

**HUMAN RIGHTS ISSUES IN SOMALIA: A CRITICAL ANALYSIS, 1991-2012**

**BY:**

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**R52/70684/2011**

**A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT FOR  
THE AWARD DEGREE OF MASTER OF ARTS IN INTERNATIONAL  
CONFLICT MANAGEMENT FROM INSTITUTE OF DIPLOMACY AND  
INTERNATIONAL STUDIES. UNIVERSITY OF NAIROBI.**

**DECLARATION**

This research project is my original work and has not been presented for a degree in any other University

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This research project has been submitted for examination with my approval as the University supervisor.

**Dr. IBRAHIM FARAH** ..... **Date**.....

## **DEDICATION**

To my family (Maryamroon, Ummueyman, Warda and Sambul.) and to the people of Somalia who endured several years of human rights violations.

## **ACKNOWLEDGEMENT**

I am beholden to the Institute of Diplomacy and International Studies (IDIS), University of Nairobi (UoN) for affording me the opportunity to be part of this startling voyage for knowledge and for the trusty support I received for the duration of the study. I am indebted to my supervisor, Dr. Ibrahim Farah for his informed guidance, encouragement and insightful comments in shaping this work. I am also grateful to my lecturers.

With thankfulness, I extend a word of appreciation for the support of various other people whose input was influential in various ways during my study; my family, the entire staff of University of Nairobi, in particular library staffs, for allowing me to access electronic books and journals; to the entire ICM class of 2011, for the treasured unique experience of a continental family.

To all the above and others whom I could not mention due to the parameters of space, I am truly indebted. God bless you all!

## **ABSTRACT**

The overthrow of President SiyadBarre in 1991 marked a turning point in Somalipolitics, economy and society. After the ousting of Barre regime by the Rebel forces in 1991, turmoil, factional fighting, and anarchy ensued in Somali. The Somali National Movement (SNM) gained control of the north, while in the capital of Mogadishu and most of southern Somalia, the United Somali Congress achieved control. Somalia had been without a stable central government since Mohamed SiadBarre fled the country in 1991. Generally security situation in Somalia is unpredictable and in particular the capital Mogadishu is marked by daily hand-grenade attacks and roadside bombs directed at Ethiopian soldiers and the Somali government forces. Accordingly, traditional or customary law is the most prevalent legal system in today's Somaliain their role as enforcers of law and order within and between clans; traditional leaders have come under sustained pressure from Somalia's long-lasting environment of conflict, rapid socioeconomic change and the absence of law and order. In the next chapter I will discuss the human rights issues in Somalia from the periods 1991-2012.

The European colonization of Somalia and the Horn of Africa involved periods of warfare between the colonialists and Darawish forces of Siyad Mohamed Abdulla Hassan and between Britain and Italy during World War II. In this regard, colonialism is said to have had a permanently damaging effect on the Somali people, Somalia's socio-economic system and attempts at post-independence reconstruction.

The study will see that if Somali state was heavily dependent on foreign aid. As this aid declined in the late 1980s, what was the end result? Political and economic competition among the elite

was turned inwards over Somalia's local resources. The study will find out that if the conflict in Somalia from its onset was caused by clannism and nepotism and unequal distribution of the natural resources whereby the country was divided between the northerners (marginalized) and the southerners (elites) as some quarters had claimed in this study. War crimes were also allegedly committed, and the study will expose if such crimes were committed against the people of Somalia.

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## CHAPTER ONE INTRODUCTION TO THE STUDY

### 1.1 Background to the Study

Since the end of World War II, when human rights were recognized in the global international law, there have been published many studies and researches on this topic.<sup>1</sup> The issue of human rights and its protection occupied a large number of scholars. Consequently, the third world countries have become an area of special interests probably because of worsening situation. However, most of the analyses of human rights in the third world countries have focused on economic development and governmental policy.<sup>2</sup>

Somalia has exceptionally poor human rights conditions and is one of the African countries that are considered by Non-Governmental Organizations (NGOs) to be not free.<sup>3</sup> This country located in the north-eastern Africa, has not had an effective central government since former President SiadBarre was overthrown in 1991.<sup>4</sup> Somalia's disintegration is evident everywhere and in daily life. While many African citizens are becoming healthier and have better access to economic opportunities than a couple of years ago, Somalia still has to struggle with many domestic difficulties. Its citizens are now even less physically secure and their rights are continuously violated.

Somalia has experienced almost constant conflict since the collapse of its central government in 1991. The ongoing civil war in Somalia has led to internal displacement of millions citizens

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<sup>1</sup> G.D.Evans, "*Human Rights and State Fragility: Conceptual Foundations and Strategic Directions for State-Building*", Journal of Human Rights Practice, Vol.1, No.2, p.181-207

<sup>2</sup> A.C Odinkalu., "Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa", Journal of African Law, Vol.47, No.1, p.1-37

<sup>3</sup> K.Menkhaus., "U.S. Foreign Assistance to Somalia: Phoenix from the Ashes?", (Middle East Policy, Vol. 5, no.1, January 1997), p. 1

<sup>4</sup> Somalia Country Profile, "BBC News", [online], 2010.

making the state a shelter for terrorist organizations.<sup>5</sup> The region is troubled with absence of the rule of law. Somalia lacks the capacity necessary to provide respect for the rule of the law and security of citizens. For instance, as a failed state as some quarters claimed, it has been most likely unable to combat piracy within its waters due to lack of central governance. Ineffective government has been unable to fight corruption and violence in the country. At the same time, poverty is still increasing and more people are suffering from the lack of security. This in turn takes effect in piracy, terrorist activity and human rights violations. Furthermore, human rights are not protected by the state and they are overall in really bad condition. Due to absence of functioning institutions, perpetrators of human rights abuses have been rarely punished.<sup>6</sup>

The security situation in Mogadishu today is more unpredictable compared with the situation in the early nineties when there were clear front lines between the various militias.<sup>7</sup> Sporadic fighting between Al-Shabaab and African Union Mission in Somalia (AMISOM) troops has persisted in Mogadishu, including in the Dayniile, Heliwa, and Yaqshiid districts.<sup>8</sup> Several politically motivated assassinations have been carried out in Mogadishu since the beginning of the year 2012.<sup>9</sup> A Person-Borne Improvised Explosive Device (PBIED) attack took place inside the Villa Somalia compound in Wardhiigley district resulting in at least four civilian casualties and an unconfirmed number of injuries.<sup>10</sup> While AMISOM has put pressure on Al-Shabaab and pushed them to the periphery of Mogadishu, 1,500 Al-Shabaab fighters loyal to Sheikh Ali Rage and the Murusade clan remain in the Deynile area. A previous attempt by Burundian AMISOM

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<sup>5</sup>Transparency International Corruption Perceptions Index available on the Internet: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results)

<sup>6</sup> Ibid

<sup>7</sup>UN High Commissioner for Refugees, *UNHCR alarmed by resumption in mortar attacks in Somalia's Mogadishu*, 20 March 2012, <http://www.unhcr.org/refworld/docid/4f6ad7e32.html>

<sup>8</sup>IASC Somalia, *Protection Cluster Update, weekly report*, 3-16 march 2012. <http://reliefweb.int/node/484051>

<sup>9</sup> Ibid

<sup>10</sup> Ibid

forces to attack Al-Shabaab in Deynile failed and resulted in heavy fighting with 30 Burundian soldiers being killed.<sup>11</sup> This was partly due to the rather poor training and equipment of the Burundian soldiers.

Al-Shabaab having withdrawn from the city has since resorted to unpredictable attacks in random places. On 20 March 2012 United Nations High Commissioner for Human Rights (UNHCR) Somalia raised alarm over the resumption of mortar attacks in the Somalia capital of Mogadishu, which led to the deaths of at least four IDPs (Internally Displaced Persons), including two children.<sup>12</sup> Mortars landed in a small IDP settlement in the Wardhigley district few weeks after the withdrawal of anti-government forces from the majority of districts in the capital marking the first attack of its kind.<sup>13</sup> On 27 March 2012 United Nations High Commissioner for Human Rights (UNHCR) expressed concern of the continuation in mortar attacks in Mogadishu, which claimed three more lives.<sup>14</sup> Several mortars landed in the BeertaDarawiishta (Darwish) settlement for internally displaced people near the Somali Parliament building in the Waardhiigley District of the Somali capital where it was reported that three internally displaced people, including a father and his three year old child were killed and eight others; five women and three men were seriously injured.

Somalia has been included in the Freedom House report as one of the worst countries in the world according to human rights condition for the fourth year in a row.<sup>15</sup> Somalia received rating

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<sup>11</sup>UN High Commissioner for Refugees, *UNHCR calls for respect for civilian life and aid agencies as mortar attacks continue in Somali capital*, 27 March 2012. <http://www.unhcr.org/refworld/docid/4f7d76d32.html>

<sup>12</sup>Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> GM., Cornett, L., & Wood, R, *Political Terror Scale 1976-2006*, (2009)

of 7 for political rights and for civil liberties, where 7 on the scale represent the worst condition and situation has been getting worse since 2000.<sup>16</sup> Somalia is not a free country, where freedom of speech and the press as well as freedom of assembly is not respected. Consequently, it has remained one of the world's most dangerous countries for journalists who along with human rights defenders are threatened and suffer from severe abuse and violence.<sup>17</sup>

Somalia's semi autonomous neighbor, Somaliland has been able to maintain relative stability; however, it has been unable to resolve problems regarding human rights such as illegal imprisoning of people, including children. This study will investigate the situation of human rights in Somali with critical analysis of the periods 1991 to 2012.

## **1.2 Statement of the Research Problem**

The overthrow of former President Siyad Barre in 1991 have since marked a turning point in Somali politics, economy and society,<sup>18</sup> where Somalia has suffered from civil-war, wide-spread famine, broken infrastructure, rampant human and civil rights abuses, poverty, human trafficking, rape, murder and corruption at every level of society. These atrocities have come from the war-lords to the merchants on the streets of Mogadishu selling 70\$ an AK 47 and rocket propelled grenades(RPGs) fresh out of the box. Consequently, no one is safe in Somalia.<sup>19</sup>

Though Al-Shabaab has partially withdrawn from Mogadishu, it has replaced its previous

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<sup>16</sup>Ibid

<sup>17</sup>*Human Rights Watch 2010*

<sup>18</sup>A .Hussein,andR. Ford,.,*Removing Barricades in Somalia: Options for Peace and Rehabilitation.*Washington D.C., Peace works (1998)

<sup>19</sup>J.Gettleman, , *Peace Force Is Attacked on Arrival in Somali,*( New York Times, 2007)

military approach with asymmetric warfare tactic, which means more suicide attacks, IEDs (Improvised Explosive Device), VBIEDs (Vehicle Born Improvised Explosive Device), i.e. car bombs and better prepared attacks on selected high-value targets.<sup>20</sup> The numbers of IEDs have increased since August/October 2011, but so has the sophistication of these devices in its battle against the Al-Shabaab forces<sup>21</sup>. Al-Shabaab makes use of young men and sometimes women in order to deploy explosive devices and undertake hand grenade attacks. These young men and women have received reimbursement of monetary values for their actions. The wider use of indiscriminate explosive devices in Mogadishu has made the city a more dangerous place for everyone.

There have been huge human rights abuses in Mogadishu and no one is protecting basic human rights. All citizens of Mogadishu, irrespective of clan affiliation, are suffering from the insecurity and lack of protection; in addition, IDPs lack shelter and food, which is only provided at an absolute minimum. There are armed gangs and clan militias which make people think twice before they go out in the streets. Consequently, those whose clans are thought to be armed are less abused or harassed but minorities and IDPs do not have this option. In 2009, Somalia took the first place in the ranking of countries with the most difficult conditions of life. Somalia has been placed on this position for the second year in a row.

Despite the deplorable situation in Somalia, little investigation has been done to unveil the plight of citizens in the war-torn Somalia. This study thus seeks to answer the question: What has been the state of human rights in Somalia from 1991-2012?

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<sup>20</sup>BBC News. *Somalia: Suicide bomber targets presidential palace.* 14 March 2012. <http://www.bbc.co.uk/news/world-africa-17364680> and *Somalia: Al-Shabab bombs Mogadishu cafe.* 9 February 2012. <http://www.bbc.co.uk/news/world-africa-16947804>

<sup>21</sup> Ibid

### **1.3 OBJECTIVES**

The main objective of this study will be to analyze the state of human rights in Somalia between the periods 1991 to 2012.

More specifically the study aims to:

- i) Provide an overview of the human rights situation in Somalia during the study period.
- ii) Examine the nature of human rights abuses in Somalia during study period.
- iii) Examine the intervention measures by the international community to address human rights abuses in Somalia during the study period.

### **1.4 Literature Review**

#### **Introduction**

This literature is drawn from books, academic journals, conference, information materials, organizations, documents, positions papers and the internet. The review is on the main theoretical perspective which the study anchors on through the identification of the gaps from the hypothesis have been formulated. A description on how they have inspired the project in part or wholly is stated. The review will give brief highlights on human rights situations in Somalia and how the human rights are intervened by the international community.

#### **Universality of Human rights**

Human rights are rights inherent to all human beings, whatever your nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. Every individual is equally entitled to human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfill

human rights. The obligation to respect means that states must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires states to protect individuals and groups against human rights abuses. The obligation to fulfill means that states must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.

According to Evans G.D, Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary, international law, general principles and other sources of international law. As he argues that International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.<sup>22</sup>

The principle of universality of human rights is the cornerstone of international human rights law. This principle was first emphasized in the Universal Declaration on Human Rights (UDHR) in 1948 and has since been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of states to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.<sup>23</sup> All states have ratified at least one, and 80% of states have ratified four or more, of the core human rights treaties, reflecting consent of states which creates legal obligations for them and giving concrete

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<sup>22</sup>G.D. Evans: *Human Rights and State Fragility: Conceptual Foundations and Strategic Directions for State Building*, *Journal of Human Rights Practice*, Vol.1, No.2, p.181-207

<sup>23</sup>Ibid

expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.<sup>24</sup> Kofi Annan asserts that Human rights are inalienable. As Annan claims that they should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.<sup>25</sup>

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>26</sup> The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, and color and so on. However, Donnelly recognizes that the principle of non-discrimination is complemented by the principle of equality, as stated in Article

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<sup>24</sup>Ibid

<sup>25</sup>K, Annan , *Address at the University of Teheran on Human Rights Day*, UN document SG/SM/6419, 1997

<sup>26</sup>Ibid



1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”<sup>27</sup>

Human rights advocates agree that, sixty years after its issue, the Universal Declaration of Human Rights is still more a dream than reality. Violations exist in every part of the world. For example, Amnesty International’s 2009 World Report and other sources show that individuals are: Tortured or abused in at least 81 countries, Face unfair trials in at least 54 countries, restricted in their freedom of expression in at least 77 countries.<sup>28</sup> Not only that, but women and children in particular are marginalized in numerous ways, the press is not free in many countries, and dissenters are silenced, too often permanently. While some gains have been made over the course of the last six decades, human rights violations still plague the world today.

### **International Human Rights Instruments**

Odinkalu, A.C. writes that Somalia is a state party to the following international human rights instruments: The International Convention on the Elimination of All Forms of Racial Discrimination, The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>29</sup> Likewise Somalia is a state party to; Convention on the Elimination of Forced and Compulsory Labor, Convention on the

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<sup>27</sup>J. Donnelly ., *Human Rights in Theory and Practice*, New York: Cornell University Press, 2003, p. 10

<sup>28</sup>A, Shah, .“*Human Rights Issues.*”*Global Issues*. 20 Oct. 2011. Web. 26 Jun. 2013.  
<http://www.globalissues.org/issue/137/human-rights-issues>>.

<sup>29</sup>A.C. Odinkalu, Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa”, *Journal of African Law*, Vol.47, No.1, p.1-37

Elimination of Discrimination in Respect Employment and Occupation.<sup>30</sup> Although the previous Transitional National Government (TNG) signed the Convention of the Rights of the Child in May 2002 and the Transitional Federal Government (TFG) the Optional Protocol on the involvement of children in armed conflict in September 2005, neither has so far been ratified. In addition, Somalia is party to the four Geneva conventions on International Humanitarian Law, and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Elman Peace and Human Rights Center (EPHRC), a local NGO in Mogadishu explained that there are no human rights in Somalia for anyone, and stated that for woman the situation is even worse off than the rest of the people.<sup>31</sup> Human rights abuses take place not only at the various checkpoints, but also in the IDP camps as well as in other places. IDPs are particularly vulnerable no matter where they are. EPHRC emphasized that all women living in Mogadishu are at risk of becoming victims of human rights abuses, especially sexual violence. Violence against women is culturally unacceptable, and the occurrence of rape and other forms of Sexual and Gender Based Violence (SGBV) is a taboo in Somalia.<sup>32</sup>

According to EPHRC women are poorly represented in Somalia politics. Women only hold 5% of all seats in the Parliament. In addition the group of female members of Parliament is fragmented and clan oriented.

EPHRC reiterated that it is dangerous for women to talk about rape and other forms of sexual

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<sup>30</sup> 1949 Geneva Conventions (signatory 1962)

<sup>31</sup> Ibid

<sup>32</sup> Human Rights Watch, *Somalia- Beyond Warlords. The Need for a Verdict on Human Rights Abuses*, 1993, [online], Vol. 5, No. 2,

abuses.<sup>33</sup> Women who have become victims of rape do not dare to report such crimes to the police as they risk being killed by the perpetrators if it becomes known that they have done so. In addition it would be exceptional if the police would take any action against a rapist. According to EPHRC it is the women who suffer most in Somalia irrespective of where they are living. It does not make any difference where the woman is living as abuses and violence against women happen in areas controlled by Al-Shabaab as well as in areas controlled by the Transitional Federal Government (TFG) and its allies.<sup>34</sup> Amina Abdulkadir Arale of Somali Women Development Centre (SWDC) emphasized that women and children are the ones suffering the most irrespective of who is in charge of the power and she added that a lot of human rights violations are still being committed in Mogadishu.<sup>35</sup>

In addition to that, the absence of an effective central government since President Siad Barre was overthrown in 1991 left Somalia lawless and exposed to inter-clan warfare in many regions, notably the Mogadishu area. Since then the country suffered internal armed conflict and a high level of violence and witnessed massive human rights abuses and violations. The critical situation of civilians has further been exacerbated by humanitarian crises due to cycles of severe droughts and widespread flooding. While the country is prone to cyclical drought, it is the persistent violence against civilians, repeated displacement, and predatory looting by armed groups that have produced serious famine on several occasions in the last 20 years.<sup>36</sup> A significant proportion of Somalia's estimated total population of 7.5 million has been displaced sometimes

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<sup>33</sup>Ibid

<sup>34</sup>Ibid

<sup>35</sup>*The Failed States Index 2010*, "Foreign Policy", [online], 2010, available on the Internet: <http://www.foreignpolicy.com/failedstates>

<sup>36</sup>Ibid

repeatedly either internally or beyond the country's borders as a result of conflict and food insecurity. According to the United Nations, 1.3 million people are currently displaced within Somalia, and there were by July 2012 more than a million Somali refugees in the Horn of Africa.<sup>37</sup>

Despite the recent political progress, of the most notable amongst recent peace initiatives are the 2000 Arta Peace Conference-Djibouti agreement, however the precarious human rights and humanitarian situation in southern and central Somalia critically worsened over the past two years, particularly in the Mogadishu area. During the past months it reached alarming levels in terms of human suffering. Many of the mission's interlocutors observed that the situation in Mogadishu was presently at its worst since 1992. Serious, widespread and systematic violations of international humanitarian and human rights law continue to be reported with alarming regularity.

