the separate identity of Somaliland and the responsibility of the Somaliland authority for the human rights obligations a state should uphold.

Engagement through direct interaction by the Independent Expert in Somaliland also does not help clarify the basis upon which the international human rights system engages with Somaliland. The Independent Expert has travelled to Somaliland⁶² and met with Ministers and senior officials of Somaliland⁶³ but has also met the Vice-president,⁶⁴ Ministers and senior officials of Puntland.⁶⁵ In compiling reports, the Independent Expert has visited Ministers of the Somali Republic⁶⁶ in relation to work of the Somali Republic's Parliamentary Human Rights Committee as preparation for the Road Map but not Somaliland and Puntland.⁶⁷ Therefore, although Somaliland has been engaged with separately from the Somali Republic, engagement has been at the same time as the Independent Expert's engagement with Puntland separate from the government of the Somali Republic which does not claim independence and accepts that it is a de jure part of a federal Somalia. Therefore, it could be seen as evidence of the acknowledgement of Somaliland being part of the same federal structure as Puntland claims to be.

⁶⁰ Ibid para 113; HRC, 'Report of the Independent Expert on the situation of human rights in Somalia' (19 July 2018) UN Doc A/HRC/39/72 para 31-32.

⁶¹ Ibid para 113(d)

⁶² HRC, 'Report of the independent expert on the situation of human rights in Somalia' (29 August 2011) UN Doc A/HRC/18/48, para 2.

⁶³ HRC (n 57) 3, para 7.

⁶⁴ HRC (n 62) para 5.

⁶⁵ HRC (n 57) 3, para 7.

⁶⁶ HRC (n 52) 9.

⁶⁷ Ibid.

6.4.1 Puntland

Examples of the international human rights system's engagement with Puntland are a relevant contrast to the references to and interaction with Somaliland by the Independent Expert. The establishment of a human rights commission by both Somaliland and Puntland separate from a central human rights commission of the government of the Somali Republic has also been encouraged.⁶⁸ The Independent Expert has urged Puntland authorities, not the government of the Somali Republic, to treat alleged perpetrators of terrorism "in accordance with international human rights standards relating to due process and fair trial".⁶⁹ The Independent Expert has also written to the President of Puntland condemning the execution of civilians by a military court and referenced article 14 of the International Covenant on Civil and Political Rights that guarantees a full and fair trial.⁷⁰ It does not state the basis on which those international human rights standards maybe responsibilities of the Puntland authorities but it does suggest an acknowledgement of the application of international human rights standards by sub-state authority in Somalia.

The "Human rights situation in Somaliland"⁷¹ has been considered as an issue in its own right separate from the rest of Somalia. However, the "Human rights situation in Puntland",⁷² which claims to be part of federal Somalia, and the "Human rights situation in the regions of Sool, Sanaag and Cayn",⁷³ which do not have a clear political or legal identity of their own and which have been the subject of armed conflict between Somaliland and Puntland forces, have also been considered in their own sections. Reference to Somaliland has also been made within thematic sections regarding forced displacement,⁷⁴ protection of children⁷⁵ and freedom of expression (also for Puntland)⁷⁶ which adds to the confusion as to what Somaliland's status is considered to be by the international human rights system. Such acknowledgement by the international human rights system, of the separate human rights issues in Somaliland and other territories and the exercising of internal self-determination within Somalia by authorities separate from the governments of the Somali Republic, is not

⁶⁸ HRC (n 62) 17, para 87.

⁶⁹ HRC (n 52) 20, 105.

⁷⁰ HRC (n 52) 15.

⁷¹ HRC (n 62) 10; HRC (n 57) 6-7.

⁷² HRC (n 62) 11; HRC (n 57) 8-9.

⁷³ HRC (n 57) 9-10.

⁷⁴ Ibid 12.

⁷⁵ Ibid 13.

⁷⁶ Ibid 14.

necessarily evidence of the international human rights system acknowledging the exercise of external self-determination by Somaliland.