Menkhaus, K observes that in Mogadishu, regular indiscriminate attacks in which heavy artillery, mortars, rocket-propelled grenades, (RPGs) heavy machine guns and roadside bombs have been used, as well as targeted assassinations, have caused thousands of deaths and wounded, as well as destruction of property with whole neighborhoods razed to the ground. Many of the accounts indicated that the culprits are at times TFG forces, police or military acting with the support of Ethiopian troops.<sup>38</sup> Consequently, following attacks against their soldiers, Ethiopian troops reportedly carry out reprisals which may involve shelling of civilian quarters,

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<sup>37</sup>Ibid

<sup>38</sup>K. Menkhaus "U.S. Foreign Assistance to Somalia: Phoenix from the Ashes?" *Middle East Policy*, Vol. 5, no.1, January 1997, p. 1

causing innumerable casualties as well as damage to property and infrastructure.

### **Accusations and counter accusations**

A new dimension to the conflict is that it is often no longer possible to clearly identify the perpetrators, as many actors cannot be differentiated by their uniform or clothing, while others blend in with civilians, and yet others may be serving financial, clan-based or even opportunistic interests rather than political ones. The TFG and others argue that insurgents often carry out attacks in police uniforms, which appear to be widely available inside Somalia, with the clear intent of implicating the TFG in those attacks.<sup>39</sup> Therefore, it is arguably more difficult to attribute responsibility. However, the point was repeatedly made that the TFG forces and police are not paid regularly except those receiving stipends from a programme sponsored by United Nations Development Programme (UNDP) and that they have to “pay themselves” through ransom, extortion and illegal fees collected in unauthorized checkpoints. TFG forces have also been described as being fragmented, loyal to clan leaders or to specific individuals or groups represented in the TFG. Insurgents have also been accused of disregarding civilian life and property. They have often used civilian homes as shelters to carry out attacks, allegedly to foment opposition to the TFG – Ethiopian forces as they engage in retaliatory or indiscriminate attacks.<sup>40</sup> Insurgents have also been accused of carrying out bomb attacks, which often result in high number of civilian casualties, in killing those accused of being “collaborators” and in intimidating the population into not cooperating with the TFG.

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<sup>39</sup>Ibid

<sup>40</sup>Ibid

## Children and women

Consequently, all parties to the conflict have reportedly recruited children off the streets and from schools to fight in their militias, paying them according to the activity they perform. Children are said to be recruited to commit targeted killings, terrorist attacks. Women and girls continue to be victims of both conflict-related and of sexual- and gender-based violence. Female Genital Mutilation (FGM), in its most severe form of infibulations, is still very widely practiced. Women also continue to be discriminated in the context of traditional and customary laws, such as with regard to compensation.<sup>41</sup> The participation of women in government and the judiciary is still lagging behind. Thürer, D. reports that levels of rape have increased, now and also including the phenomenon of “gang rape”, as a form of retaliation against opponents in the conflict but also as a symptom that traditional mechanisms which were already inadequate have also collapsed.<sup>42</sup> Access to basic services is particularly difficult for women and children, which end up in situations of extreme vulnerability. In Somaliland, there have been reports of girls attempting or committing suicide because schooling is reserved for boys in the family. Furthermore, strong resistance to equality is based on practices emanating from customary law, which many believe are based on *sharia* while in reality they are not. Gender-based violence against women and girls, especially amongst IDPs, has been frequently reported. As single female headed households constitute the majority of adults in IDP and refugee camps, these women generally lack the protection of male relatives rendering them more vulnerable.<sup>43</sup> Perpetrators are almost never brought to justice. These women furthermore bear the brunt of raising their children under very

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<sup>41</sup>A.C. Odinkalu „Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa”, *Journal of African Law*, Vol.47, No.1, p.1-37

<sup>42</sup>D.Thürer, “*The Failed State*” and *International Law*, “International Review of the Red Cross”, [online], 1999, available on the Internet: <http://www.icrc.org/eng/resources/documents/misc/57jq6u.htm>

<sup>43</sup>Ibid

difficult circumstances. In addition, members of civil society, especially intellectuals, journalists and human rights activists, have continuously and deliberately been faced with harassment, arbitrary arrests and detention.

Human rights defenders and journalists have since reported having received serious death threats which had led some of them to flee Mogadishu. Since February 2007, at least ten journalists have been killed in Somalia, the majority working for radio stations. Many others have been threatened and intimidated or arbitrarily detained, allegedly for reasons directly linked to their profession; others have fled the country. Access to independent information is therefore critically hampered. Discrimination against minorities and persons with disabilities has also consistently been reported seeking asylums to Dadaab and in Somaliland.<sup>44</sup> Social constraints have put obstacles to inter-marriage and access to work is restricted to traditional jobs normally those enjoying the lowest social status and pay. In a context of total breakdown of law and order, lack of protection from clans detracts them even from this shelter provided by customary law. Persons with disabilities, many of which caused as a result of the protracted conflict, are also subject to abuses in Mogadishu and are regularly caught in the crossfire between TFG and/or Ethiopian troops fighting opposing armed groups. Regular indiscriminate shootings from both sides have caused a massive displacement of the population from the capital to other parts of the country, which were already facing serious humanitarian challenges. In a desperate effort to flee the violence and poverty, many Somalis risk their lives to undertake the perilous journey across the Gulf of Aden from Somalia to Yemen.<sup>45</sup> A recent UN source indicates that more than 22,500

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<sup>44</sup>*Conflict in Somalia: Drivers and Dynamics*, available on the Internet: <http://siteresources.worldbank.org/INTSOMALIA/Resources/conflictinsomalia.pdf>

<sup>45</sup>UN, *Universal Declaration of Human Rights*, available on the Internet:

people most of them Somalis have attempted this journey in open boats this year. At least 165 have died and another 220 are missing. Others have fled to secure areas within Somalia or to neighboring countries. UN sources indicate that 600,000 civilians have been displaced from or within Mogadishu during 2007 and according to the Population Tracking Database run by UNHCR; more than 135,000 people were displaced since 1<sup>st</sup> January 2008.<sup>46</sup> UNHCR furthermore reported that the monthly figure for newly arrived refugees in the Dadaab camp had risen from an average of 1,800 per month in 2007 to 4,000 in 2008.<sup>47</sup>

The 2011 famine followed intense armed conflict in Mogadishu as well as ongoing insecurity and intermittent fighting in southern areas of the country. It was exacerbated by severe restrictions on access for humanitarian agencies. Some of the most important organizations providing food aid had withdrawn or been banned from working in areas under the control of the armed Islamist group Al-Shabaab.<sup>48</sup> Al-Shabaab's increasing "taxation" of communities under its control further eroded the coping mechanisms of an already vulnerable civilian population.<sup>49</sup>

Forsythe, D. P. argues that in its resolution 1872 (2009), the Security Council recognized that serious crimes had been committed against civilians in the conflicts in Somalia and affirmed the importance of ending human rights abuses and combating impunity and requested United Nations Political Office in Somalia (UNPOS) to work with the Transitional Federal Government to develop its capacity to address human rights issues. It also expanded the sanctions regime to

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<http://www.un.org/en/documents/udhr/index.shtml>

<sup>46</sup>Ibid

<sup>47</sup>Ibid

<sup>48</sup>*Somalia Country Profile*, "BBC News": [http://news.bbc.co.uk/2/hi/africa/country\\_profiles/1072592.stm](http://news.bbc.co.uk/2/hi/africa/country_profiles/1072592.stm)

<sup>49</sup>Ibid



target individuals responsible for violations of international law, namely the obstruction of humanitarian assistance and the recruitment and use of child soldiers.<sup>50</sup>

United Nations Political Office in Somalia (UNPOS) was established in 1995 to advance the cause of peace and reconciliation in Somalia. In its resolution 1814 (2008), the Security Council requested the Secretary-General to establish an effective capacity within UNPOS to monitor and enhance the protection of human rights in Somalia, and to ensure coordination, as appropriate, between UNPOS, OHCHR and the Independent Expert on the situation of human rights in Somalia, which led to the creation of the UNPOS Human Rights Unit in 2008. The three substantive components of UNPOS are security sector development, political, civil and gender affairs and human rights and rule of law. In accordance with the decision of the Secretary-General and standing United Nations policy, human rights components are integrated into political and peace operations.<sup>51</sup> OHCHR, as the lead United Nations entity for human rights, provides expertise, guidance and support to the UNPOS Human Rights Unit, which has a dual reporting line to the Special Representative of the Secretary-General for Somalia and the High Commissioner.

In addition, since 1999, the Security Council has adopted a number of resolutions to afford greater protection to civilians, including by strengthening the protection framework for women and children. Consequently, as one of the most complex situations before the Council, there are no easy solutions for protection challenges in Somalia.

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<sup>50</sup> D. P. Forsythe, *Human Rights in International Relations*, Cambridge: Cambridge University Press, 2002, p. 3

<sup>51</sup> Ibid

## **Literature gap**

Human rights offenders are under extreme pressure since the inception of International Criminal Courts (ICC) hence the study ought's to contribute to the management and intervention of human rights issues and mechanism to punish its perpetrators. It also examines an overview of the human rights situation in Somalia during the study period. Likewise, it examines the nature of human rights abuses during study periodand the intervention measures by the international community to address this problem.

### **1.5 Justification of the study**

Since the third world countries have become an area of special interests because of worsening situation, most of the analyses of human rights in the third world countries have only tried to address economic development and governmental policy. They have focused on human rights on the African continent in general. It is of significance to focus on routes causes of human rights violations. It is essential to learn how African state should develop capacity to fulfill international human rights responsibilities. The base for this paper will be to study the state of human rights in the war torn Somali, where one of the most violation to human rights has taken place.

Human rights are universal moral laws of a fundamental nature, belonging to any individual in its relations with the state. Literature treats State as a main protector of human rights and at the same time as a main violator. The emergence of international crimes such as genocide, war crimes and crimes against humanity has led to the establishment of an international legal principle aimed to protect and prevent the worst forms of human rights atrocities and to

prosecute those who committed such atrocities. Perhaps a multifaceted approach is required to determine the kind of atrocity committed in Somalia during the military regime.

Many of the previous published materials remarked the role of the State in protection of human rights. According to them state is responsible for ensuring basic rights and promoting them among society. This paper is concerned with human rights and the state of security; to be more specific, condition of human rights in Somalia. The analysis will provide support for hypothesis that the more insecure the state, the worse the condition of human rights. Strong state is able to protect its citizens, while weak states lack capacity to provide security. The main purpose of this paper is to investigate the state of human rights in war -torn Somalia.

Human rights require everyone's commitment, effort and support. The United Nations took first step in protection of human rights with the Universal Declaration in 1948, formulating internationally defined norms which all states and people should obey. The Universal Declaration has become common vision of more just and peaceful world. It became first international document which is based on the assumption that human rights and fundamental freedoms apply to every person in every place. It is the significance to understand the situation of human rights abuses in conflicting states such as Somali which this study seeks to explore.

### **1.6 Hypothesis**

This study will test the following hypotheses:

- i) What has been the condition of human rights in Somalia during the study period?
- ii) What is the nature of human rights abuses in Somalia during study period?

- iii) What are the intervention measures by the international community to address human rights abuses in Somalia during the study period?

### **1.7 Theoretical Framework**

In a pluralistic world with many different beliefs, not all of which see the world as ultimately meaningful, a religious theory of human rights does not appear to meet the criterion of inclusiveness. Hence, several theorists claim that a viable secular defense of human rights is possible, and more inclusive. Alan Gewirth argues that the criteria of justification for human rights are based on a supreme moral principle, similar to the Golden Rule or the Kantian categorical imperative, which he calls the Principle of Generic Consistency (PGC).<sup>52</sup> He perceives the verifiability of human rights as an immense challenge: “it is not the case that humans are born having rights in the sense they are born having legs. At least their having legs is empirically verifiable, but this is not the case with their having rights.”

According to Gewirth, the PGC is logically derivable from the nature and structure of the human agency, which enables us to plan and execute an action and is thus an observable feature. Gewirth constructs the PGC through a dialectical mode of argumentation and presents the various stages of his argument as inferences made by an agent. The first, inevitable premise is “I do X for purpose E”, followed by the assertion “E is good.”<sup>53</sup> These two assumptions must be accepted by all agents, provided their actions are voluntary, or they risk contradicting the idea that they are agents: Any agent, simply by virtue of being an agent, must admit, on pain of self-contradiction, that he ought to act in certain determinate ways.

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<sup>52</sup> A. Gewirth, (1984), “The Epistemology of Human Rights”, *Social Philosophy & Policy*, 1(2): 1-24.

<sup>53</sup> Ibid

The PGC can be summarized as based on two main components. The first is that Every agent logically must hold or accept that he has rights to freedom and well-being as the necessary conditions of his action for if he denies that he has these rights, then he must accept that other persons may remove or interfere with his freedom and well-being, so that he may not have them, but this would contradict his belief that he must have them.<sup>54</sup>

The second component holds that “the agent must logically accept that all other prospective purposive agents have the same rights to freedom and well-being as he claims for himself.” This method of justification, drawing upon human agency, has the major drawback that it can be interpreted as being exclusive, for not every human being actually has the ability to plan or execute an action. Thus the problem remains of whether babies (even unborn babies), young children, mentally disabled persons or euthanasia patients classify as the agents that Gewirth perceives as holding rights. Moreover, as Richard Rorty points out, Gewirth’s argument of self-contradiction fails when an agent violates another because he perceives the other as merely “pseudo human”: “We have contrasted us, the real humans, with rudimentary or perverted or deformed examples of humanity.”<sup>55</sup>

Unlike Perry and Gewirth, Ronald Dworkin holds that there is both a “secular as well as a religious interpretation of the idea that human life is sacred.”<sup>56</sup> . For Dworkin, it is not difficult to understand a religious version of human sacredness regarding all human beings as ‘children of God’, yet he claims that, admittedly more complicated, secular vision of human rights is also possible: “most people who are not religious also have general, instinctive convictions about

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<sup>54</sup> Ibid

<sup>55</sup>R. Dworkin,. (1994), *Life’s Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York: Vintage Books).

<sup>56</sup> Ibid

whether, why and how any human life has intrinsic value.” Dworkin defines such an intrinsic value as independent of “what people happen to enjoy or want or need or what is good for them.”

<sup>57</sup>According to Dworkin, human sacredness can be perceived as a “secular but deep philosophical belief.” He distinguishes between two different types of sacredness.

The first refers to “sacredness by association.” Dworkin considers national symbols like the American flag an example of such sacredness: “Many Americans consider the flag sacred because of its conventional association with the life of the nation; the respect they believe is owed to their country is transferred to their flag.”<sup>58</sup> The second form of sacredness is related to creation, linking art and life: “Each developed human being is the product not just of natural [divine or evolutionary] creation, but also of the kind of deliberative human creative force that we honor in honoring art.” Dworkin argues, in this regard, humans construct themselves.

### **1.8 Research methodology**

Research methodology section outlines the methods of collecting, assembling and analyzing data. It is divided into research design, data collection and data analysis. The study will adopt a survey design which entails finding out what, where, and how of a phenomenon. A cross-sectional descriptive survey design will be used in this study and information will be collected using questionnaires, key informants. A descriptive study will be undertaken in order to ascertain and be able to describe the characteristics of the variables of interest in a phenomenon.

Data will be collected both from primary and secondary sources. The primary data will be obtained through contacting with the authorities and scholars in the field of research through non structural discussion, Somalia government officials, human rights personnel, international human rights personnel e.g. from United Nations and the victims of human rights abuses.

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<sup>57</sup> Ibid

<sup>58</sup> Ibid

Secondary sources of data will entail the analysis and review of published books, journals, papers, periodicals, and unpublished work, including policy documents and Sessional Papers, media sources and the internet. After the collection, the data will be analyzed by content analysis.

This study will concentrate on human rights situation in Somalia and its human rights condition. Currently, Somali is considered to be in a serious crisis and this may pose difficulty in receiving reliable and complete information. Moreover, due to limited space of this paper, and the available information, the study will provide analysis of human rights only in this country in limited period of time.

The data to be collected will concentrate only on the case of Somalia and thus it may be difficult to determine if the predictions fit in wider scale. It may be impossible to fit the results with other states because each of them differs and each case is different and perhaps even more complex

## **1.9 Chapter Outline**

The study is structured under the following sub- headlines:

**Chapter one:** Provides the introduction to the research by outlining the background, the objectives and the literature review of the study.

**Chapter Two:** Discusses the security situation in Somalia from 1991 to 2012 by providing a theoretical review of the research.

**Chapter Three:** Provides a critical analysis of human right issues in Somalia from 1991 to 2012

**Chapter Four:** Presents an analysis of the study findings in relation to human right issues in Somalia during the period of study

**Chapter Five:**Outlines the summary, conclusions of the research, recommendations and suggestions on areas for further study.