The head of UN Assistance Mission in Somalia (UNSOM) and the UN Secretary General's Special Representative for Somalia has visited Puntland and both upheld successes by the Puntland authority and emerging Somali states however this was done while confirming a process of establishing a more united federal state.⁷⁷ The Independent Expert has met with Puntland Government officials but at the same time as other federal member states⁷⁸ and specifically refers to this status⁷⁹ which would indicate again an acceptance by the international human rights system of the exercise of internal self-determination as claimed by Puntland and argued for by the Somali Republic and preparedness to engage with territorial entities exercising this form of self-determination and not the exercise of external self-determination as claimed by Somaliland.

Although the reference above to Somaliland and Puntland in relation to human rights protection can be distinct from the reference to human rights responsibilities of the government of the Somali Republic the overlap between reference to Somaliland and Puntland,⁸⁰ suggests that Somaliland is still considered and treated as a territorial unit of a federal Somalia rather than a de facto state. However, this also shows that there is scope for interaction by Somaliland with the international human rights system as part of a state of Somalia, if Somaliland self-determination is exercised as a "subnational" effort. Rather than a de facto state, to promote and protect human rights and to implement recommendations made by the Independent Expert.⁸¹

6.4.2 Conclusion to the Independent Expert

The uncertainty of territorial status in Somalia has consequences as the Independent Expert has suggested that "[t]he human rights road map could be developed with the help of thematic mandate holders under the special procedures system".⁸² Without the Somaliland authority having a clear status within the international human rights system, it is difficult to

⁷⁷ UN News, 'Somalia: marking one year in Puntland, UN pledges state-building support' (17 August 2014) <www.un.org/apps/news/story.asp?NewsID=48500#.VQhfX47kfYg> accessed 12 October 2016.

⁷⁸ HRC (n 50) para 12.

⁷⁹ Ibid para 32.

⁸⁰ There is a section in the Expert's report HRC (n 52) that deals just with "Developments in Puntland and Somaliland".

⁸¹ HRC, 'Senegal (on behalf of the African Group): draft resolution - Assistance to Somalia in the field of human rights' (24 September 2012) UN Doc A/HRC/21/L.3, 3 at paras 7-8.

⁸² HRC (n 57) 17, para 93.

see how the Somaliland authority could follow such a recommendation and grant an invitation to mandate holders without the government of the Somali Republic agreeing to the exercise of such a degree of external self-determination. This is highlighted by the Independent Expert advising governments of the Somali Republic to specifically fulfil their international human rights commitments⁸³ under the UPR process of the Human Rights Council.⁸⁴

A reliance on the governments of the Somali Republic, as being central to international engagement in Somalia in relation to human rights, has been demonstrated by the focus on human rights, in the context of the Road Map, with governments of the Somali Republic informing the Independent Expert that a significant contribution would be made to the Somali Republic's national human rights agenda for Somalia through the Road Maps overall six-pillar policy.⁸⁵ Such commitments by governments of the Somali Republic to protect human rights have been based on co-ordination and promotion from central Mogadishu based governments.⁸⁶ However, neither the commitments of the governments of the Somali Republic nor the Road Map have made it clear to what extent human rights protection in Somaliland is to be covered by the Somali Republic's national agenda for Somalia. Engagement by the Independent Expert, under the auspices of the Road Map, has also been unclear as to the extent of the intended geographic impact of its advice. Such as, recommendations that the Federal Government of the Somali Republic accede and/or ratify international and regional human rights instruments⁸⁷ and funding of the civilian institutions of governance, such as the courts, ministries and regional States.⁸⁸ Although advice is on the basis of governments of Somalia and not all Somali authorities, the Independent Expert has proposed that governments of the Somali Republic "delineate authorities responsible for implementing activities".⁸⁹

6.5 UN Security Council

⁸³ HRC, Report of the Working Group on the Universal Periodic Review (11 July 2011) A/HRC/18/6/Add.1 - <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/144/50/PDF/G1114450.pdf?OpenElement>> accessed 25 May 2015

⁸⁴ HRC (n 52) 19.

⁸⁵ HRC (n 52) 3.

⁸⁶ HRC (n 52) 3.

⁸⁷ HRC (n 50) 2

⁸⁸ Ibid para 90

⁸⁹ Ibid 17.

Engagement from the UN Security Council in relation to human rights issues that may affect Somaliland have addressed Somalia as a whole and not Somaliland and the Somali Republic as separate entities. UN Security Council Resolutions have referenced an intent to help “build capacity on human rights”,⁹⁰ and “uphold”⁹¹ rights and concerns about “violations of human rights”⁹² but these resolutions have only referred to a federal Somalia and not Somaliland or Puntland. However, the sources or information upon which the UN Security Council’s considerations are based are analysis by other UN human rights agencies in Somaliland. Although this is not direct interaction in Somaliland by the UN Security Council itself, these various bodies through which the UN Security Council engages with human rights issues in Somalia do consider Somaliland but not in a way that clarifies the basis upon which the exercise of self-determination in Somaliland impacts its engagement with the international human rights system.

The Special Representative for Somalia has met the President of Somaliland but this was in relation to UN “engagement in support of peace, stability and progress for the people Somaliland”⁹³ rather than promotion of increased external self-determination in Somaliland. The UN Monitoring Group on Somalia and Eritrea (“SEMG”) and the various human rights Special Rapporteurs, have also discussed human rights issues in Somaliland as being distinct from the Somali Republic such as concerns about human rights arising from armed disputes in Sool and Sanaag.⁹⁴ This does not amount to recognition of Somaliland statehood but is acknowledgment of the exercise of self-determination in Somaliland the acknowledged form of which is unclear.

6.6 UN Secretary General

UNSC Report of the Secretary General on Somalia⁹⁵ has referred to ‘Somaliland’ throughout as if to indicate at all times a non-agreed status. This intent is further affirmed by the lack of ‘’ when referring to Puntland. Despite this qualification to Somaliland’s name Reports of the UN Secretary General have referred to conduct of ‘Somaliland’ police, treatment of

⁹⁰ UNSC Res 2093 (6 March 2013) UN Doc S/RES/2093.

⁹¹ Ibid; UNSC Res 2111 (24 July 2013) UN Doc Res S/RES/2111.

⁹² Ibid.

⁹³ UN News, ‘Top UN envoy pledges to step up support for peace, progress in Somaliland’ (18 August 2014) <<https://news.un.org/en/story/2014/08/475402-top-un-envoy-pledges-step-support-peace-progress-somaliland#.VRwEwo54rYg>> accessed 12 December 2016.

⁹⁴ UNSC, ‘Letter dated 18 July 2011 from the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council’ (18 July 2011) UN Doc S/2011/433.

⁹⁵ UNSC, ‘Report of the Secretary-General on Somalia’ (20 August 2019) UN Doc S/2019/661.

journalists and prisoners.⁹⁶ Reports of the Secretary General on Somalia, the UNHCR, the Office of the High Commissioner on Human Rights and the UN Secretary-General have frequently used a significant amount of evidence from the United Nations Political Office for Somalia (“UNPOS”) Human Rights Unit which had an office in Hargeisa and other special procedures.⁹⁷ As such reports have noted concerns about human rights under the governments of the Somali Republic and the Somaliland authority⁹⁸ and the Puntland Government.⁹⁹ Engagement with human rights in Somaliland and Puntland has been on an equal basis but separate from the Somali Republic.¹⁰⁰ Reports of the Secretary General on Somalia have also referenced Somaliland¹⁰¹ when looking at connections with UN agencies and technical assistance provided.¹⁰² However, the UN Secretary General’s Special Representative (SRSG) on Sexual Violence in Conflict has visited the Somali Republic¹⁰³ but has not visited Somaliland. The SRSG for Somalia has referred to Northern Somalia and not Somaliland when expressing concern at violence in the Sool region.¹⁰⁴

As well as the limits to Somaliland’s engagement with the international human rights system through UN Secretary General bodies, this engagement again demonstrates a lack of consistency in engagement with Somaliland and thus a lack of clarity as to the status of Somaliland’s exercise of self-determination and the human rights responsibilities for international human rights standards of public bodies in Somaliland, that arise from it.