## CHAPTER TWO INSECURITY AND HUMAN RIGHTS ISSUES IN SOMALIA: AN OVERVIEW

### 2.1 INTRODUCTION

The Somali Republic gained independence on 1st July 1960 from the former colonies; union of British Somaliland and Italian Somaliland, while French Somaliland became Djibouti.<sup>59</sup> The conflict in Somalia has endured for more than two decades now, a complex conflict to which a solution seems distant. The faces of the conflict have changed and the warfront has been moved back and forth, but the people of Somalia have had to endure constant unrest since the former President Siad Barre was ousted in 1991. Prior to the 1991 coup, a socialist state was established in Somali following a coup led by Major General Muhammad Siad Barre in 1969.<sup>60</sup>

After the ousting of Barre regime by the Rebel forces in 1991,<sup>61</sup> turmoil, factional fighting, and anarchy ensued in Somalia. The Somali National Movement (SNM) gained control of the north, while in the capital of Mogadishu and most of southern Somalia, the United Somali Congress achieved control<sup>62</sup>. Somalia had been without a stable central government since Mohamed Siad Barre fled the country in 1991. Subsequent fighting among rival faction leaders had resulted in the killing, dislocation, and starvation of thousands of Somalis and this led the United Nations to intervene militarily in 1992.<sup>63</sup>

In 1992, responding to the political chaos and humanitarian disaster in Somalia, the United States and other nations launched peacekeeping operations to create an environment in which assistance could be delivered to the Somali people. By March 1993, the potential for mass starvation in

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<sup>59</sup>DD. Laitin and S. S. Said, *Somalia: Nation in Search of a State* (Boulder: Westview Press 1987), p. 79

<sup>60</sup>Ibid

<sup>61</sup>J. George "Somalia's Overthrown Dictator, Mohammed Siad Barre, Is Dead" *New York Times* (1/3/1995)

<sup>62</sup>S. Carruthers, (2000) *"The media at war: communication and conflict in the Twentieth century"* St Martin's Press: New York.

<sup>63</sup> ibid

Somalia had been overcome, but the security situation remained fragile. On 3<sup>rd</sup> October 1993, US troops received significant casualties (18 dead over 80 others wounded) in a battle with Somali gunmen<sup>64</sup>. When the United States and the UN withdrew their forces from Somalia, in 1994 and 1995 respectively, after suffering significant casualties, order still had not been restored.

Conflict between rival warlords and their factions continued throughout the 1990s. No stable government emerged to take control of the country. The UN assisted Somalia somewhat with food aid, but did not send peacekeeping troops into the country<sup>65</sup>. In the late 1990s, relative calm began to emerge and economic development accelerated somewhat. The country was by no means stable, but it was improving. A transitional government emerged in 2000, but soon lost power. Somaliland and Puntland, regions in the north broke away from the country and set up regional, semi-autonomous governments. They were not internationally recognized.

After the attacks of 11 September 2001, the United States began to take a more active role in Somalia's affairs, fearing that the country had become a haven for terrorists<sup>66</sup>. Other Western governments hoped to bring stability to Somalia for similar reasons. In January 2004, 2 dozen or so warlords reached a power-sharing agreement after talks in Kenya. This agreement called for a 275-member parliament. This Transitional Federal Government (TFG) was the 14th attempt at a

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<sup>64</sup>Human Rights Watch (2011). *"You don't know who to blame – War crimes in Somalia"*. HRW: New York.

<sup>65</sup>K. Lance et al, Florian (2010) *"Peace Journalism, war and conflict resolution"*. Peter Land publishing, Inc: New York.

<sup>66</sup>International Crisis Group (2012) *"Somalia: An Opportunity that Should Not Be Missed."* Africa briefing Nr 87: Nairobi/Brussels.

government since 1991. Its head, Abdullah Yusuf, originally called for African peacekeepers to restore order within Somalia, but many Somalis feared invasion, especially by nearby Ethiopia.<sup>67</sup>

Consequently, Somalia has been suffering from a civil war. Warlords, supported by clan-based militias established themselves as local rulers throughout Somalia, and the country became divided between the various Somali clans.<sup>68</sup> Clan-based conflicts since 1991 have continued to divide the country into local clan fiefdoms and despite 14 attempts to establish a government it was not until 2004 that all main politicians and warlords in Somalia agreed to set up a transitional government. However, this government – the Transitional Federal Government (TFG) – immediately faced the extremely complicated task in bringing reconciliation and cohesion to a fragmented and clan based society. These tasks were further complicated with the rise of Islamism in South-Central (S-C) Somalia. Despite international support to the TFG the warlords and politicians supporting the TFG never succeeded in providing a durable solution to the formidable problems in Somalia.<sup>69</sup>

The failure to reach any amicable solution gave the militias of the Islamist movement Union of Islamic Courts (UIC) and opportunity to gain military control of much of S-C Somalia, including the capital Mogadishu in early 2006.<sup>70</sup> The warlords became marginalized for the first time during the civil war, and the UIC succeeded in establishing some kind of security, law and order in its areas of influence in S-C Somalia. However, this law and order was based on a strict interpretation of Islamic law, and human rights suffered from the UIC's implementation of

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<sup>67</sup> Ibid

<sup>68</sup> National Union of Somali Journalists (2012) "Annual report 2012. The state of press Freedom in Somalia" Nusoj: Mogadishu.

<sup>69</sup> Ibid

<sup>70</sup> United Nations, *Somalia 2004 Consolidated Appeals Process (CAP)*, Geneva, November 2003.

*sharia*. In addition, the UIC had close contacts with radical Islamist groups in other countries, and the international community became increasingly concerned that Somalia would fall into the hands of radical Islamists with connections to international terrorist groups such as Al-Qaeda. Ethiopian troops, backed by several countries, intervened in Somalia in 2006 and by the end of that year Ethiopia and forces loyal to the TFG gained military control of large parts of S-C Somalia, including Mogadishu.<sup>71</sup> Following the ousting of UIC from Mogadishu the TFG Parliament swiftly decided to relocate from Baidoa to Mogadishu. By January 2007 the TFG and its supporter, the Ethiopian forces, controlled most of S-C Somalia, including Mogadishu. However, radical elements of the UIC formed Al-Shabaab, an insurgent organization which fought back against the Ethiopians and the TFG. Soon Al-Shabaab turned out to pose a real threat to the authority of the TFG.<sup>72</sup>

In January 2009 Ethiopia pulled out its troops and Al-Shabaab took control of Baidoa and other locations while the TFG's military control of S-C Somalia gradually weakened, and in May 2009 Al-Shabaab began its attacks on Mogadishu. Soon the TFG in Mogadishu only controlled a small portion of the city while Al-Shabaab succeeded in gaining control over large parts of S-C Somali and Mogadishu.<sup>73</sup> Al-Shabaab's authority in S-C Somalia is strongly influenced by extremist Islamic policies, resulting in severe violations of basic human rights. As the TFG came under serious threat the President of the TFG appealed for international help, and in 2007 the African Union (AU) deployed its peacekeeping forces known as African Union Mission in Somalia

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<sup>71</sup>D. Ted, *Somalia: Current Conditions and Prospects for a Lasting Peace*, Congressional Research Service, April 20, 2011. p. 6.

<sup>72</sup> Ibid

<sup>73</sup> ibid

(AMISOM) in Mogadishu.<sup>74</sup> AMISOM's mandate was originally for a six months period, but this period has been extended repeatedly and AMISOM is still the major military force operating in S-C Somalia.

Al-Shabaab came under increasing pressure by AMISOM in Mogadishu and in August 2011 Al-Shabaab made what it called a tactical retreat from Mogadishu, and since then the allied forces of AMISOM, the TFG, Ethiopia and Kenya have launched an offensive against Al-Shabaab in many other areas of S-C Somalia.<sup>75</sup> This offensive has so far had the outcome that Al-Shabaab no longer has the military control of Mogadishu and in many other cities and areas in S-C Somalia they are continuously being pushed out of its former areas of control, and the allied forces are gaining military influence in an increasingly larger part of S-C Somalia.

However, the military gains by the allied forces have not been filled in by a parallel political development. In many parts of S-C Somalia recovering from Al-Shabaab, there are now a political vacuum. This vacuum is slowly being filled in by various military and political actors including the TFG, clan-based militias and local self-declared administrations/states.<sup>76</sup> As a result of this development there are now some 20 local, often clan based, administrations, and many of these administrations have territories which are overlapping each other. These territorial claims and the ongoing fight against Al-Shabaab pose a serious threat not only to the security situation in S-C Somalia but also to the ongoing political processes in S-C Somalia. The TFG has not been able to fill in the power vacuums in all the areas liberated from Al-Shabaab influence and there is

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<sup>74</sup> Somalia Report (2012), *TFG-AMISOM Seize Remaining Areas of Mogadishu*. 16 March 2012.

<sup>75</sup> Ibid

<sup>76</sup> Ibid

a risk that a return to warlordism will be the reality in many parts of S-C Somalia.<sup>77</sup>

As a result of the continuous fighting in S-C Somalia since 1991 a very large number of Somalis have become internally displaced persons (IDPs). There are approximately 184, 000 IDPs in Mogadishu and its surroundings alone. The total figure for IDPs in all of Somalia is now estimated to be 1 129 000 persons.<sup>78</sup> Many Somalis have also fled the country since 1991 and they are now living as refugees in neighboring countries as well as in Europe, North America, Asia and Australia. It is estimated that there are close to one million Somali refugees in neighboring countries alone.<sup>79</sup> Another result of the dissolution of the Somali state, warfare, droughts and insecurity is a recurring humanitarian crisis in many parts of the country, especially in S-C Somalia. Due to insecurity and inaccessibility, Al-Shabaab has denied the international community access to areas under its control and it is often very difficult for donors to reach those in need in S-C Somalia. Generally, thousands of people have become victims in what is often called the worst humanitarian disaster in the world.<sup>80</sup>

## **2.2 Human rights and insecurity situation in Somalia**

The situation in Somalia capital Mogadishu is marked by daily hand-grenade attacks and roadside bombs directed at Ethiopian soldiers and the Somali government forces. Sniper killings are also widespread. The targeted attacks affect high-profile individuals, including human rights activists, people who cooperate with the TFG, District administrators and members of vigilante

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<sup>77</sup> Ibid

<sup>78</sup> UN High Commissioner for Refugees, *UNHCR alarmed by resumption in mortar attacks in Somalia's Mogadishu*, 20 March 2012, <http://www.unhcr.org/refworld/docid/4f6ad7e32.html>

<sup>79</sup> Ibid

<sup>80</sup> Ibid

groups.<sup>81</sup> One of Mogadishu's four vice mayors has been the subject of a murder attempt, and in August 2007 a prominent Hawiye elder-representative was killed by unknown assailants in Mogadishu. The violence in Mogadishu has increased in June 2007. Many residents had trouble getting to work and schools when parts of Mogadishu were closed off in connection with house-to-house searches carried out by the authorities in a hunt for insurgents. To calm the situation, on 19 June 2007 the government declared amnesty for former members of the UIC, with an exception for those seen as having links to international terrorist organizations.<sup>82</sup>

Despite those measures the UN reported an increase in the number of grenade blasts killing or wounding women and children. On 26 June 2007, five women were killed in the vicinity of the Bakara market, and on 6 July the same year five children were killed when a package they were playing with exploded. During a six-day period in August 2007, more than 20 grenades exploded in city districts, and four sniper killings were reported. The grenade explosions were responsible for the deaths of four people and injury to 30 more. Several of the injured were civilians. On 7 and 8 July respectively, all business activity at the Bakara markets was shut down for the first time in 17 years while TFG forces conducted searches for weapons. At the beginning of August a new series of building searches was conducted in the Heliwa (Huruwa) District in northern Mogadishu, where more than 100 people were arrested.<sup>83</sup>

According to the United Nations reports, several hundred people have been arrested since the curfew was imposed. Those arrested are denied visits from their families and from independent

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<sup>81</sup> Office for the Coordination of Humanitarian Affairs (OCHA) – Somalia, Situation Report #50 – 24 August 2007.

<sup>82</sup> Ibid

<sup>83</sup> Ibid

observers. Neither the International Committee of the Red Cross (ICRC) nor other organizations have access to jails in Southern Somalia.<sup>84</sup> The fighting in Mogadishu has mainly affected the northern Districts of Yaqshiid, Wardingley and Heliwa (Huruwa). Many buildings and homes have been destroyed, and widespread destruction is visible around the Bakara and Gupta marketplaces. The Arafat Hospital in Yaqshiid has been severely damaged, and is out of service. The large number of dead and wounded has put great stress on the hospitals and clinics still in operation. According to Doctors without Borders/Médecins Sans Frontières, only 250 hospital beds are now available in Mogadishu, compared with almost 800 in January 2007. Nearly 75 percent of health personnel at these hospitals have left the city.<sup>85</sup>

Mogadishu's inhabitants have been under great strain where all of them risked being random victims of grenade attacks. The capital is rife with rumors that heighten the fears of the population. At the same time, inhabitants are accorded the full freedom of motion; there are no more roadblocks in the city, and no one (apart from the police and soldiers) carries weapons in the streets. The airport is open and traffic flows normally between the airport and the city. But security on roads leading out of the city is poorer than before, primarily as a result of criminal activity, which is said to have increased by 30 percent on these stretches of road.<sup>86</sup> Some of the people who fled Mogadishu were attacked and robbed while on the move. The same danger faces those who now return to the city.

On the streets of Mogadishu today, security is provided by Somali police in conjunction with

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<sup>84</sup>MSF, 20 August 2007. *Access to medical care dangerously scarce in and around Mogadishu, Somalia.*

<sup>85</sup> Ibid

<sup>86</sup>ReliefWeb, 20 August 2007. *Security Council authorizes African Union Somalia mission for further six months, unanimously adopting resolution 1772 (2007).*



Ethiopian forces, and the police are stationed in all districts of the city. In July 2007, the authorities in Mogadishu publicly executed two men who had been convicted of killing two security agents. According to the OCHA, it was the first execution conducted since the transitional authorities seized control in Mogadishu.<sup>87</sup> The administrative organizations have been established in all Districts of the city. Their only sources of revenue are the harbor and the international airport, from which they receive 15 percent of tax proceeds. Their ability to perform services on behalf of city residents is therefore limited. Taxes are also collected on goods that enter the city through roadblocks on the two main inbound arteries controlled by the TFG. District administrative bodies are also responsible for organizing local vigilante groups. Every house pays 1,000 Somali shillings per day to these armed groups, which patrol neighborhoods after dark. Their purpose is to protect the inhabitants against criminal activity. Some members of these guardian groups have been killed by rebels in southern Mogadishu's Black Sea area and other areas.<sup>88</sup>

According to Mohamoud Nur Ahmed, Mayor of Mogadishu/Governor of Benadir region there are huge human rights abuses in Mogadishu and no one is protecting basic human rights.<sup>89</sup> All citizens of Mogadishu, irrespective of clan affiliation, are suffering from the insecurity and lack of protection; in addition IDPs lack shelter and food, which is only provided at an absolute minimum. There are armed gangs and clan militias which make people think twice before they go out in the streets. However, Mohamoud Nur Ahmed added that people whose clans are armed,

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<sup>87</sup>United Nations Office for the Coordination of Humanitarian Affairs (OCHA). *Somalia: Situation Report - 31 August 2007*

<sup>88</sup> Ibid

<sup>89</sup> Ibid

the attackers may think twice before abusing or harassing them, but minorities and IDPs do not have this option.

By Al-Shabaab's withdrawal from most parts of Mogadishu, the security situation in the city became more volatile due to overstretching of the AMISOM forces, as these forces have had to widen their military operations in order to control a larger area. The withdrawal by Al-Shabaab was out of tactical reasons and Al-Shabaab now resorts to infiltration and asymmetric warfare in Mogadishu. Al-Shabaab now employs Improvised Explosive Devices (IEDs) and makes use of suicide attacks. It is a paradox that the security situation has worsened as a result of Al-Shabaab's retreat but, on the other hand, this is due to the abovementioned overstretching of AMISOM forces.

The security situation in Mogadishu for the international community remains difficult. Regarding the rest of S-C Somalia the security situation for the international community is now much more complicated, i.e. risky and deadly. UN's Somalia operations are the most dynamic UN operations in the world as the security and political situation is highly volatile. Anarchy and clan conflicts followed by fighting flare up repeatedly in some areas. UNHCR Somalia explained that Al-Shabaab exerts pressure on the population in areas beyond its control.<sup>90</sup> Thus, Al-Shabaab is capable of infiltrating criminal gangs to undertake attacks on the UN in S-C Somalia, including Mogadishu. Recently, in January 2012 there were three hand grenade attacks on the UN Compound (UNCC) in Mogadishu but there is no risk of Al-Shabaab regaining control of Mogadishu. However, a so-called asymmetrical warfare now takes place, and this includes IEDs, car bombs, and suicide attacks.

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<sup>90</sup> Ibid

On 27 March 2012 UNHCR expressed concern of the continuation in mortar attacks in Mogadishu, which claimed three more lives. Several mortars landed in the BeertaDarawiishta (Darwish) settlement for internally displaced people near the Somali Parliament building in the Waardhiigley district of the Somali capital March 2012. It is reported that three internally displaced people, including a father and his three year old child, were killed and eight others; five women and three men were seriously injured. When asked if the resumption of mortar attacks in Mogadishu is a sign of a new and more dangerous strategy by Al-Shabaab, or if Al-Shabaab is definitely in the process of being eliminated by the allied forces, StigJarle Hansen explained that Al-Shabaab is under heavy pressure, but have been so before.<sup>91</sup> StigJarle Hansen explained that the forces under AMISOM are not large enough to control the central Somali countryside, and the TFG does not function, and this might enable Al-Shabaab to continue operating in a vacuum in the countryside, as long as TFG remains weak. It also seems like external actors, except Ethiopia, now are quite static. StigJarle Hansen stated that Al-Shabaab can survive, and will engage in more and more insurgency, and will assassinate their civilian enemies when they can, in order to create a regime of fear, they have done it before.<sup>92</sup>

The Inter-Agency Standing Committee Somalia (IASC Somalia) Protection Cluster Update dated 16 March 2012 reported that sporadic fighting between Al Shabaab and AMISOM troops

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<sup>91</sup>United Nations Security Council. 20 April 2007. *Report of the Secretary-General on the situation in Somalia pursuant to paragraphs 3 and 9 of Security Council resolution 1744 (2007), (S/2007/204)*

<sup>92</sup> Ibid

persisted in Mogadishu, including in the Dayniile, Heliwa, and Yaqshiid districts.<sup>93</sup> Comparing the number of security incidents/attacks in Mogadishu since August 2011 as compared to the previous six months, there have been 20 security incidents alone reported through TFG in August 2011 which when compared to previous months is nearly twice as many.<sup>94</sup> Bediako Buahene, Policy and Protection, OCHA clarified that the conflicts in S-C Somalia are generally on a small scale except for the war that took place in Mogadishu.<sup>95</sup>

Many people have lost their homes, and periodically the inhabitants have had trouble gaining access to food and water. Telecommunications, on the other hand, have generally functioned as normal, as have the systems for transferring money from abroad. Some schools have reopened and others are in the process of opening. People with a regular supply of money from abroad have by and large managed without undue difficulty, while internal refugees in particular have had a hard time because regular income-providing activities have been out of order for long periods. The crime rate is said to have declined, but it remains higher than before the fighting began (and certainly higher than it was under the UIC). The civilian population is vulnerable to random criminal acts. Consequently, neither *sharia* courts nor secular courts are functioning and the mechanisms needed to fight crime are simply not present. There are a couple of ordinary courts, but by and large justice is administered through the traditional Somali legal system *Xeer*-or traditional Somali law assigns responsibility to an entire *diya* group when one or more of that group's members commit a crime.