6.7 Office of the High Commissioner on Human Rights

Both the Working Group and the human rights Special Rapporteurs do not directly visit Somaliland as they do with the Somali Republic. As per the UN Security Council, information is fed into the Working Group and the Special Rapporteurs from other UN agencies (several non-humanitarian specific agencies deal with Somaliland directly) which do

⁹⁶ Ibid para 48

⁹⁷ HRC, ‘Report of the Secretary-General - United Nations support to end human rights abuses and combat impunity in Somalia’ (21 September 2012) UN Doc A/HRC/21/36, 11.

⁹⁸ Ibid.

⁹⁹ UNSC, ‘Report of the Secretary-General on Somalia’ (21 May 2019) UN Doc S/2019/393 para 64.

¹⁰⁰ UNSC (n95)

¹⁰¹ Ibid 8, paras 33 and 11.

¹⁰² Ibid 11-16, UNSC ‘Report of the Secretary-General on Somalia’ (31 May 2013) S/2013/326, 9.

¹⁰³ African Union, ‘Communique PSC/PR/2.(CCCLXXIX)’ (2013) <www.peaceau.org/uploads/psc-379-com-somalia-13-06-2013-3-2-.pdf> accessed 19 March 2016, 15.

¹⁰⁴ UN News, ‘Somalia: UN envoy appeals for calm following clashes in northern region’ (30 November 2013) <www.un.org/apps/news/story.asp?NewsID=46629#.VRqGj454rYg> accessed 12 June 2015.

engage with human rights issues in the Somali Republic and Somaliland directly, if not with the Somaliland actors directly.

In the report of the OHCHR Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination, the Working Group refers to human rights problems in Somaliland¹⁰⁵ but it did not visit Somaliland.¹⁰⁶ The Minister for Justice for the government of the Somali Republic has sought technical assistance from the OHCHR to develop a comprehensive media law that was compliant with human rights standards.¹⁰⁷ The OHCHR has urged the government of the Somali Republic to review a draft media law and the composition of the regulatory body that would oversee it “[f]ollowing a request from the National Union of Somali Journalists”.¹⁰⁸ Direct engagement in relation to legal protection of human rights such as this has not been received by Somaliland authorities.

6.7.1 Universal Periodic Review

No open invitation has been extended to Special Procedures by the governments of the Somali Republic but country visits have been made under various special procedures.¹⁰⁹ The government of the Somali Republic has extended standing invitations, including:

- The Special Rapporteur on the right of food
- The Special Rapporteur on the right to highest attainable standard of physical mental health.
- The Special Rapporteur on the right to safe drinking water and sanitation
- The Special Rapporteur on the rights to education
- The special Rapporteur on violence against women, its causes and consequences
- The Special Rapporteur on the human rights of internally displaced persons.

¹⁰⁵ UNGA ‘Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination’ (1 July 2013) A/HRC/24/45/Add.2 <<https://undocs.org/A/HRC/24/45/Add.2>> accessed 25 May 2015, 8 at para 23, and 9 at para 27.

¹⁰⁶ Ibid 9, para 27.

¹⁰⁷ HRC (n 57) 7.

¹⁰⁸ Security Council Report, ‘September 2013 Monthly Forecast – Somalia’ (29 August 2013) <www.securitycouncilreport.org/monthly-forecast/2013-09/somalia_10.php> accessed 14 January 2014.

¹⁰⁹ A list of country visits can be found at <www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsN-Z.aspx>.

- The Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

The governments of the Somali Republic have tried to implement Universal Periodic Review (“UPR”) recommendations with a UPR Task Force¹¹⁰ but without a clear basis as to the extent of the territorial responsibilities of the Somali Republic it is unclear how such engagement through the UPR and implementation by governments of the Somali Republic will impact engagement between Somaliland and the international human rights system. An example of this is the grave concern about media legislation in Somalia, expressed by The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.¹¹¹ As no reference was made to Somaliland, it is unclear as to what is the extent of ‘Somalia’, to which the legislation should be applied and about which the Special Rapporteur is expressing concerns.

Abnormalities as to responsibilities for the protection and breach of human rights in Somalia have been acknowledged under the UPR as it has been stated in a report that the UPR process in Somalia differs from the standard UPR process in that the governments of the Somali Republic have to deal with human rights violations which are not of their own making because the control does not extend “to areas in which the abuses take place”.¹¹² This also acknowledges the Somali Republic’s lack of control across all the territory in Somalia it claims to have responsibility for whilst also still acknowledging its de jure responsibility for human rights in Somalia, highlighting the gap in application of human rights responsibilities which arises from the lack of a form of self-determination agreed by the Somali Republic.

Under the UPR, organisations from Somaliland civil society do submit evidence for consideration, but the Somaliland authorities do not form part of the delegation from Somalia, whereas the governments of the Somali Republic and the Puntland authority do¹¹³ and no mention of Somaliland is made at all in some reports.¹¹⁴ This is another example similar to the Independent Expert of the formal procedures upholding the de jure status of Somaliland as being part of Somalia. The Special Rapporteur on violence against women has

¹¹⁰ HRC, ‘National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Somalia’ (11 April 2011) UN Doc A/HRC/WG.6/11/SOM/1.

¹¹¹ HRC (n 52) 14.

¹¹² HRC (n 110) 23.

¹¹³ Report of the Working Group on the Universal Periodic Review, UN Doc A/HRC/18/6, 5.

¹¹⁴ UNGA, ‘Draft report of the Working Group on the Universal Periodic Review – Somalia’ (1 February 2016) UN Doc A/HRC/WG.6/24/L.9.

not spoken to Somaliland officials but has spoken with Puntland officials.¹¹⁵ This demonstrates the importance of the parent states non-opposition to the exercise of self-determination. As such, direct interaction with Somalia under the UPR is with representatives of the Somali Government and Somali organisations that do not dispute a unified Somalia and not with Somaliland based organisations.

6.8 Conclusion

The inconsistency in the relations between the international human rights system and the Somaliland authority reflects the inconsistency in relations between international organisations, individual states and the Somaliland authority in relation to trade, logistics and a host of other non-human rights issues. As with these other areas of relations, a consistency in engagement between Somaliland and the international human rights system has been impeded by not having an agreed arrangement between the Somali Republic and Somaliland. Engagement between Somaliland and the international human rights system is mostly consistent with Somaliland being a de jure part of the state of Somalia. However, many of the international actors within the international human rights system reference or report on Somaliland as a part of Somalia but identify it as separately administered and as exercising responsibility for international human rights standards even though such responsibilities of the Somaliland authorities for international human rights obligations applicable in Somaliland have not been agreed between the Somali Republic and the Somaliland authority. International efforts in relation to human rights under the Somali Compact/Somaliland Arrangement and those of UN bodies have also engaged directly with Somaliland authorities as exercising a level of self-determination that has not been agreed by the government of the Somali Republic but is not recognition of the statehood Somaliland claims.

Whilst Somaliland is recognised as part of Somalia under international law the extent of the engagement by the international community with the protection of human rights acknowledges human rights issues distinct to Somaliland and falling within the responsibilities of the Somaliland authority. Consistent engagement by the international human rights system with these issues will depend on an agreed arrangement for the exercise of self-determination in Somaliland between the Somaliland authority and the government of the Somali Republic. As such, when considering the impact of the exercise of self-determination by Somaliland, the lack of certainty arising from Somaliland's unrecognised

¹¹⁵ HRC (n 110) 3, paras 2 and 6.

independence could mean that engagement may still be improved by an arrangement that agrees to the exercise of a level of external self-determination.