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<sup>93</sup> Ibid

<sup>94</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA). *Somalia: Situation Report - 31 August 2007*

<sup>95</sup> Ibid

The Lower Shebelle region is completely without administration, and that the Haber Gedir Ayr militia continues to control it.<sup>96</sup> The TFG had appointed representatives of the local clans to help administer the city of Afgoye, which thereby was able to govern itself for the first time in 16 years. The former militia leader Yussuf Siad “Indha Adde” left the district when the UIC lost control in December 2006. In the absence of a strong leader, local residents have challenged the Ayr clan, and there have been clashes between the Garre and Ayr clans. Members of the Ayr have held a lower profile than they used to, partly because of the periodic presence of TFG soldiers and Ethiopian forces. Brava, unlike Qoryoley, is not under the control of local inhabitants. In Qoryoley, the Garre and Galyal clans are in charge. The security situation in most of the region is unstable, and mobile roadblocks heighten the sense of insecurity felt by the local population. UN spokespersons said widespread banditry has plagued the region, especially outside Merka, and that the road from Merka to Mogadishu was thought to be unsafe because of roadblocks.<sup>97</sup>

The situation in middle Shebelle region, which was one of the most stable areas in southern Somalia even before the UIC took control in the summer of 2006, is now unstable, according to the reports from the ground.<sup>98</sup> Consequently, no one controls the area around the regional capital, Jowhar, but that the city itself is controlled by men loyal to the former warlord and governor, Mohammed “Dheere”.<sup>99</sup> Large parts of the region outside of Jowhar are plagued by banditry, but the militia leader who controls the city can send members of his force

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<sup>96</sup>United Nations Security Council. 20 April 2007. *Report of the Secretary-General on the situation in Somalia pursuant to paragraphs 3 and 9 of Security Council resolution 1744 (2007), (S/2007/204)*

<sup>97</sup> Ibid

<sup>98</sup>United Nations Security Council. 25 June 2007. *Report of the Secretary-General on the situation in Somalia, S/2007/381*

<sup>99</sup> Ibid

out into the surrounding area to deal with conflicts. According to international sources, the total number of security-related incidents has not changed significantly since 2005/2006, but the absence of functioning authority at the local level complicates the work of UN and other organization

The situation in Bay and Bakool had been stable, but according to the UN, curfews were introduced on 17 June 2007 in Baidoa, in the Bay region, after six people were killed and several others were injured in three hand-grenade attacks.<sup>100</sup> The summer of 2007 also saw attacks on international aid organizations in both Bay and Bakool. At the beginning of August at least 12 people were killed in connection with clan violence in the Bay region's Bur Hakaba area. The clashes stemmed from disagreements over access to grazing areas and water.<sup>101</sup>

The TFG appointed an administrative body in the Hiraan region in which all local clans are represented. This administrative body is said to have control over the region, and the situation is seen as peaceful.

Inter-peace (the International Peacebuilding Alliance, formerly the War-torn Societies Project, or WSP) has brought the delegation up to date on conflicts between the Saad and Suleiman groups within the Hawiye Haber Gedir clan.<sup>102</sup> There have been hostilities between these sub-clans for more than 10 years, and some points of conflict go back nearly 50 years. In 2005 the situation deteriorated, and about 200 people were killed in several clashes. Many of those killed were

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<sup>100</sup>Shabelle Media Network, 7 August 2007. *Somalia: Mogadishu under house-to-house search for the 3rd day*

<sup>101</sup> Ibid

<sup>102</sup>Office for the Coordination of Humanitarian Affairs (OCHA)-Somalia. Nairobi. *Situation Reports*, # 50- 51, 2007

civilians, and the destruction was widespread. The drought of 2005 exacerbated the problems, with talks between the parties over water and grazing rights breaking down. The conflict also prevented travel between south and north, affecting both food prices and food availability. On 21 January 2006 the Mogadishu-based political leadership of the two conflicting parties agreed to a cease-fire in Mudug and Galgadud.<sup>103</sup> In February 2006 a number of meetings were held in Galkacayo under the aegis of the TFG, which, in concert with key political leaders and administrators in Puntland, proposed a peace plan for Mudug and Galgadud. On 27 February 2007 the parties signed a peace agreement that may contain a lasting solution.

A large number of Hawiye clans and sub-clans live in southern Mudug, and that poor communication generates distrust and suspicion between them. Though it is important to try to get the parties communicating, the geographic distances between them are relatively large and the infrastructure and transport options are poor. Consequently, conflict-resolution traditions in Mudug and Galgadud are stronger than in many other areas, and that reconciliation and peace processes facilitated by the international organization. Interpeace has made important contributions to the settlement of disputes there. Tensions remain high in Galkacayo, where two or three killings are committed each month. However, the violence has declined not because of increasing respect for the law, but because violence and conflict have come to be seen as harmful to local business. At the same time, freedom of movement in the general population has become more restricted as a result of the presence of armed bandits. The potential for conflict remains alive even in areas where there has been no fighting in several years. About 12,000 to 14,000

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<sup>103</sup> Ibid

internal refugees occupy valuable land on the so-called "green line" in Galkacayo.<sup>104</sup> Attempts by the landowners to remove them from these areas have since fueled conflicts between local residents and the refugees.

The situation in the southern portion of Gedo is relatively calm, but the absence of officials and institutions able to preserve security is a major problem nonetheless. Despite this state of affairs, open clan conflict does occur in Gedo and that latent intra-Marehan conflicts exist as well, particularly in the northern part of the region.<sup>105</sup>

The Marehan/Haber Gedir-dominated Juba Valley Alliance (JVA) movement, which controlled Kismayo from 1999 through September 2006,<sup>106</sup> is no longer functioning. The TFG appointed an administration that was dominated by the Harti and Absame/Ogaden clans but that was also representative of the Hawiye clan's Galjeel people. The TFG-appointed administration was in charge of Kismayo. In March 2007, however, the 2,000 Ethiopian soldiers who had controlled the city were withdrawn, and according to IRIN News (24 April 2007)<sup>107</sup> violent clashes erupted between Majerteen and Marehan militias as part of a power struggle between the two clans, both of which were represented in the city administration. The Marehan militia pushed the Majerteen forces out of the city, and on 23 April, 12 people were killed and nine injured in clan strife. Fierce new clashes broke out on 22 June between the Marehan and the Galjeel, with 52 people killed and many more injured.

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<sup>104</sup>Office for the Coordination of Humanitarian Affairs (OCHA)-Somalia.Nairobi.*Situation Reports*, # 50- 51,

2007

<sup>105</sup> Ibid

<sup>106</sup> Ibid

<sup>107</sup>IRIN News, 24 April 2007. *SOMALIA: Kismayo fighting forces civilians to flee.*



The most recent strife grew out of differences over grazing areas; more than 13,000 people fled as a result of the conflict. To reduce tensions a curfew was imposed in Kismayo. But on 27 June in Bardere, in the Gedo region, an attempt was made to assassinate the head of the JVA, AbdikaderAdan Shire (BarreHiraale), who has clan links to Kismayo. At the end of June an additional 2,000 people fled the area as a result of conflicts between the Marehan and the Majerteen in and around Kismayo.<sup>108</sup> The situation in the northern reaches of Middle Juba has been relatively calm, but the absence of any public authority capable of preserving security is a significant problem. Over several months there had been many killings in the Marere area of Lower Juba, and that 40 to 50 people per month had been brought to the local hospital for treatment of gunshot and knife wounds.<sup>109</sup>

### **2.3 The Legal Framework in Somalia**

The ordinary structures of state are practically non-existent in southern Somalia. The United Nations Security Council's April 2007 report on the situation in Somalia (UN Security Council, April 2007) points out that transitional institutions, including the court system, are weak, and that the transitional authorities have limited means of safeguarding people's rights.<sup>110</sup> Somali jurisprudence is manifest in three principle ways: traditional or customary law practiced through elder councils/clan leaders; Islamic law practiced through *sharia* courts, and secular law through an ordinary court system.<sup>111</sup> Accordingly, traditional or customary law is the most prevalent legal system in today's Somalia.<sup>112</sup> In their role as enforcers of law and order within and between clans,

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<sup>108</sup> Ibid

<sup>109</sup> Ibid

<sup>110</sup> UN High Commissioner for Refugees, *UNHCR calls for respect for civilian life and aid agencies as mortar attacks continue in Somali capital*, 27 March 2012

<sup>111</sup> Ibid

<sup>112</sup> Ibid

traditional leaders have come under sustained pressure from Somalia's long-lasting environment of conflict, rapid socioeconomic change and the absence of law and order.<sup>113</sup>

Traditional mechanisms and structures have faced major challenges in Southern Somalia.<sup>114</sup> The traditional structures in South-Central Somalia are different and more composite, fragmented, weakened and confused than in the North, for a range of reasons: First of all, the ethnic composition of people are very different due to a heterogeneous mix of sedentary agriculturalist, agro-pastoralist, old urbanized cultures along the coastline and pastoralist people - all with differing cultural heritage and traditional structures. Secondly, the history including the colonial experience is different and with that a diverse historical social construction of the traditional structures. Finally, the dynamics of the civil war in the South differed as well, resulting in an equally different impact on the traditional structures.<sup>115</sup>

After many years of conflict the traditional legal and conflict-resolution mechanisms has stopped functioning. However, the systems are claimed to be working albeit in varying degrees. Gundel estimated that between 80 percent and 90 percent of all civil and criminal matters are resolved and resort to *xeer*. *Sharia* courts still exist in Mogadishu to adjudicate civil cases, but all other legal activity takes place in the context of traditional Somali practice.<sup>116</sup>

Traditional Somali law, though, may conflict with international human rights standards, while the collective responsibility underpinning *diy* groups removes individual responsibility for criminal actions. Consequently, individuals can act with absolute impunity. Although the traditional

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<sup>113</sup>Gundel, J. 2006. *The predicament of the 'Oday', The role of traditional structures insecurity, rights, law and development in Somalia.*

<sup>114</sup> *ibid*

<sup>115</sup> *Ibid*

<sup>116</sup> *Ibid*

compensation system is functional, it is based on collective rather than individual responsibility. The UNHCR confirmed this state of affairs, but added that local circumstances, clan strength, lines of conflict, gender and other variables play important roles in how the system functions.<sup>117</sup> The traditional conflict and compensation mechanisms are dependent on a certain degree of stability. Traditional law presupposes that a group is capable of paying compensation and that rights and security must be defended, by force if necessary.<sup>118</sup> Because no impartial mechanisms are available to force a militarily strong clan to abide by decisions favoring a weaker adversary, Somalia minority groups and weak clans often suffer discrimination. Consequently, people who commit violence against women generally face no prospect of punishment. For one thing, traditional law does not focus on the victim, and for another, women's rights are not protected by the compensation system in the same way that men's rights are. Minority groups often find themselves excluded from this system because they live outside the clan system and thus lack the support that clan membership entails.<sup>119</sup>

## **2.4 Conclusion**

In the above chapter we have seen that the Somali Republic gained independence on 1st July 1960 from the former colonies; union of British Somaliland and Italian Somaliland, while French Somaliland became Djibouti. The conflict in Somalia has endured for more than two decades now, a complex conflict to which a solution seems distant. After the ousting of Siad Barre regime by the Rebel forces in 1991, turmoil, factional fighting, and anarchy ensued in Somali.

As a result of the continuous fighting in S-C Somalia since 1991 a very large number of Somalis have become internally displaced persons (IDPs). There are approximately 184, 000 IDPs in Mogadishu and its surroundings alone. The total figure for IDPs in all of Somalia is now

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<sup>117</sup>J. Gundel, 2006. *The predicament of the 'Oday', The role of traditional structures insecurity, rights, law and development in Somalia.*

<sup>118</sup> Ibid

<sup>119</sup> Ibid

estimated to be 1 129 000 persons. Generally security situation in Somalia is unpredictable and in particular the capital Mogadishu is marked by daily hand-grenade attacks and roadside bombs directed at Ethiopian soldiers and the Somali government forces. Accordingly, traditional or customary law is the most prevalent legal system in today's Somali in their role as enforcers of law and order within and between clans; traditional leaders have come under sustained pressure from Somalia's long-lasting environment of conflict, rapid socioeconomic change and the absence of law and order. In the next chapter I will discuss the human rights issues in Somalia from the periods 1991-2012.

## CHAPTER THREE

### HUMAN RIGHT ISSUES IN SOMALIA 1991- 2012

#### 3.1 Introduction

It is generally recognized that the concern for human rights is not confined to a particular society, continent or culture. Alongside the struggle over the years for the recognition of human rights, efforts have also been made to evolve mechanisms for the promotion and protection of those rights at the national, international and regional levels<sup>120</sup>. At the international level there are, for instance, the Universal Declaration of Human Rights and the United Nations Covenants and several human rights instruments.<sup>121</sup> Mechanisms have also been evolved to safeguard human rights at the regional level. The African Charter on Human and Peoples' Right is one such mechanism or arrangement for promotion and protection of human rights over the continent of African. Other examples of regional arrangements for safeguarding human rights include the European and American Conventions of human rights which serve similar purposes for the European and American continents respectively. At the national level, individual States make provisions in their constitutions and the ordinary legislations to safeguard human rights in their territories.

The development of human rights concepts and legal instruments has been tangible since the end of the Second World War. With the creation of the United Nations, several international legal documents that addressed the issue of human rights came to existence including the Universal

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<sup>120</sup> G.D. Evans ,“Human Rights and State Fragility: Conceptual Foundations and Strategic Directions for State-Building”, *Journal of Human Rights Practice*, Vol.1, No.2, p.181-207

<sup>121</sup> A. C. Odinkalu., *Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa*”, *Journal of African Law*, Vol.47, No.1, p.1-37

Declaration on Human Rights and the two international covenants on civil, political, economic, social and cultural rights that followed it<sup>122</sup>. Human rights were further advanced after the end of the cold war with the establishment of tribunals in the former Yugoslavia, Rwanda, Sierra Leone, and the permanent International Criminal Court (ICC), to prosecute perpetrators of war crimes, crimes against humanity and genocide. Furthermore, the year 2000 recorded the signing of the Millennium Declaration, where 189 state leaders resolved to respond to common threats to humanity and achieve, by the year 2015, eight Millennium Development Goals to eradicate poverty, spread education, and fight disease<sup>123</sup>.

Although there have been staunch efforts by the international community to promote and preserve human rights, the record is still below the expectations of human rights activists<sup>124</sup>. In view of the interminable human rights abuse that has occurred in several regions worldwide, a number of legitimate questions have been raised: Why the international community wait until 800,000 Tutsis were butchered in Rwanda before taking action?, Why it took an American war on Iraq to end Saddam Hussein's impunity and whether the American war on Iraq serve the purpose of human rights or it undermined it?, Why the atrocities in Darfur have been allowed to persist? And why people in certain countries are still denied basic social, civil and political rights?<sup>125</sup> These concerns still need to be addressed with a lot of emphasis.

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<sup>122</sup>K. Menkhaus, "U.S. Foreign Assistance to Somalia: Phoenix from the Ashes?", Middle East Policy, Vol. 5, no.1, January 1997, p. 1

<sup>123</sup>Somalia Country Profile, "BBC News", [online], 2010, available on the Internet: [http://news.bbc.co.uk/2/hi/africa/country\\_profiles/1072592.stm](http://news.bbc.co.uk/2/hi/africa/country_profiles/1072592.stm)

<sup>124</sup>Transparency International Corruption Perceptions Index available on the Internet: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results)

<sup>125</sup>UN High Commissioner for Refugees, *UNHCR alarmed by resumption in mortar attacks in Somalia's Mogadishu*, 20 March 2012, <http://www.unhcr.org/refworld/docid/4f6ad7e32.html>

Indeed oppression in human history has generated resistance that has contributed to the transformation of society and the production of democracy and human rights<sup>126</sup>. In fact, the whole issue of democracy and human rights is a terrain of struggle between oppressors and the oppressed. Since the engagement between the dominated and the dominating is generally couched in ambiguous and contradictory terms, then democracy and human rights as ideological issues and artifacts of human struggles are themselves fraught with ambiguities and contradictions<sup>127</sup>. This observation implies that a fuller reconstruction of democracy and human rights history of any society must necessarily take full range of diversities and complexities of political, economic, and social realities, churned out by human struggles over power and dominance, and against oppression and exploitation.

### **3.2 Human rights issues in Somalia in pre-colonial time**

Like much of Africa, the impact of colonialism left its imprint on Somalia. During the time of colonialism, the European powers – France, Britain and Italy – divided the Somali nation amongst themselves, partitioning Somalia into five separate parts or “protectorates”. While one portion remained under the control of Kenya, the Ogaden province was given to Ethiopia’s King Menelik by the British Empire. Although British Somaliland and Italian Somaliland were united at independence on 1 July 1960, the French kept Djibouti under colonial administration, and the

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<sup>126</sup>Ibid

<sup>127</sup>UN High Commissioner for Refugees, *UNHCR calls for respect for civilian life and aid agencies as mortar attacks Continue in Somali capital*, 27 March 2012. <http://www.unhcr.org/refworld/docid/4f7d76d32.html>

region did not gain independence until 1977<sup>128</sup>. The effects of this partitioning continue to permeate Somali society today. A substantial minority of Somalis fall outside the country's boundaries while the northern region of Somalia (former British Somaliland) continues to push for a withdrawal from the south.<sup>129</sup> In Somalia, current patterns of development and human rights reflect the historical processes of state formation, marginalization, and exploitation. The development of the modern Somali State was not a peaceful process.

The European colonization of Somalia and the Horn of Africa involved periods of warfare between the colonialists and Darawish forces of Sayid Mohamed Abdulla Hassan and between Britain and Italy during World War II. The colonial expropriation of land for commercial purposes, labor conscription and the introduction of tied labor systems had a profound impact on social organization and production in southern Somalia<sup>130</sup>. Politically, the colonial administrations altered customary authority, parceled out territory with little regard to indigenous rights, and introduced Western judicial systems that affected indigenous systems of customary law and dispute resolution. The centralization of authority in the state involved investment in law and order agencies to protect state interests, including 'public order' laws to control the population. Economically, colonial state formation created a 'national' economy and Somalia's unequal incorporation into an expanding global market that led to new internal inequalities of wealth<sup>131</sup>.