Conclusion

7.1 Thesis argument

The research question of the thesis, as set out in the introduction, was how constitutional arrangements for the exercise of self-determination by the territory of Somaliland could impact Somaliland's engagement with the international human rights system. The explanation of the historical background to the formation of Somalia in chapter one demonstrates the focus of the current debates, regarding the exercise of self-determination by Somaliland on a federal Somalia and a sovereign Somaliland state, has had an emotive impact. The emotional focus on a Somaliland state is one of the consequences of the Siad Barre regime's persecution of the Isaaq clan, which is a minority clan in Somalia but a majority in Somaliland. The focus on a federal Somalia is a result of maintaining the territorial integrity of Somalia after the assertion of regional self-determination in Somalia in the absence of a strong central government of the Somali Republic.

Chapter two built on the effects of the historical background on the exercise of self-determination identified in chapter one by analysing the relationship between the Somaliland human rights system and international human rights. This analysis demonstrated that there is a human rights system in Somaliland separate from the Somali Republic which the international human rights system can engage with, if the constitutional arrangement for Somaliland's self-determination were established and agreed with the Somali Republic, as the parent state. The chapter also explored human rights problems in Somaliland, such as with women's rights, refugees and IDPs and the free expression of the media and demonstrated that there are problems that may impede engagement with the international human rights system even if an arrangement for Somaliland's self-determination was clear and agreed.

Chapter three continued the discussion of the issues that impact the exercise of self-determination that chapters one and two contributed to and building on the historical circumstances to self-determination in Somaliland and the separate human rights system in Somaliland, chapter three demonstrated that Somaliland claims to exercise self-determination as a state and that the spectrum of self-determination is broader than the two dominant sides of the current debate. Although Somaliland claims to exercise self-determination as an independent state, Somaliland is a de jure part of Somalia and does not exercise a level of self-determination that has been agreed by the government of the Somali Republic, as the de

jure government of Somalia. This demonstrates that the starting point for consideration of the impact of different arrangements for the self-determination of Somaliland is that Somaliland currently exercises self-determination as a de facto state and a de jure part of Somalia. Thus, this is also the starting point from which an assessment of how the exercise of self-determination by Somaliland may impact engagement with the international human rights system can be made.

The chapter discussed that self-determination is a spectrum that must remain open to new aspects.¹ The level of self-determination Somaliland exercises on this spectrum is impacted by the stability of the Somaliland authority's governance in Somaliland but the formal model discussed when assessing the broader spectrum of self-determination is not as important as the agreement to the exercise of self-determination by the government of the Somali Republic. The focus of the debate on the exercise of self-determination in Somaliland on the two opposing positions of a sovereign independent Somaliland state and a federal Somalia which has resulted from the history of Somalia, limit the scope for reaching an agreement on the self-determination of Somaliland. This restriction of the arguments for the self-determination of Somaliland has led to a lack of agreement from the Somali Republic to an arrangement. Consideration of the impact of the exercise of self-determination by Somaliland and thus what is required from an agreed arrangement, may widen the scope for reaching such a possible agreement.

The analysis of the international community's engagement with Somaliland in chapter four demonstrated that the basis upon which the international community engages with the exercise of self-determination in Somaliland in relation to a range of issues including economic, trade, military and a range of other areas is inconsistent. This was demonstrated by the responsibilities Somaliland was encouraged to meet and the overlaps with and deviations from, the international community's engagement with Puntland which claims to exercise self-determination as an autonomous region of a federal Somalia rather than as a state, as claimed by Somaliland. The inconsistent approach to engagement with Somaliland taken by various actors within the international community has arisen due to political self-interest and diplomatic concerns regarding the territorial integrity of Somalia and broader political interests that would arise from acknowledging Somaliland statehood. Of particular importance are the power dynamics between states in the Horn of Africa, due to the effect the

¹ Alexandra Xanthaki, *Indigenous Rights and the United Nations Standards: Self-Determination, Culture and Land* (CUP 2007) 169.

agreement of such states has on reducing concerns of the wider international community of appearing imperialist in their approach to Somaliland statehood. Thus, the importance of the parent state's agreement to the exercise of self-determination, as demonstrated in chapter three, was again highlighted in chapter four due to the domino effect on acceptance of Somaliland's status by the Horn of Africa region, Africa and globally.