In this regard, colonialism is said to have had a permanently damaging effect on the Somali people, Somalia's socio-economic system and attempts at post-independence reconstruction.

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<sup>128</sup> A.A. Elmi, & A. Barise, 2006. The Somali conflict: Root causes, obstacles, and peace-building strategies. *African Security Review*, 15(1):32-54.

<sup>129</sup> B. Buzan, 1991. *People, States and Fear: an Agenda for International Security Studies in the Post-Cold War Era*. Hertfordshire: Harvester Wheatsheaf

<sup>130</sup> C. Besteman & L. V. Cassanelli, (eds) (1996) *The Struggle for Land in Southern Somalia: The War Behind the War*. Colorado/London: Westview Press/HAAN Publishing.

<sup>131</sup> A. Samatar (1989) *The State and Rural Transformation in Northern Somalia 1884-1986*. Wisconsin: University of Wisconsin Press; S.I. Ahmed (1988) *Socialist Somalia: Rhetoric and Reality*. London: Zed Books



Colonialism, however, is not the only factor contributing to Somalia's collapse. Ongoing clan wars over resources such as grazing land and water existed long before Somalia became unified as a nation state. However, after Somalia gained independence, many Somalis moved to the urban areas where a new realization surfaced around the type of resources needed to prosper and the means to secure them. Here the control of the nation's resources (government resources, control of foreign aid, appointments of civil servants) was equated with control of the state<sup>132</sup>. Although Somalia's first government, under president Aden Abdullah Osman, was generally recognized as democratic, corruption and political patronage appointments soon affected all levels of government and its legitimate authority.

During the so-called democratic era (1960-1969), the state soon failed to meet the expectations of various segments of society, making way for a military coup under General Siad Barre in October 1969. Typical of such authoritarian dictatorships, Barre displayed little toleration of opposition groups or criticism of the new leadership. In response to such authoritarianism, various guerrilla opposition movements were founded between 1978 and 1989, and after the 1977/1978 war between Somalia and Ethiopia, a number of military officers attempted to overthrow the government. When an armed struggle started against the military regime, Ethiopia welcomed and armed opposition groups fleeing from the repression, glad for the opportunity to back the opposition of the state with which it had largely interacted on hostile terms. Tensions erupted as Barre began to use coercive force against the Majerteen clan, the tribe from which most of the opposing military officers came. NGOs report that more than 50,000 people were killed during the reign of Siad Barre, with such actions eventually plunging the entire country into civil war in 1990.<sup>133</sup>

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<sup>132</sup> Ibid

<sup>133</sup> K. Mbugua, 2006. Situation report: Somalia. *Conflict Trends*. Available at:

## **The causes of the Somali civil war**

The Somali civil war can be ascribed to a number of multiple and complex factors, of which Elmi and Barise<sup>134</sup> have identified three main causes. Prominent amongst these is Somalia's colonial legacy. While the "decolonization process created large numbers of new territorial states in the European image ... for the most part it neither took account of existing cultural and ethnic boundaries, nor created new nations to fit within them."<sup>135</sup> The second factor fuelling the conflict was the competition for power and resources among the various clans and militia groups. Here the control of key cities, ports and airports, checkpoints, agricultural areas and foreign aid became heavily contested resources amongst vying militia groups and various clans. Thirdly, state repression fuelled resistance. For 21 years, the military regime used excessive force and collective punishment to suppress opposition, with little regard for human rights. Inevitably, when the opportunity arises, repression leads to resistance.

Besides these factors, various socio-economic contributing causes, such as high unemployment and elements of Somali tribal culture and clan identity, have contributed to the escalation of conflict during the civil war. The change from an emphasis on inclusive clan identities to that of sub-clan identities after 1992 (for example Darod or Hawiyeto Harti, Mareehaan) have led to clan disputes and disagreements, while positioning members of a single clan against one another. Such changes in clan identities fuelled and prolonged the war in Somalia and have undermined social cohesion.

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<http://journals.sabinet.co.za> (accessed 20 April 2007).

<sup>134</sup>A. A. Elmi, & A. Barise, 2006. The Somali conflict: Root causes, obstacles, and peace-building strategies. *African Security Review*, 15(1):32-54.

<sup>135</sup>B. Buzan, 1991. *People, States and Fear: an Agenda for International Security Studies in the Post-Cold War Era*. Hertfordshire: Harvester Wheatsheaf

### **3.3 Human Rights issues in post-independent Somalia**

In 1960, the government of the newly independent Somali Republic accepted the responsibilities of statehood towards its citizens. Upon taking its seat at the United Nations, the Universal Declaration of Human Rights (UDHR) was incorporated into the Republic's constitution and in 1962 it became a signatory to the Geneva Conventions. During the nine years of democratic rule the human rights record of the civilian government was generally good. The legacy of that period on human rights in contemporary Somalia is apparent in several ways, however. First, the centralizing tendency of state bureaucracy and the growth of urban elite established a process of inequitable development. Second, the control established by ethnic Somalis over the postcolonial state served to marginalize non-Somalis<sup>136</sup>. Third, the incomplete integration of different judicial systems inherited from colonial administrations impacted on the administration of law. Fourth, from its foundation, the Somali State was heavily dependent on foreign aid. As this aid declined in the late 1980s, political and economic competition among the elite was turned inwards over Somalia's local resources.

The military take-over in October 1969 was to produce one of the most repressive regimes in Africa. With a vision to transform the Republic into a modern socialist state, the first charter of the 'revolution' articulated the central role of the state in society, elevated social and economic rights, guaranteed the right to work and social justice, and promoted popular participation in development.<sup>137</sup>

The reality was somewhat different, as the vision also involved a suspension of civil and political rights, institutionalized through legal reforms and repressive state security. On taking power the military suspended the 1960 constitution, political parties were banned, and members of the

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<sup>136</sup> A.A. Jimale (ed) (1995). *Preface to The Invention of Somalia*. Lawrenceville: Red Sea Press.

<sup>137</sup> Ibid

former government were detained without trial. Labor associations and civil and professional associations came under party control and independent non-governmental forms of civil association were proscribed. A strongly censored media controlled the freedom of political and cultural expression.<sup>138</sup>

The army became the most powerful institution in the country, with military personnel taking over government posts. National security structures were created to control the population. Legislation established the military's legal control over state affairs. Particularly notorious was Law No. 54 of September 1970 of the National Security Law, which defined twenty-six acts considered detrimental to the maintenance of peace and order, twenty of which were made capital offences, including that of spreading 'rumors' (*afminshar*)<sup>139</sup>. Such offences were tried by a National Security Court whose procedures violated international treaties to which Somalia was a signatory. The torture of political prisoners and their relatives and extra-judicial executions were commonplace. When defeat in the Ogaden war with Ethiopia threw the Somali Democratic Republic into a Cold War alliance with the West, the regime came under pressure to liberalize. The introduction of a new constitution in 1979, elections and the official ending of military rule did little, however, to improve civil and political liberties. With military hardware provided by the Soviet Union and the US, the regime responded to the SSDF and SNM insurgencies in the late 1970s and 1980s with civilian killings, forced displacement, asset stripping, destruction of water reservoirs, and the planting of landmines<sup>140</sup>. According to the Somali scholar Said Samatar, by the end of the 1980s a serious disjuncture had emerged between

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<sup>138</sup> Ibid

<sup>139</sup> Notorious cases which fell foul of national security legislation included: the long-term imprisonment of former government officials, including the Prime Minister and Police Commander etc.

<sup>140</sup> Africa Watch (1990) *Somalia - A Government At War With Its Own People*. London: Africa Watch.

the moral and coercive authority of the Somali state<sup>141</sup>. With strategic interests in Africa declining, human rights abuses provided a justification for the West to freeze aid to Somalia, a move that both weakened the government and served to internalize the political and economic crisis.

Conventional explanations of the Somali war and famine have tended to highlight the fragmentary nature of clanism, the unsustainability of Somalia's rural economy, or environmental stress. While the war took the form of an inter-clan struggle, underlying it were the long-term processes of marginalization and exploitation, a struggle among an elite over the state and its productive assets. Supported by international aid, the 'development' trajectory in Somalia prior to the war was one of increasing inequalities between a largely urban elite and a rural and urban underclass<sup>142</sup>. On taking power, the Barre regime had embarked on an ambitious development programme to modernize the country. Socio-economic rights to employment and education were guaranteed by the state and equitable access to productive resources ensured through the nationalization of land. Legal reform also afforded women greater equality before the law. The reality, again, was somewhat different. State interventions in the rural sector proved disastrous.

During the 1970s, the country slid from self-sufficiency in grain production to a food import dependency. In the pastoral sector, policies aimed at transforming an 'archaic' nomadic way-of-life to amore sedentary one, by providing preferential rights to grazing lands to herding cooperatives and encouraging sedentary agriculture, served to encourage the spread of enclosures, restrict the movement of pastoralists, and undermine livestock production. While economic deregulation and structural reforms agreed with the IMF in the 1980s led to a

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<sup>141</sup>Samatar, Said (1991) *Somalia: A Nation in Turmoil*. London: Minority Rights Group.

<sup>142</sup>C. Besteman, & L.V. Cassanelli, (eds) (1996) *The Struggle for Land in Southern Somalia: The War Behind the War*. Westview Press/HAAN Publishing.

substantial improvement in grain production (Particularly maize), these policy reforms only served to increase social inequalities. A liberalization of land tenure caused land prices to rise. The main beneficiaries were state bureaucrats and military officers, who had preferential access to land. The losers were pastoral nomads and small-scale farmers, who constituted the majority of the population.<sup>143</sup> As power relations are partially based on ‘the ability to acquire and allocate the means of subsistence’<sup>144</sup>.

Clanism and clientelism became a key source of political and economic power and security. Those allied to the government gained preferential treatment. Some 41% of planned investments in the 1987-1989 development budgets were allocated to Mogadishu and 81% of the remainder to five favored regions in the south and northeast<sup>145</sup>. The northwest region, which accounted for the largest share of the country’s export earnings, saw little of this return as development investment. Mogadishu grew, while rural infrastructure and services deteriorated.

Journalistic accounts of the Somali civil war in the 1990s largely neglected the conflicts in the 1980s between the government and the SSDF and the SNM, in which tens of thousands were killed, and many more were forced to seek refuge in Ethiopia and surrounding countries. The actions of the Somali Armed Forces violated international humanitarian law and Somali social conventions and set a precedent for the conflict in southern Somalia<sup>146</sup>. No effort was made to distinguish between civilians and armed combatants. The wounded and sick were not spared, private property was stolen, humanitarian access denied, and humanitarian aid looted. The SNM

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<sup>143</sup>L.V.Cassanelli, (1996) ‘Explaining the Somali Crisis’, in C. Besteman, & L.V.Cassanelli. (eds) *The Struggle for Land in Southern Somalia: The War Behind the War*. Westview Press/HAAN Publishing.

<sup>144</sup> ibid

<sup>145</sup> M. Watson (1990) *Collapse of Somalia and the Science of Governance*. London: Management Resource Limited.

<sup>146</sup>R. Marchal, (1997) ‘Forms of Violence and Ways to Control it: The Mooryaan of Mogadishu’, in Hussein M. Adam & Ford, R. (eds) *Mending Rips in Sky: Options for Somali Communities in the 21st Century*. Red Sea Press.

was also accused by human rights groups of summarily executing military officers and civilians associated with the regime.

This pattern of abuse continued as the war spread and government forces responded to escalating military threats from other movements. After the regime was overthrown, the abuses continued and even intensified with civilian massacres, rape, torture, and the looting and destruction of public and private property. An estimated 25,000 civilians are said to have been killed in Mogadishu alone between 1991 and 1992. Asset stripping, forced displacement, and the disruption of food supplies led to mass deaths from starvation and disease those who died in the greatest numbers were from politically marginalized groups in the inter-riverine agro pastoral regions of southern Somalia.<sup>147</sup>

### **3.4 Islamic sharia and Human rights issues in Somalia**

It has already been seen that, after the fall of Siad Barre in 1991, opportunistic warlords effectively feudalized Somalia back into a dark age<sup>148</sup>. Their bands ravaged the country amidst uncontrollable civil war, as they battled for strategic towns and regional footholds. Anyone who could piece together an army or militia could obtain a piece of Somalia. Accordingly, a group of north eastern Islamists wasted no time in grabbing Garowe Town in 1992. While the majority of the Somali population is Muslim (99%, predominantly Sunni), the nation had long sustained itself without a theocratic thrust. Religious leaders have always been respected and honored for their knowledge of the Islam, yet the Somali culture traditionally draws a line between their realm and those of state, government, and clan. Generally, clerics have neither sought to influence clan politics nor claim any particular leadership position other than that of teacher.

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<sup>147</sup> ibid

<sup>148</sup> K. et al Florian (2010) "*Peace Journalism, war and conflict resolution*". Peter Land publishing, Inc: New York.

Over the centuries, Somalia pastoral society perpetuated its own Islamic tradition. Fundamentalism held little appeal for it. Clan society saw only harm in strict Salafist ideas. Particularly abrasive among these were *sharia* law and new, rank-and-file leadership which could only confront and undermine the time-honored clan system. That is why pastoral Somalia had rejected Islamist militant fervor in the past. It saw instability rather than tranquility in the usurpation of power from the most basic social units. It was not easy for the phenomenon of hard-line Islamism to survive in the Somali nomadic society without the support of clan leaders, not to mention the common people as an entirety<sup>149</sup>.

However, fundamentalism based in sources to which no one could answer was equally hard to squelch entirely<sup>150</sup>. Like a parasite, it would always find a way to breed and perpetuate its kind. The Islamist part of Somali society and its leadership came from different tribes and regions. However, a single goal unified all of the elements: to rule the land under Islamic law. The movement was effectively against all of Somali history. Often construed as antiquated, fundamentalists actually think themselves progressive. The Somali version believed that the ancient clan system was un-Islamic and in need not of realignment, but abolition. This idea was brash and radical. Its fate in Garowe Town suggests a basic rift with the Somali people and time. The clan system brought down the fundamentalists when north eastern communities learned that the group's principal leader, Sheikh HasanDahir Always (future head of the Islamic Court Union), was a member of Hawiye tribe which belongs to same clan as General Mohamed Farah Aideed. Aideed had achieved infamy as the notorious warlord who led the rebel USC in

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<sup>149</sup>International Crisis Group (2012) "Somalia: An Opportunity that Should Not Be Missed." Africa briefing Nr 87: Nairobi/Brussels.

<sup>150</sup>National Union of Somali Journalists (2012)"*Annual report 2012*. The state of press Freedom in Somalia" Nusojo: Mogadishu.



overthrowing SiadBarre's government and instigating genocide against the Darood clan in the south. Many of the victims fled from their homes in Mogadishu for refugee camps in Kenya and Ethiopia.<sup>151</sup>

Accordingly, Islamist leaders often lost the battle between religious and clan loyalty. This was the precise fate of the north eastern Islamists in Garowe Town. Sheikh Aweys looked outside of his clan to establish and recruit an Islamic militia. He failed. Local tribal leaders and residents defined him as an outsider and enemy of the Darood who wanted to unmake the peace that they had enjoyed since the collapse of central government. When Aweys and his followers lost the support of the people, clan warlord and future Somali president Abdullahi Yusuf Ahmed mobilized his militia to oust the Islamists from Gorowe and the region. That is the best example of the old clan system overpowering the incursion of hard-line Islamic ideas. However, it was just as difficult to destroy radical Islamism as it was to defeat the clan system. The movement did not die; rather, it changed its strategy and point of attack to the southern regions where there was far more violence, chaos, and anarchy to exploit.<sup>152</sup>

For several years, the Islamists went underground and quietly reorganized under the radar. Then, in 1996, they announced a new organization called Al-Itahad al-Islamiya, based in Gedo in the southwest, near the Ethiopian and Kenyan borders<sup>153</sup>. Here, warlords and tribal leaders had only a very loose handle. Al-Itahad al-Islamiya perceived a power vacuum and sought to take advantage of it. Sheikh DahirAweys, previously defeated by north eastern warlord Abdulahi Yusuf Ahmed in1992, resurfaced as the organization's leader. The radicals started to collect weapons and impose *sharia* on locals without clan leaders' assent. Before long, Al-Itahad al-

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<sup>151</sup> Ibid

<sup>152</sup> Human RightsWatch (2011). "You don't know who to blame – War crimes in Somalia". HRW: New York.

<sup>153</sup> ibid

Islamiya had placed its own regional and town administrators in direct opposition to existing clan leadership.

With the menace growing ever more foreboding, local leaders tried to negotiate with the Islamists, advising them to lay their weapons down and resume peaceful teaching duties instead. The militant group rejected the offer and killed some influential members of the clan-family to assert that they were serious. During the negotiations, clan leaders encountered Islamist's logic and reasoning were beyond their comprehension, because their rivals sincerely believed that they did not have any ulterior motives except God's work on earth and to apply His words to all people and society<sup>154</sup>.

### **3.5 Customary law and human rights issues**

Throughout Somalia, the 'pillars of law' for the greatmajority of people are a combination of customarylaw (*xeer*) and Islamic *shari'a*. Inaddition, traditional values (*caado*) and a code ofsocial conduct (*dhagan*), practices of kinship protectionwithin *diya*-paying groups, structures ofmediation by respected elders and sheikhs, and theadoption by stronger clans of weaker social groupsall serve to hold society together and sustain public order and personal security<sup>155</sup>.

During the war many elements of customary lawwere violated. The abuse and killing of maternal kin (*xigaalo*) is one example<sup>156</sup>. On the other hand, in thevacuum of an alternative legal system, there wasversion to customary practices and institutions thathave emerged strengthened. Indeed, between certain clans where no mutual *xeer*existed there wasnothing to mitigate violence.

Traditional methods ofconflict management and resolution have proven durable in containing

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<sup>154</sup> S. Carruthers, 2000) "*The media at war: communication and conflict in the Twentieth century*" St Martin's Press: New York.

<sup>155</sup>J. Drysdale, (2000) *Stoics without Pillows*. London: HAAN

<sup>156</sup>Puntland Development Research Centre (PDRC) (2000 October) *Harmonisation of Somali Legal Traditions (shari'a and xeer) and Secular Law in the Puntland State of Somalia: Concept and Format of Workshop Discussion Paper*. Garowe.

crime and violence at a community level. The peace processes in Somaliland and Puntland that led to the establishment of regional administrations were in effect processes to re-establishment *xeer* among the clans in those regions.<sup>157</sup> The Somaliland National Charter adopted at the 1993 Boroma conference gave lineage elders the responsibility to enforce 'codes of conduct' among the clans, while the Puntland Charter recognizes the value of alternative dispute resolution for establishing justice and peace. The application of customary law has been extended to matters other than *diya* and has replaced secular law in urban settings<sup>158</sup>. Traditional rules have also been revived to protect environmental resources.

Customary law in Somaliland is not codified but applies in all parts of the country<sup>159</sup>. Although customary law is not codified, traditional courts are consistent in abiding by precedents. Should a new issue arise which does not fit within the existing precedents, traditional courts will apply legal reasoning to fit that particular issue. The decision reached will thereby become the precedent to be followed in future cases of a similar nature<sup>160</sup>. The peculiar nature of customary law in Somaliland is that this source of law embodies a number of distinct customary laws relevant to a particular geographic location. Thus, similar issues may result in different decisions, based on their different geographical locations. This notwithstanding; every geographic location observes the precedents pertaining to its locality<sup>161</sup>.

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<sup>157</sup> *ibid*

<sup>158</sup> *ibid*

<sup>159</sup> Allan, Stuart (2004) "*News culture, issues in cultural and media studies*". Open University press: Berkshire.

<sup>160</sup> National Union of Somali Journalists (2012) "*Annual report 2012*". The state of press Freedom in Somalia"

Nusoj: Mogadishu.

<sup>161</sup> Hoehne, Markus & Luling, Virginia (2010) "*Milk and peace, drought and war. Somali culture, society and politics*" Hurst & Co: London.

The Somaliland customary law court system is based on Somaliland's traditional authority, which is elected by the clan members. This authority originates from the election criteria set up by clan elders. The supreme customary law court is headed by the *Sultan* who is the highest clan authority. The customary appeal court is headed by the Chiefs and the traditional court is headed by the *Aqil*, who is the lowest clan leader.

All *Sultans*, *Garads*, *Ugas*, Chiefs and *Aqils* in Somaliland are registered by the Ministry of Interior. *Sultans* are heads of two or more Chiefs. Chiefs are heads of five or more *Aqils*. *Aqils* have the mandate to nominate representatives of the customary court from the sub-clan. These traditional courts use traditional law, commonly referred to as customary law which is not codified. If the case is new, the customary law agrees on a new method to manage the case. If it is of a similar nature to previous cases it follows precedent<sup>162</sup>.

Traditional courts are known as *Aqil* courts and are presided by the *Aqil*, commonly referred to in English as the 'chief', and comprised of the '*Guurti*', who are elders of the clans. *Aqil* courts are mobile courts resolving cases wherever a particular dispute arises. In some parts of Somaliland customary law is preferred to *Sharia* law and is very powerful, bearing in mind the power vested in the *Guurti* by their clans. The clan system rests on a patriarchal system which determines customary law. Thus, customary law also governs issues relating to matrimonial disputes, inheritance and property rights, depending on the geographical area<sup>163</sup>.

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<sup>162</sup> Human Rights Watch (2012) "*Somalia: Country Summary*"

<sup>163</sup> M. Hoehne, & V. Luling, (2010) "*Milk and peace, drought and war. Somali culture, society and politics*" Hurst & Co: London.

### **3.6 International law and human rights issues**

In 1992, responding to the political chaos and humanitarian disaster in Somalia, the United States and other nations launched peacekeeping operations to create an environment in which assistance could be delivered to the Somali people<sup>164</sup>. By March 1993, the potential for mass starvation in Somalia had been overcome, but the security situation remained fragile. On 3 October 1993, US troops received significant casualties (18 dead over 80 others wounded) in a battle with Somali gunmen. When the United States and the UN withdrew their forces from Somalia, in 1994 and 1995 respectively, after suffering significant casualties, order still had not been restored.

Conflict between rival warlords and their factions continued throughout the 1990s. No stable government emerged to take control of the country. The UN assisted Somalia somewhat with food aid, but did not send peacekeeping troops into the country. In the late 1990s, relative calm began to emerge and economic development accelerated somewhat. The country was by no means stable, but it was improving. A transitional government emerged in 2000, but soon lost power. Somaliland and Puntland, two regions in the north broke away from the country and set up regional, semi-autonomous governments. They were not internationally recognized. After the attacks of 11 September 2001, the United States began to take a more active role in Somalia's affairs, fearing that the country had become a haven for terrorists. Other Western governments hoped to bring stability to Somalia for similar reasons<sup>165</sup>. In January 2004, two dozen or so warlords reached a power-sharing agreement after talks in Kenya. This agreement called for a 275-member parliament. This Transitional Federal Government (TFG) was the 14th attempt at a government since 1991. Its head, Abdullah Yusuf, originally called for

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<sup>164</sup>RDP – note however that population figures are extrapolations, and are highly contentious

<sup>165</sup>WB/UNDP 2002 Socioeconomic survey of Somalia

African peacekeepers to restore order within Somalia, but many Somalis feared invasion, especially by nearby Ethiopia<sup>166</sup>

In June 2006, the ICU seized control of Mogadishu and much of the Southern Somalia, driving Yusuf's TFG from Jowhar to Baidoa. As of July 2006, Yusuf's government, with the backing of Ethiopia, still hoped to wrest power from the Islamists but had taken little action to do so. The ICU had pushed moderates aside and began to set up a conservative Islamic state. Yusuf had called for peacekeepers from the African Union since the fall of Mogadishu in June 2006, but many have feared that this could lead to further instability<sup>167</sup>. TFG and ICU leaders met in Khartoum in June 2006 for peace talks, but no deal was reached. It might have been difficult to reach an agreement with the ICU, as it was composed of 11 different clans and an asymmetrical power structure<sup>168</sup>.

Bolstered by the UN resolution, the interim government attacked ICU positions on 8 December 2006 with assistance from Ethiopian troops. An ICU counterattack, meant to cut off Baidoa from Ethiopian assistance, targeted a town near the Somali-Ethiopian border. By January 2007, the Ethiopian government had claimed victory over the ICU, which had effectively been dispersed<sup>169</sup>. In its place, a militant wing generally called Al-Shabaab, continued to fight against the TFG and foreign forces. In January 2007, the African Union Peace and Security Council authorized the deployment of the African Mission in Somalia (AMISOM) with 9 infantry battalions of 850 each, and the accompanying support elements. While a number of AU member

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<sup>166</sup>UN Doc/ Gen/ E/ cn.4/1999/03/, Commission of Human Rights, Fifty-fifth session, item 19 agenda, the human rights situation in Somalia

<sup>167</sup> R. Omar (1990) *Somalia: A government at war with its own people, testimonies about the killing and the conflict in the North* African Watch Committee

<sup>168</sup>S. Zappala, (2003) *Human Rights in International Criminal Proceedings*, Oxford University Press

<sup>169</sup>D. Hirsh, (2003) *Law against Genocide: Cosmopolitan Trials* Glass House Press

nations pledged support, Uganda sent the bulk of the forces to support the mission. By 2008, of the authorized 9 battalions, only 3 had been deployed, together, with a level two fieldhospitals. By January 2012 the United Nations Security Council gave a cautiously favorable response to a joint request by Kenya and the African Union for the incorporation of Kenya troops into the AU military mission in Somalia<sup>170</sup>. The AMISOM deployment would increase from 12,000 troops to almost 18,000 troops under the proposal, which also added additional troops from Djibouti, Uganda and Burundi.<sup>171</sup>

There has not been any national government in Somalia. While parts of the north have been relatively peaceful, including much of the self-declared Republic of Somaliland, interclan and interfactional fighting have flared up with little warning, and kidnapping, murder and other threats to foreigners occur unpredictably in many regions. Since 1991, an estimated 350,000 to 1,000,000 Somalis had died because of the conflict<sup>172</sup>

As a result of the decades of civil war, local and clan conflict, absence of government, continuing insecurity in many parts of the country and inadequate access to basic services and infrastructure, welfare has declined compared to both pre-civil war times and the economy's potential achievements in the absence of civil strife. The cost in terms of loss or disruption of human lives alone has been considerable, with an estimated population deficit relative to expected levels on the basis of long term growth patterns of about 2 million people. Somalia's population is predominantly rural, with over 50% being traditionally linked to the nomadic

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<sup>170</sup>UN Doc/ Gen/ E/ cn.4/1999/03/, Commission of Human Rights, Fifty-fifth session, item 19 agenda, the human rights situation in Somalia

<sup>171</sup> ibid

<sup>172</sup>R. Thakur, (1994): 'Human Rights: Amnesty International and the United Nations', in: *Journal of Peace Research* 31(2), pp. 143-160.

pastoral food economy and about half that figure associated with sedentary agro pastoral livelihoods<sup>173</sup>

Basic human rights of children, women and other vulnerable groups have been severely compromised in Somali. Children are at extreme risk (50% of the population is below the age of 18 and some 20% are under the age of 5), mainly as a result of under-nourishment (with global acute malnutrition running at between 10% and 20%) and lack of protection<sup>174</sup>. Somalia's current high malnutrition levels among children reflect the enormous toll that conflict, drought, poverty and food insecurity have taken on the capacity of Somali households to produce or purchase food to support the needs of their children. Women and girls are particularly vulnerable to the consequences of insecurity<sup>175</sup>. With traditional structures and coping mechanisms breaking down, limited financial resources require decisions on where money is spent; in most cases, the priority goes to male children and men. Many girls marry or are forced to marry before the age of 14 and the practice of female genital mutilation (FGM) is widespread. The nomadic sector of the population has specific problems; not least their lack of access to adequate health, education and other services, and appropriate provision has to be made to meet the emergency needs of the large number of IDPs, and to support their reinstallation and reintegration<sup>176</sup>.

UNHCR estimated the number of IDPS in Somalia to be around 750,000 people at the end of 2007, of which 400,000 were from Mogadishu. Living conditions in most IDP camps, where access to safe places often requires paying landlords, are very poor, with insufficient water and

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<sup>173</sup>F.R. Teson, (2005): *Humanitarian Intervention: An Inquiry into Law and Morality*, 3rd edition, Ardsley Park: Transnational Publishers.

<sup>174</sup>The UN DPKO – Department of Peacekeeping Operations (1996): *Comprehensive Report on Lessons Learned from United Nations Assistance Mission for Rwanda (UNAMIR)*, New York: United Nations

<sup>175</sup>A.J.P. Taylor, (1954): *The Struggle for Mastery in Europe 1848-1918*, Oxford: Clarendon

<sup>176</sup>J. H. Steiner, and P. Alston (2000): *International Human Rights in Context*, 2nd edition, Oxford



sanitation facilities and limited access to health care. According to the findings of the War Committee in Somaliland and international forensic teams, there were mass killings in Somaliland. The murders were committed in many parts of the country, but specifically Buroa, Hargeisa, Berbera, Gebilay and other major cities. According to the findings of the Committee there was widespread killing against the people of Somaliland<sup>177</sup>.

In May 2003, the Committee mapped and identified 200 mass graves in Hargeisa, 12 in Berbera, and 8 in Buroa. At the request of an Independent Expert, a preliminary assessment of mass graves in the vicinity of Hargeisa was undertaken. Thereafter, a mission was sent to Somaliland in order to investigate all these mass graves<sup>178</sup>. Thus, that mission was carried out by Physicians for Human Rights (PHR) under the auspices of the Office of the United Nations High Commissioner for Human Rights in accordance with Commission on Human Rights resolution 1997/47 of 11 April 1997. The aim of the mission was to conduct an on-site assessment of alleged mass graves in the vicinity of Hargeisa, the forensic team observed and examined a minimum of 92, and possibly as many as 116 alleged graves in three areas on the southern and south-western outskirts of Hargeisa. The forensic expert found one young adult male and one adult male individual, both completely skeletons. The context of these discoveries led the forensic team to conclude that many of the other mound features are likely to contain human remains.

In relation to the case of Somaliland, massive torture was committed by the former President Barre regime against the people of Somaliland. Torture and other inhuman treatments were the interrogative skills of the military regime in order to retrieve information that deals with the

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<sup>177</sup> J. Stevenson (1993): 'Hope Restored in Somalia?', in: *Foreign Policy* 91, pp. 138-155

<sup>178</sup> US Department of State Dispatch, on 7 December 1999

military activities that SNM engaged in northern Somalia<sup>179</sup>. Although the Somali Constitution and other relevant legislation did not legitimize the use of torture in the prisons of Somalia, the Barre regime tortured people who were detained illegally and unconstitutionally<sup>180</sup>.

In a civil action against one of the former military commander of Somalia, the head of the Fifth Battalion of Somali National Army, filed in the United State District for Eastern District of Virginia, Alexandria Division, it was stated by one of the survivors of human rights atrocious acts in Somaliland, that the defendant had been arrested without any legal means and due process. She was then kept her in a cell which did not have toilet and bath<sup>181</sup>. At the time, she was pregnant<sup>182</sup>. As she mentioned in her application, the commander had beaten her during the interrogation period in order to get any information on whether she concealed weapons in her farm for the SNM movement. As a result of that inhuman act, she lost her baby. Thus, this denotes that there was inhuman and torture committed by the military regime against the civilian population of Somaliland for being supplying, supporting, building and reinforcing SNM.

By November 1991, the struggle for power led by the warring factions had escalated to a fullscalecivil war so that in the beginning of January 1992, Omer ArtehQhalib selected as interimPrime Minister at a so-called 'reconciliation conference' in Djibouti in July 1991 requested theUN Security Council to address the rapidly deteriorating security situation in Somalia. Inresponse to Qhalib's letter, the Security Council acknowledged the anarchy, the massive humanrights abuses committed by the Somali warring factions, as well as the

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<sup>179</sup>The UN Security Council Resolution 794 of 3 December 1992, <http://www.un.org/documents/sc/res/1992/scres92.htm>, status: 28.03.2009.

<sup>180</sup>, J. Stevenson (1993): 'Hope Restored in Somalia?' in: *Foreign Policy* 91, pp. 138-155

<sup>181</sup>Chesterman 2001, 143

<sup>182</sup>The UN General Assembly Resolution A/ RES/ 46/ 7: *The Situation of Democracy and Human Rights in Somalia*, 11 October 1991, <http://www.un.org/depts/dhl/res/resa46.htm>, status: 28.03.2009

widespread hunger (aggravated by drought) within the text of Resolution 733 of 23 January 1992. In this sense, the Security Council determined that the internal Somali crisis constituted a threat to international peace and security and imposed a complete weapons embargo on Somalia<sup>183</sup>.

The Office of the UN High Commissioner for Refugees (UNHCR) claimed that on 31 January 1992, 140,000 Somali refugees had reached Kenya, with another 700 arriving each day. Meanwhile, severe food shortages affected a large proportion of Somalia's population. Resolution 751 of the UN Security Council followed on 24 April 1992, which established the creation of a UN Operation in Somalia, UNOSOM with 50 UN observers, aimed at providing humanitarian assistance to the starving population and monitoring a widely ignored ceasefire among the factions. The situation continued to deteriorate through 1992. At the peak of the famine, in August 1992, the International Committee of the Red Cross (ICRC) reported that 4.5 million Somalis out of a population of 7 million were threatened by severe malnutrition and related diseases. Of those, at least 1.5 million were at immediate mortal risk<sup>184</sup>.

Based on the UN World Food Programme (WFP) figures, over 500,000 people in the country's south central region had perished of starvation by December 1992. On 29 November 1992, the Secretary-General advised the Council that the only way in which relief operations could continue was through resort to enforcement provisions under Chapter VII of the UN Charter. Non-military measures, corresponding to the UNOSOM mission, seemed to have proven inefficient. The recommendation of the Secretary General came four days after the United States offered

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<sup>183</sup>R. Keohane (eds.): *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge: Cambridge University Press, pp. 93-129.

<sup>184</sup>Thakur, R. (1994): 'Human Rights: Amnesty International and the United Nations', in: *Journal of Peace Research* 31(2), pp. 143-160

20,000 troops to support a multinational operation force to be authorized by the UN to overcome the humanitarian disaster in Somalia<sup>185</sup>.

On 3 December 1992, the Security Council unanimously adopted Resolution 794, which explicitly determined that the magnitude of the human tragedy in Somalia represented a threat to peace and security, and consequently authorized the use of force in order to ensure the delivery of humanitarian assistance. As Roberts highlights, the language used in Resolution 794 (1992) makes apparent that the threat to international peace and security does not come so much from cross border disturbances in the sense of high number of refugees or clear potential of conflict spread in the region<sup>186</sup>. Instead, it was the humanitarian crisis itself and the massive violation of human rights which brought the use of UN-led armed forces into motion. While there is one mention of a threat to international peace and security in the above referred resolution, there are 18 mentions of the word ‘humanitarian’ and several other phrasings for the magnitude of human tragedy caused by the conflict in Somalia<sup>187</sup>. Arguably, the reason for intervention was primarily humanitarian. No national interests in any of the senses circumscribed within sub-section 5.1.1 could be traced in the case under purview. Neither colonial linkages nor strategic or military interests seem to have played a role in the decision over humanitarian intervention in Somalia. More explicitly, neither British nor Italian bonds facilitated in any way the UN humanitarian intervention in Somalia would put no considerable strains on the US state. In his view, American action was necessary as a catalyst for broader involvement of the community of nations. Only the

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<sup>185</sup>F.R.Teson, (2005): *Humanitarian Intervention: An Inquiry into Law and Morality*, 3rd edition, Ardsley Park: Transnational Publishers

<sup>186</sup>The UN DPKO – Department of Peacekeeping Operations (1996): *Comprehensive Report on Lessons Learned from United Nations Assistance Mission for Rwanda (UNAMIR)*,

<sup>187</sup>The UN General Assembly Resolution A/ RES/ 260 (III): *Convention on the Prevention and Punishment of the Crime of Genocide 1948*, 9 December 1948,

United States has the global reach to place a large security force on the ground in such a distant place quickly and efficiently and thus save thousands of innocents from death. Therefore, after the adoption of the AC VII Resolution 794, US President George Bush ordered 28,000 troops into Somalia in Operation Restore Hope also known as (UNITAF).<sup>188</sup>

US Marines landed on 9 December 1992, with live television links back to the United States so that the strong concern about the humanitarian disaster in Somalia would be appeased both in the U.S. and worldwide. In the absence of any rare or highly valued natural resources, with an economy relying on agriculture with livestock normally accounting for about 40% of GDP and around 65% of export earnings, economic interests cannot be conceived as a potential motivation for the U.S. and UN's willingness to intervene in Somalia<sup>189</sup>. The economic situation was actually so disastrous that an international relief aid of around 2 billion dollars had to be urgently funneled in the country<sup>190</sup>. In the collapsed Somali state, this money spent between December 1992 and October 1993 could not help too much though, it will only be added that the Washington irresponsibility to alleviate the humanitarian crisis in Somalia without confronting the country's warlords eventually led to a cul-de-sac.