The lack of consistency in the status given to Somaliland by the international community in relation to non-human rights issues as illustrated in chapter four and the absence of an agreement from the Somali Republic in relation to the exercise of self-determination by Somaliland has led to inconsistencies as to international responsibilities in Somaliland. Such inconsistencies were demonstrated by the responsibility for human rights in Somaliland claimed and inferred by the conduct of different actors in chapter five. Chapter five also reaffirmed the importance of the agreement of the Somali Republic to the exercise of self-determination by Somaliland on the impact an arrangement for the exercise of self-determination may have on responsibility for human rights protection in Somaliland.

The inconsistent status given by the international community to the exercise of self-determination in Somaliland in trade economic and other matters as demonstrated in Chapter 4 and the unclear human rights obligations and responsibility for them, as set out in Chapter 5, were shown to impact engagement between the international human rights system and Somaliland in chapter six. This engagement has inconsistencies between generally recognising Somaliland as a de jure part of Somalia under the Somali Republic despite the government of the Somali Republic not having a presence and providing support for a Somaliland human rights system that is identifiably separate from the federal structure of the Somali Republic. The inconsistencies in engagement between the international human rights system and Somaliland reaffirmed the argument throughout this thesis that the lack of an agreement with the government of the Somali Republic as to how self-determination is exercised in Somaliland is of central importance to the impact of a constitutional arrangement for the exercise of self-determination on engagement between the international human rights system and Somaliland.

7.2 Where Next and Broader questions

The thesis has identified there is a human rights system in Somaliland with which the international human rights system could engage if the form of self-determination exercised by

Somaliland was agreed with the Somali Republic. Debates around self-determination in Somaliland have been shown to focus on the two opposing positions of a sovereign Somaliland and federal Somalia as a result of Somalia's recent history. This has resulted in an inconsistent approach from the international community to the exercise of self-determination by Somaliland due to the international community's diplomatic concerns regarding the weakening of Somalia's territorial integrity and broader political interests. The inconsistent approach of the international community to engagement with Somaliland has had the impact of increasing uncertainty as to responsibility for international human rights in Somaliland. This in turn has resulted in engagement between the international human rights system and Somaliland that is not always consistent with Somaliland being a *de jure* part of Somalia. Consideration of the exercise of self-determination by Somaliland beyond a federal Somalia and a sovereign Somaliland to include a level of self-determination that enables a degree of external self-determination that could take advantage of the stability of governance in Somaliland which was also agreed to by the government of the Somali Republic, as the recognised government of Somalia, may enable greater engagement between Somaliland and the international human rights system.

This thesis links in with other areas of research on self-determination and Somaliland regarding the right to self-determination in Somaliland and what constitutional arrangements would lead to stability in Somalia. This wider research, along with the analysis in this thesis of the current status of the exercise of self-determination in Somaliland and the importance of the parent state's agreement might be used to explore different potential political models. This exploration could assess how different constitutional models could accommodate aspects of the exercise of external self-determination, which this thesis identifies as necessary for engagement with the separate human rights system in Somaliland, to a level Somaliland has exercised as a *de facto* state. Such analysis would also need to assess what is acceptable to the central *de jure* government of the Somali Republic and would satisfy the emotive issues felt in Somaliland and the Somali Republic that arise from Somalia's history.