The United States withdrew its peacekeeping forces in March 1994, at which time the UN mission, UNOSOM II since 4 May 1993, had assumed UNITAF's mission and envisaged an expanded UNOSOM mandate that included nation-build however, the UNOSOM II mandate went

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<sup>188</sup> *ibid*

<sup>189</sup> IRIN, Web Special: a decent brutal-Somalis yearn for justice: *killing and the conflict in the North African Watch Committee*

<sup>190</sup> BBC News. *Somalia: Suicide bomber targets presidential palace*. 14 March 2012.

<http://www.bbc.co.uk/news/world-africa-17364680> and *Somalia: Al-Shabab bombs Mogadishu cafe*. 9 February 2012. <http://www.bbc.co.uk/news/world-africa-16947804>

astray and on 4 March 1995, the UN completely withdrew its forces, leaving the country as anarchic as it had found it. "Operation Restore Hope" had become "Operation Return Home."

Finally, it should be clear that the UN military intervention in Somalia was primarily driven by humanitarian reasons. More explicitly, the campaign led by the international media ignited strong moral concerns especially among American public's, whose pressure allegedly made the U.S. President offer his support for UN-flagged humanitarian intervention<sup>191</sup>. Some security concerns also drew the attention of the international community particularly in terms of refugee flows into neighboring Kenya and Ethiopia. Nevertheless, these negative spillovers were only of minimal importance as compared to the dreadful humanitarian crisis pervading Somalia<sup>192</sup>.

### **3.7 Human Rights Violations by non-Somali actors The 1992 - 1995 US-led UNOSOM I and II**

When the U.N. initially decided to act, through the creation of UNOSOM, it did so under Chapter VI of the Charter of the United Nations, which concerns "Pacific Settlement of Disputes." Its terms apply to situations in which the belligerents agree to cease hostilities. In such situations U.N. forces are authorized to use force in self-defense. Movement to implement the mandate was slow. Although authorized in April 1992, a group of fifty U.N. observers did not arrive until July. In September, the first troops arrived: a contingent of 500 soldiers from

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<sup>191</sup>R.Keohane (eds.): *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge: Cambridge University Press, pp. 93.129.

<sup>192</sup>The UN General Assembly Resolution A/ RES/ 46/ 7: *The Situation of Democracy and Human Rights in Somalia*, 11 October 1991  
<http://www.un.org/depts/dhl/res/resa46.htm>, status: 28.03.2009.

Pakistan, but did not take up defensive positions at Mogadishu airport until mid-November. A Canadian battalion was posted at Bossaso in the far Northeast (Bari) during December 1992.<sup>193</sup>

The United Nations International Task Force (UNITAF) which landed in mid-December 1992 was under U.S. command and comprised 24,000 U.S. troops and 13,000 from other nations. Its deployment followed a decision by the outgoing Bush Administration that humanitarian intervention could no longer be put off. Security Council Resolution 794 of December 1992 mandated UNITAF "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations," and to send up to 38,000 troops to Somalia.<sup>194</sup>

In May 1993, UNOSOM and UNITAF were replaced by U.N. mission with a broader mandate. UNOSOM II's mandate was under Chapter VII of the U.N. Charter ("Actions with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression") which authorizes the U.N. to determine to use force against risks to international peace and security. This is the only part of the Charter that authorizes U.N. peacekeeping operations without the consent of the state. UNOSOM II's mandate was to cover all of Somalia's regions, including the secessionist northwest. Although UNOSOM and UNITAF had been authorized to use force, UNOSOM II's mandate included responsibilities that made the use of force more likely.

The general mandate of UNOSOM II was "to assume responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia" (Resolution 814). A U.N. report summarized the political dimensions of the task as a mandate: to provide humanitarian and other assistance to the people of Somalia in rehabilitating their political institutions and economy and promoting political settlement and national reconciliation. Such

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<sup>193</sup>Human Rights Watch, *The Lost Agenda*, pp. 116-119.

<sup>194</sup> *ibid*

assistance should include economic relief and rehabilitation of Somalia, the repatriation of refugees and displaced persons within Somalia, the re-establishment of national and regional institutions and civil administration in the entire country, the re-establishment of Somali police, mine-clearance and public information activities in support of the United Nations activities in Somalia<sup>195</sup>

A series of clashes between forces of the war leaders Colonel Omar Jess and Gen. Mohammed Said Hersi "Morgan," both seeking to control the port of Kismayu, provided an early test of UNOSOM's commitment to enforce a cease-fire and maintain the military status quo. On January 23, two Somalis were reported killed by Belgian peacekeepers in Kismayu; and on January 25, U.S. forces attacked a Morgan column as it approached Kismayu<sup>196</sup>. When Morgan ultimately retook Kismayu from General Aideed's ally Colonel Jess in fighting on March 17, 1993, despite the presence of some 800 Belgian troops and one hundred Americans, the U.N. was blamed for having allowed it to happen.

On June 5, 1993 twenty-four soldiers from the Pakistani units serving with UNOSOM were killed in a series of attacks that started in the morning and continued until late afternoon; fifty-six more were wounded, eleven seriously. UNOSOM estimated Somali casualties, militia and civilian, at thirty-five dead and about a hundred injured. Responsibility for the attacks was promptly attributed to forces of General Aideed's SNA. A cease-fire had ostensibly been in force.<sup>197</sup>

Earlier that morning, a Somali was shot by UNOSOM forces trying to disperse demonstrators in front of Radio Mogadishu at about 9:30 A.M. A short time later, attacks were made on the

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<sup>195</sup>United Nations Department of Public Information, *Information Notes: United Nations Peacekeeping, Update: May 1994*,

<sup>196</sup>Africa Watch, "Beyond the Warlords," p. 29; Agence France Press, January 24, 1993

<sup>197</sup>United Nations, New York, August 12, 1993. U.N. document S/26351, August 24, 1993.



Pakistani Brigade headquarters in the National Stadium and on Pakistani UNOSOM troops at two relief feeding centers, at several military posts, and at key points along the streets linking these places. Some of the UNOSOM troops were attacked when they were returning from the inspection of an authorized weapons storage site; others were ambushed while attempting to rescue those attacked earlier or to evacuate the wounded from the most serious fighting. This was at Checkpoint 89, on October 21 Road, where a number of factors suggested a well organized assault, if not premeditation: the weight and length of fire, the distribution of gunmen to prevent flank attacks, the firing discipline, the location of weapons, and the nearly simultaneous attacks elsewhere. Surprisingly, UNOSOM estimated subsequently that only around 200 militia fighters were involved in the clashes.<sup>198</sup>

The UNOSOM offensive that began on June 12, when it took over Radio Mogadishu and attacked three official arms dumps, two illegal arms caches, and a relay station, was carried out by AC-130 gunships and Cobra helicopters, with troops from the U.S. Rapid Deployment Force following up on the ground to destroy weapons and ammunition. According to the deputy U.N. commander, General Montgomery, who was also the commander of the RDF, the operation was precise and careful. He told the BBC, "We knew there were not civilians living in most of these sites, and we knew that by conducting the operations at the time we did, that we would not be in a position where we would be necessarily endangering lives of any noncombatants."<sup>199</sup> Estimates for the number of Somali casualties of the UNOSOM responses varied. UNOSOM claimed only one Somali was killed, while the SNA talked of more than ten killed. UNOSOM, however, admitted to about 200 people detained, including a close aide of General Aideed, Ali Keidye.

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<sup>198</sup> *ibid*

<sup>199</sup> Gen. M. Thomas I interviewed by Roger Hearing, BBC, Mogadishu, June 12, 1993.

Admiral Howe announced that Radio Mogadishu was being removed from General Aideed's control and would be returned to "the Somali people."<sup>200</sup>

The same day, Pakistani troops fired in disputed circumstances on a small civilian demonstration, and at least two civilians were killed by gunfire. Observers claimed Pakistani troops had fired upon Somali demonstrators without provocation. Human Rights Watch wrote to the U.N. Secretary-General on June 15 calling for an immediate inquiry into the incident.<sup>201</sup> UNOSOM officials subsequently said that an investigation was conducted out into the deaths, but no conclusions were made public. The inquiry should have determined whether the firing by Pakistani troops responded to a real and immediate threat to their own lives or to others, whether they panicked or accidentally discharged their weapons in the face of a hostile crowd, or whether they fired deliberately and without cause in violation of international standards on the use of lethal force in crowd control situations.

A second incident in which twenty Somali civilians were shot dead took place at Kilometer 4, a roundabout four kilometers from the center of Mogadishu, also known as K 4. There is some dispute over what happened. Pakistani troops stationed in a former hotel and on the roof of the former Egyptian Embassy claimed they were fired on from the crowd, and that they fired warning shots after seeing gunmen in the crowd. There were also claims that casualties were caused by Somali gunmen firing into the crowd; witnesses in a second group of demonstrators approaching from another direction said that they were fired upon from positions that could not have been held by the Pakistanis.<sup>202</sup>

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<sup>200</sup>Radio Manta, Mogadishu, June 12, 1993

<sup>201</sup>Africa Watch, News Release, "Africa Watch Calls on Security Council to Convene Special Session on Somalia," July 15, 1993

<sup>202</sup>African Rights, "Somalia: Human Rights Abuses by the United Nations Forces," London, July 1993.

The turning point for the American presence in Somalia came on October 3 and 4, 1993 when eighteen U.S. Rangers died, eighty-four American troops were injured and one-Chief Warrant Officer Michael J. Durand-was taken prisoner. One Malaysian was killed and seven were injured in the later stages of the battle. Two helicopters were shot down and three damaged, and a number of armored vehicles were destroyed. Over 200 Somalis were killed and another 700 or so injured.<sup>203</sup>

### **3.8The 2006 - 2009 US-backed Ethiopian intervention**

In 2006, Ethiopian National Defense Forces (ENDF), with political support and military assistance from the United States, entered the sovereign state of Somalia to bolster the Transitional Federal Government (TFG) against the increasingly powerful Islamic Courts Union (ICU).<sup>204</sup>

Although the allied forces easily routed the ICU by January 2007, the struggle for control of Somalia had only just begun. Immediately after the dissolution of the ICU, an eclectic mix of former ICU loyalists, Al-Shabaab Islamists and various Somali militias launched an insurgency campaign against the ENDF-TFG. The ensuing violence would last for over two years, inflict significant losses on all parties to the conflict and result in a catastrophic deterioration of humanitarian conditions for the Somali populace.<sup>205</sup>

Despite the historical enmity between Somalia and Ethiopia, the Ethiopia National Defense Forces in Somalia, which numbered between 30,000-40,000 throughout the duration of the conflict, was initially praised by many Somali civilians for being “disciplined in their day-to-day

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<sup>203</sup> ICRC report October 1993

<sup>204</sup> Lackey. Albin, *So Much to Fear: War Crimes and the Devastation of Somalia* (New York: Human Rights Watch, 2008), 3.

<sup>205</sup> *Ibid*

interactions with Somali civilians.”<sup>206</sup> However, when confronted with attacks from a growing and diffuse insurgency, ENDF frequently responded with bombardment of highly populated urban areas. ENDF relied on the use of Katyusha rockets launched from Grad multiple-rocket-launchers in response to insurgent attacks. Critics of ENDF tactics claimed the Katyusha was an inherently indiscriminate weapon incapable of offering the targeting precision necessary to minimize civilian casualties—assuming that targets were even located to begin with.<sup>207</sup> Firsthand accounts detail several instances of civilian casualties that occurred as a result of Katyushas.<sup>208</sup> In one incident, ENDF responded to an insurgent attack launched from the town of Beletweyne by shelling the city for three days in July 2008. Reports estimate “that at the end of July, 74,000 people—more than 75 percent of the town’s population—had been displaced as a direct result of the bombardment and related fighting.”<sup>209</sup> Such episodes were reportedly commonplace throughout 2008.<sup>210</sup>

ENDF soldiers were also accused of using indiscriminate small arms fire that resulted in further civilian casualties. In an August 2008 incident, ENDF soldiers responded to the detonation of a roadside bomb with wild gunfire that left approximately 40 Somali civilians dead.<sup>211</sup> In addition to recorded instances of reckless use of force, human rights groups also claimed that search and seizure operations conducted by the ENDF, like those carried out by the TFG, occasionally resulted in assault, rape, looting and killing of Somali civilians.<sup>212</sup>

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<sup>206</sup> Ibid pg 58

<sup>207</sup> ibid

<sup>208</sup> Human Rights Watch, Shell-Shocked, August 12, 2007, [www.hrw.org/en/node/10783/section/15](http://www.hrw.org/en/node/10783/section/15)(accessed, November 23, 2010)

<sup>209</sup> OCHA, Monthly Cluster Report, September 2008, [ochaonline.un.org](http://ochaonline.un.org),( accessed November 23, 2010)

<sup>210</sup> ibid

<sup>211</sup> Lackey. Albin, So Much to Fear, 59

<sup>212</sup> Ibid., 61-3.

### **3.9 Violations by Kenya Defense Forces (KDF)**

Kenya's ill-advised incursion into Somalia on Oct. 16 2011 after a rash of kidnappings in the tourist paradise of Lamu will most likely lead to a long and expensive quagmire. The escalation will further destabilize a region already reeling from war, piracy, famine, and international terrorism. Kenya insist that it is not at war with Somalia but only defending its borders and pursuing non-state actors, such as the al-Qaeda-linked Al-Shabaab, who stand accused of abducting and killing innocent civilians.<sup>213</sup>

“Our mission is therefore, based on a legitimate right to protect Kenya's sovereignty and territorial integrity,” Kenya's president Mwai Kibaki told the Commonwealth Heads of Government Meeting at Perth, Australia.<sup>214</sup>

However, On January 15 2011, Kenyan fighter jets conducting air strikes on the town of Jilib, Lower Juba, against Al-Shabaab reportedly resulted in the death of seven children when a missile landed in a house. Results of an investigation were not made public. Human Rights Watch called on the government of Kenya to investigate civilian casualties that occurred during an August 11 shelling by Kenyan naval ships of Al-Shabaab anti-aircraft artillery installations in Kismayo. Naval shells reportedly hit the houses of and killed two boys and a pregnant woman.<sup>215</sup>

On 2 March 2012 Somalia Report reported that —at least 22 people were killed when an airstrike from suspected Kenyan planes struck an area called Irida, 25 km from Garbaharey in the Gedo region on Friday. Somalia Report further reported that Kenyan fighter planes launched an air strike at an Al-Shabaab base in a remote area near Garbaharey, and killed more than 22 Al-

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<sup>213</sup>Francis Njubi Nesbitt, Foreign Policy In Focus October 31, 2011

<sup>214</sup> *ibid*

<sup>215</sup>2012 Human Rights Reports: Somalia

Shabaab fighters, while others fled.<sup>216</sup> Small-scale diversion of WFP wet food commodities was also reported, with suspected TFG involvement. TFG, allied militia, and KDF forces reportedly looted and collaborated in the diversion of humanitarian aid. A KDF commander allegedly received medical aid equipment from a local NGO and sold the equipment in Kenya, splitting his profits with the local NGO.<sup>217</sup>

### **3.9.1 Conclusion**

In the above chapter firstly, I have highlighted that Human rights are not confined to a particular society, continent or culture. Alongside the struggle over the years for the recognition of human rights, efforts have also been made to evolve mechanisms for the promotion and protection of those rights at the national, international and regional level, furthermore, the development of human rights concepts and legal instruments has been tangible since the end of the Second World War.

Secondly, the European colonization of Somalia and the Horn of Africa involved periods of warfare between the colonialists and Darawish forces of SayidMohamed Abdulla Hassan and between Britain and Italy during World War II. In this regard, colonialism is said to have had a permanently damaging effect on the Somali people, Somalia's socio-economic system and attempts at post-independence reconstruction.

Thirdly, the government of the newly independent Somali Republic's human rights record of the civilian government was generally good; however, when the military regime took over

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<sup>216</sup> Somalia Report, *Suspected Kenyan Airstrikes Kill More Than 20*, 2 March 2012.  
<http://www.somaliareport.com/index.php/post/2976/Suspected> Kenyan Airstrikes Kill More Than 20.

<sup>217</sup> *ibid*

it produced one of the most repressive regimes in Africa by suspending the constitution, banning political parties and detaining members of the former government without trial.

Fourthly, religious leaders have always been respected and honored for their knowledge of the Islam, yet the Somali culture traditionally draws a line between their realm and those of state, government, and clan. In this study I have explored that throughout Somalia, the 'pillars of law' for the great majority of people are a combination of customary law (*xeer*) and Islamic *shari'a*. In addition, traditional values (*caado*) and a code of social conduct (*dhagan*), practices of kinship protection within *diya*-paying groups, structures of mediation by respected elders and sheikhs, and the adoption by stronger clans of weaker social groups all serve to hold society together.

Lastly, foreign intervention started entering Somalia in 1992 when the international community responded to the political chaos and humanitarian disaster by launching peacekeeping operation popularly known as UNOSOM 1 spear headed by USA and its allies, however US troops received significant casualties and the death of many Somalis. UNOSOM 2 was also not better and the troops left in a huff. Ethiopian troops were also accused of mass killings when they intervened and they also withdrew. Consequently AU responded by sending AMISOM. In a nutshell Somalis are always suspicious of foreign troops and AMISOM is not doing enough. In the next chapter we shall see a critical analysis of human rights issues in Somalia

## **CHAPTER FOUR: HUMAN RIGHTS ISSUES IN SOMALIA: A CRITICAL ANALYSIS**

### **4.1 Introduction**

The absence of an effective central government since President SiadBarre was overthrown in 1991 left Somalia lawless and exposed to inter-clan warfare in many regions, notably the Mogadishu area. Since then the country suffered internal armed conflict and a high level of violence and witnessed massive human rights abuses and violations. The critical situation of civilians has further been exacerbated by humanitarian crises due to cycles of severe droughts and widespread flooding. Furthermore, state collapse and civil war have contributed to make Somalia one of the world's worst human rights and humanitarian crises. While the country is prone to cyclical drought, it is the persistent violence against civilians, repeated displacement, and predatory looting by armed groups that have produced serious famine on several occasions in the last 20 years.