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Appendix 1

Somalia has ratified or acceded to;²

Human Rights Conventions

- International Convention on the Elimination of All Forms of Racial Discrimination³
- International Covenant on Economic Social and Cultural Rights⁴
- International Covenant on Civil and Political Rights⁵
- UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities⁶
- Convention on Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷
- The 1951 Convention relating to the Status of Refugees and its 1967 Protocol⁸
- The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment⁹
- International Court of Justice
- Convention on the Rights of the Child¹⁰
- Convention on the Rights of Persons with Disabilities acceded 2 October 2018 ratified 6 August 2019¹¹

International Labour Organisation Conventions

- Discrimination (Employment and Occupation) Convention
- Medical Examination of Young Persons (Sea) Convention
- Workmen's Compensation (Accidents) Convention
- Equality of Treatment (Accident Compensation) Convention
- Seamen's Articles of Agreement Convention
- Repatriation of Seamen Convention

² Amnesty International, Report, In The Line of Fire Somalia's Children Under Attack (2011) <http://www.protectingeducation.org/sites/default/files/documents/amnesty_international_in_the_line_of_fire.pdf> accessed 12 September 2015

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ HRC, 'National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Somalia' (11 April 2011) UN Doc A/HRC/WG.6/11/SOM/1, 40.

⁸ Ibid

⁹ Amnesty International (n2)

¹⁰ UNICEF Press Release, Government of Somalia signs instrument of ratification of UN Convention on the Rights of the Child (January 2015) <https://www.unicef.org/media/media_78732.html> accessed 20 April 2016

¹¹ HRC, 'Report of the Independent Expert on the situation of human rights in Somalia' (19 July 2018) UN Doc A/HRC/39/72 para19.

- Forced Labour Convention
- Underground Work (Women) Convention
- Recruiting of Indigenous Workers Convention
- Contracts of Employment (Indigenous Workers) Convention
- Penal Sanctions (Indigenous Workers) Convention
- Labour Clauses (Public Contracts) Convention
- Protection of Wages Convention
- Abolition of Forced Labour Convention¹²

The Government of Somali Republic has deposited with the International Labour Organisations the instruments of ratification for the following International Labour Organisation conventions:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

Humanitarian Law

- Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949
- Convention (III) relative to the Treatment of Prisoners of War
- Convention (IV) relative to the Protection of Civilian Persons in Time of War

Somali has signed but not ratified

- Convention on the Rights of the Child, Optional Protocol on Children in Armed Conflict
- the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol
- The Convention on the Rights of Persons with Disabilities and its Optional Protocol¹³
- the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- the International Convention for the Protection of All Persons from Enforced Disappearance
- the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women¹⁴

¹² (n6)

¹³ Amnesty International (n2)

¹⁴ Amnesty International (n2)

- the Optional Protocol to the International Covenant on Economic Social and Cultural Rights¹⁵
- The Second Optional Protocol to the International Covenant on Civil and Political Rights
- the Rome Statute of the International Criminal¹⁶
- African Charter on the Rights and Welfare of Children¹⁷
- Convention on the Rights of People with Disabilities¹⁸

Somalia has not signed or ratified

- Convention on the Elimination of Discrimination of All Forms of Discrimination against Women
- Convention on the Rights of Persons with Disabilities
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- The United Nations Convention against Transnational Organized Crime and its three Additional Protocols aiming to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, the smuggling of migrants, and the illicit manufacturing of and trafficking in firearms and ammunition
- The Convention on the Rights of Persons with Disabilities and its Optional Protocol
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977¹⁹
- It should also immediately sign and ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa²⁰

¹⁵ Amnesty International, Somalia: Human rights agenda for the post-transition Somali government. Public Statement, AFR 52/007/2013 (2013)
<<https://reliefweb.int/sites/reliefweb.int/files/resources/Human%20Rights%20Agenda%20for%20the%20Post-Transition%20Somali%20Government.pdf>> Accessed March 2014

¹⁶ Amnesty International (n1)

¹⁷ Diplomat New Network, Efforts to improve human rights in Somalia (19 August 2014),
<<https://diplomat.so/2014/08/19/efforts-to-improve-human-rights-in-somalia/>> accessed 22 January 2015

¹⁸ (n6)

¹⁹ (n6)

²⁰ Amnesty International n1