### **Emerging issues**

#### **4.2The nature of human rights abuses**

##### **4.2.1State actors**

##### **Somali Militia and Political Force**

Since before the U.N. intervention, and still currently, abuses by agents of Somalia's de facto authorities have included killings of civilians through the indiscriminate use of heavy weapons, the deliberate, targeted killing of civilians, execution-style killings of captives, rape and other cruel and degrading treatment, and forced displacement and controls on freedom of movement. All of these abuses appear in patterns that reflect discriminatory treatment along clan lines, protection from abuses and compensation for past abuses is also sometimes available, although



often depending almost exclusively on clan affiliation. *Shari'a* (Islamic law) has been credited with significantly reducing common crime in areas in which it has been enforced. The virtual absence of due process guarantees in the current Somali application of *shari'a* and in traditional proceedings, as well as the cruel and irrevocable punishments often handed down including summary executions and amputations are further concerns.<sup>218</sup>

Somali forces also violated international law by carrying out unprovoked attacks on U.N. forces engaged in humanitarian missions. On August 22, 1994, for example, ten days before attacking the Baidoa hospital, HabrGedir forces had ambushed a supply convoy escorted by members of the Indian U.N. contingent, killing seven and wounding nine.<sup>219</sup> Somali forces in several incidents were also reported to have violated humanitarian law standards by mutilating the bodies of U.N. troops.<sup>220</sup>

### **Arbitrary and Unlawful Deprivation of Life**

The TFG and its allied militias, persons in uniform, Puntland and Somaliland forces, Al-Shabaab, pirates, and unknown assailants committed arbitrary killings. Civilians were killed in armed clashes, and humanitarian workers were also targeted and killed. Journalists were killed. Impunity remained the norm. There were reports the TFG, as well as authorities in Puntland and Somaliland, committed arbitrary or unlawful killings.<sup>221</sup>

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<sup>218</sup>Human Rights Watch, *Somalia Faces the Future: Human Rights in a Fragmented Society*, 1 April 1995, A702, available at: <http://www.refworld.org/docid/3ae6a8534.html> [accessed 5 August 2013]

<sup>219</sup>Reuters, "Somalis kill 3 Indian doctors at U.N. Hospital," *New York Times*, September 1, 1994.

<sup>220</sup> *ibid*

<sup>221</sup>Country Reports on Human Rights Practices for 2012, United States Department of State Bureau of Democracy, Human Rights and Labor

Defendants in many TFG military trials, which sometimes included civilian defendants, were often not afforded legal representation or the opportunity to appeal. Those sentenced to death were sometimes executed within hours of the court's verdict. For example, on July 19 2012, four members of the Somali National Army (SNA) were sentenced to death by the chairman of the Somali military courts after being found guilty of killing civilians and were immediately executed<sup>222</sup>

### **The Transitional Federal Government (TFG)**

Although TFG forces have played a secondary role in much of the indiscriminate bombardment of Mogadishu, they have been responsible for a variety of attacks against civilians in Mogadishu. These include widespread pillaging and looting of civilian property; rape; attacks on humanitarian workers; mass arbitrary arrests and mistreatment of detainees. The TFG has also failed to provide effective warnings to civilians of impending military operations, interfered with and sometimes obstructed delivery of humanitarian assistance, and repeatedly closed independent media outlets. To date there have been no apparent efforts by the TFG to investigate or prosecute those responsible for the killings of journalists and human rights activists in Somalia, much less other abuses reported by human rights organizations. There were reports of several isolated incidents where rogue TFG troops and allied militia opened fire on public transport vehicles, extorted money at checkpoints, and looted private businesses. In most of these cases, other TFG security forces intervened.<sup>223</sup>

Puntland security forces indiscriminately repatriated internally displaced southern Somalis, resulting in family separations and the loss of property and business. The administration alleged

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<sup>222</sup> *ibid*

<sup>223</sup> *Ibid*

that the southerners were responsible for insecurity in Puntland. Fighting by TFG troops, allied militias, and African Union Mission in Somalia (AMISOM) forces against antigovernment forces, terrorist groups, and extremist elements affected thousands of civilians in Mogadishu<sup>224</sup>

#### **4.2.2 Non-Somali actors**

##### **Toxic Waste by European companies**

The illicit transfer of toxics has also involved significant abuses at the hands of corporations. Africa has been particularly affected by the dumping of toxic waste. Over the past years, the coast of Somalia has been used as an illegal dumping ground for several European companies who have dumped their most toxic substances including nuclear and chemical wastes into the waters.<sup>225</sup> The Asian Tsunami has further exacerbated the problem as tidal waves smashed open containers of toxic waste and spread the contaminants as far away as 10 or more kilometers inland. Some of the groundwater has also been contaminated. The dumping is illegal; but the low cost (\$2.50 per ton to dump the wastes on Somalia's beaches as opposed to the \$250 to dispose of it in Europe), the ease of the dumping due to the absence of a functioning government, and the lack of accountability have prompted many corporations to continue this dangerous practice in Somalia and in other parts of Africa.<sup>226</sup> Interestingly, it is precisely this dumping that has been used by Somali pirates as a justification for their seizure of ships off the coast of Somalia in recent years.<sup>227</sup>

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<sup>224</sup>2010 Country Reports on Human Rights Practices

Report April 8, 2011 [www.state.gov/j/rdl/rls/hrrpt/2010](http://www.state.gov/j/rdl/rls/hrrpt/2010)

<sup>225</sup>C. Kevin, "Illegally Dumped Hazardous Waste Released in Somalia After Tsunami," Feb. 23, 2005, <http://www.tsunamis.com/tsunami-hazardous-waste-somalia.html>.

<sup>226</sup>*Ibid.*

<sup>227</sup>*Not Just a Pirate Movie*, Boston Globe, April 14, 2009.

## **Ethiopian National Defense Forces (ENDF)**

Since intervening in Somalia in support of the TFG in 2006, Ethiopian troops have violated fundamental provisions of international humanitarian law by failing to distinguish between civilians and military objectives. For example, Ethiopian troops repeatedly used "area bombardment" in populated urban areas in response to insurgent attacks.<sup>228</sup> These indiscriminate attacks killed and wounded hundreds of civilians. Hospitals were deliberately targeted in some of the early offensives in March-April 2007. Ethiopian forces have also carried out targeted attacks on civilians, including killings of civilians by snipers and summary executions of individuals in their custody.<sup>229</sup>

Likewise, since late 2007, when new Ethiopian troops were rotated into Mogadishu, reports of unlawful killings by Ethiopian and TFG troops in the context of house-to-house searches increased significantly. Several reports describe Ethiopian troops slitting the throats of victims, including, in one case reported to Human Rights Watch, that of a two-year-old child. Amnesty International has also collected many reports of killings conducted in this manner, which eyewitnesses described as "slaughtering like goats." Looting of civilian property has also been reported in the context of these searches, which generally follow insurgent attacks in the neighborhood.<sup>230</sup>

## **Insurgent forces**

The term "insurgent forces" is used here to describe a range of anti-TFG and anti-Ethiopian and anti-AMISOM forces. These include the extremist al-Shabaab militia, supporters of the Alliance

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<sup>228</sup> Shell-shocked, August 13 2007, [www.hrw.org/reports/2007/08/12](http://www.hrw.org/reports/2007/08/12)

<sup>229</sup> *ibid*

<sup>230</sup> *ibid*

for the Re-Liberation of Somalia, and clan-based fighters loosely known among many Somalis as *muqaawama* (resistance). Insurgent forces have repeatedly and indiscriminately attacked civilians with mortars, small arms and remote explosive devices; killed and mutilated captured combatants on several occasions; killed TFG officials and threatened civilians, including journalists and aid workers; and jeopardized civilians through their deployment in densely populated areas.<sup>231</sup>

#### **4.3 Intervention measures by Somali and non-Somali actors** **The TFG and the Ethiopian Intervention**

In December 2006, Ethiopia launched a major assault at the Islamic courts, ostensibly on behalf of the TNG. Considering that this was a very uneven battle, it was not particularly surprising that the SCIC chose not to fight, but left Mogadishu, perhaps to continue the struggle by other means, either as a guerilla war or in the form of terrorism.<sup>232</sup> Nevertheless, fighting continued in the following months even though it was unclear whether the main combatants were militant Islamists or merely clan-based militias—but, on the other hand obvious, that they included a growing number of child soldiers. In any case, the response by the Ethiopian forces was very indiscriminate, killing hundreds of civilians and displacing hundreds of thousands, especially from the capital—but their opponents also “fought dirty,” e.g. attacking humanitarian and UN agencies, and using roadside bombs.<sup>233</sup>

Following the eviction of the UIC from Mogadishu, the TFG was now, at long last, able to establish its seat of government in the national capital, albeit only thanks to the continued

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<sup>231</sup> *ibid*

<sup>232</sup> Somalia: Ethiopia’s Preemptive Strike,” African Research Bulletin. Political, Social and Cultural Series, vol. 43, no. 12 (2006), pp. 16883-16885

<sup>233</sup> IRIN: “Somalia: Mogadishu Residents Back to Living in Constant Danger,” IRIN News, 15 February 2007;

Ethiopian militant support. It was somewhat equivocal about its relationship with the remnants of the defeated UIC, some spokespersons expressing the intention of co-opting at least moderate elements into the TFIs, but others taking a less conciliatory position. As so often before, however, the TFG's ability to actually govern the country was extremely limited, also because they had lost most of whatever legitimacy they might have enjoyed in the first place by aligning so closely with what was seen by most Somali as a hostile invader and occupant. It probably did not help either that the TFG President explicitly endorsed the air strikes which the United States launched against Somalia in the wake of the Ethiopian intervention in January 2007, apparently killing more than thirty innocent civilians. While both the United Nations and the European Union criticized the air strikes, Yusuf condoned them with the argument that the USA "has the right to bombard terrorist suspects who attacked its embassies." Nor did he object to the transfer of at least one Somali detainees to the Guantanamo prison.<sup>234</sup>

In May the Transitional Federal Parliament further passed an anti-terrorism bill introduced the TFG, allowing the latter to freeze property of people suspected of (as opposed to found guilty of) terrorist activities. An even more draconian measure included in the same bill was the institution of capital punishment for membership of a terrorist organization—regardless of whether this entailed actual terrorist activities.<sup>235</sup> The situation was thus quite volatile and the future unpredictable by the summer of 2007. Before nevertheless venturing some guesses about the future, it seems appropriate to provide an overview of the various external actors involved.<sup>236</sup>

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<sup>234</sup> "Somalia: TFG Takes Control," African Research Bulletin. Political, Social and Cultural Series, vol. 44, no. 1 (2007),

<sup>235</sup> Report of the Secretary-General on the Situation in Somalia," UN Documents, no.S/2007/381 (25 June 2007), 15.

<sup>236</sup> *ibid*

#### 4.3.1 Non –Somali actors

The 2006/7 crisis brought into play a number of external actors, most of whom have been pursuing their national or organizational agendas regardless of their compatibility with the interests of the Somali people. The various humanitarian agencies constituted a partial exception, doing their best to cater for the innocent victims of the struggle, the refugees and internally displaced persons, under extremely challenging circumstances.<sup>237</sup> As will be obvious from the account above, the United States has been quite active throughout the crisis, yet almost exclusively pursuing its own security agenda with little regard for the Somali population. In addition to this, a plethora of neighboring states and international organizations have also been involved<sup>238</sup>

#### 4.3.2 International Organizations

Having served as the “midwife” of the TFG, it is hardly surprising that the Subregional organization for the Horn of Africa (HoA), IGAD, has been unswervingly on the side of this so-called “government,” also because Ethiopia has a large say in the organization. IGAD was thus, from the very start, very favorably inclined towards the TFG’s request for armed protection<sup>239</sup> as well as in favor of a relaxation of the arms embargo on Somalia in order to allow for a build-up of armed forces loyal to Yusuf and his entourage.<sup>240</sup> In June 2006 the organization (minus Eritrea) followed Kenya’s lead in imposing various sanctions, including a travel ban, on what it called “warlords,” some of whom they also wanted prosecuted for crimes against humanity.<sup>241</sup> Likewise without Eritrea’s participation, IGAD heads of state and government met in January for

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<sup>237</sup>OCHA: “Somalia: Humanitarian Response to Mogadishu Displacements (IDPs),” at <http://ochaonline2.un.org/LinkClick.aspx?link=ocha&docid=1023453>

<sup>238</sup> *ibid*

<sup>239</sup> The communique from the Special Summit on Somalia, 15 October 2004, available at [www.issafrica.org/AF/RegOrg/unity](http://www.issafrica.org/AF/RegOrg/unity)

<sup>240</sup> The “*Nairobi Declaration of the 11th Summit of Heads of State and Government of the Intergovernmental Authority on Development (IGAD)*,” adopted 20 March 2006, available at [www.issafrica.org/AF/RegOrg/](http://www.issafrica.org/AF/RegOrg/)

<sup>241</sup> IRIN: “*Somalia: Regional Body Imposes Sanctions against ‘Warlords’*,” *IRIN News*, 14 June 2006

an extraordinary meeting at which they voiced no opinion on the Ethiopian intervention, yet took note of its intention to withdraw, urging the international community to take steps to prevent the emergence of a “security vacuum.”<sup>242</sup>

Due to the organization’s weakness, however, its actual role has mainly consisted in putting pressure on the African Union. The AU, in turn, could not easily go against one of the REC’s designated as its operational arms in the making—or against the expressed wishes of its host country, Ethiopia—and especially not at a historical juncture where its utility was being assessed by the world community with a view to granting much needed external support.<sup>243</sup> Moreover, considering that the OAU had already recognized the TNG, the AU chose to view the TFG as a simple successor which made its support for the latter almost preordained.<sup>244</sup> The actual role of the AU was, however, quite modest, mainly because of a lack of armed forces and other resources. Having first dispatched a fact-finding mission and then acknowledged the need for the dispatch of “peacekeepers” to assist the TFG—and having endorsed the proposal by the United States and IGAD to lift or relax the arms embargo the Peace and Security Council in January 2007 mandated a peacekeeping mission (AMISOM) to take over from the Ethiopian forces. Even though it was mandated to comprise 8,000 troops—and partly financed by EU and US support of €15,000 and \$14,000, respectively

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<sup>242</sup> *Communique on Somalia by the Extraordinary Meeting of the IGAD Assembly of Heads of State and Government* (28 January 2007), at [www.issafrica.org/dynamic/administration/file\\_manager/file\\_links/IGADSOMJAN07.PDF](http://www.issafrica.org/dynamic/administration/file_manager/file_links/IGADSOMJAN07.PDF)

<sup>243</sup> K. Powell, *The African Union’s Emerging Peace and Security Regime* (Pretoria: ISS, 2006); Mwanasali, Musifiky: “*From the Organisation of African Unity to the African Union*,” in Baregu & Landsberg (eds.): op. cit. (note 2), pp. 205-224;

<sup>244</sup> Anonymous: loc. cit. (note 115), p. 254



### **4.3.3 Response from the New Government**

The new Somali government has many challenges ahead, but it is crucial that it ensures that basic protection and services are provided to the capital's sizeable displaced population. In the longer-term it is also vital that Somalia ends the culture of impunity in which abuses against displaced persons occur. In the few months since the government came to power, the signals have been mixed.

In his September 16, 2012 inaugural address the new Somali president, Hassan Sheikh Mohamud, identified security as one of his main priorities.<sup>245</sup> Improving security and equally important, developing professional and accountable security forces, is clearly critical in any effort to protect IDPs—and Somali citizens more broadly. On November 25, 2012, President Hassan Sheikh also publicly committed to hold to account government forces responsible for abuses, including rape, although he said that the death penalty would be applied.<sup>246</sup> A commitment to end impunity is a positive step towards ensuring justice for victims and deterring future abuses, but the new Somali government should place a moratorium on executions with a view to abolishing the death penalty, and instead focus on improving the quality of police response and investigations, as well as the functioning of the judiciary.<sup>247</sup>

### **4.3.4 The Diplomatic and Donor Community**

Throughout the course of the famine and during its immediate aftermath in the last months of the transitional government, the diplomatic community focused primarily on achieving the aims of the political roadmap, often overlooking human rights abuses, questions of impunity, and the

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<sup>245</sup>“Somalia: New Somali President says his government to focus on security,” Raxanreeb.com, September 18, 2012, <http://www.raxanreeb.com/2012/09/somalia-new-somali-president-says-his-government-to-focus-on-security/> (accessed

November 14, 2012

<sup>246</sup><http://radiomuqdisho.net/wp-content/uploads/2012/11/Riix-Halkan-si-Aad-U-Dhageysato-Khudabadii-Madaxweynuhu-uga-hadlayay-amniga.mp3>;

<sup>247</sup>African Commission on Human and Peoples' Rights, “Study on the question of the death penalty in Africa,” April 10, 2012,

complex relationship between aid, armed groups, and rights abuses. Calls for accountability have tended to focus on financial and budgetary accountability rather than accountability for abuses against the population. At the political level, the international community has begun to raise concerns over SGBV. Rape of IDPs has been referenced in numerous UN reports and in UN resolutions on Somalia.<sup>248</sup> The donor community has increased funding to agencies providing assistance to survivors of sexual and gender-based violence.<sup>249</sup>

#### **4.4 Post-9/11 and its effects on the human rights situation in Somalia**

Since 9/11 Somalia has attracted growing attention as allegedly one of the most likely breeding grounds for terrorism. The actions taken by the United States and its allies (mainly Ethiopia) in the years 2006-07 seem to have pushed this troubled country over the edge, plunging it back into chaos. It all seems to have begun with US efforts to enlist the support for its war on terror from various Somali warlords, including some who were formally parts of the TFI, but had broken ranks with President Yusuf. Even though it has not been officially confirmed, the United States—seemingly acting through the CIA and the private military company “Select Armor”—was in the beginning of 2006 “handing suitcases full of cash to warlords on the streets of Mogadishu,” as bluntly put by John Prendergast and Colin Thomas-Jensen, who estimated the cash flow to be \$150,000 per month.<sup>250</sup>

The outcome of these efforts was the formation in February 2006 of an Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT, sometimes referred to as ATA: Anti-

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<sup>248</sup>UN Human Rights Council, “Report of the Secretary General on the United Nations support to end human rights abuses and combat impunity in Somalia,” A/ HRC/21/36, September 21, 2012.

<sup>249</sup>Human Rights Watch email correspondence with UN officer, Nairobi, November 15, 2012

<sup>250</sup>J. Prendergast & T-J. Colin: “*Blowing the Horn*,” Foreign Affairs, vol. 86, no. 2 (2007), pp. 59-74

TerroristAlliance).<sup>251</sup>The rationale for the Bush Administration’s support for the ARPCT was spelled out by Assistant Secretary of State for African Affairs Jenday Frazer, according to whom, “We will work with those elements that will help us root out al-Qaeda and to prevent Somalia becoming a safe haven for terrorists, and we are doing it in the interest of protecting America.”<sup>252</sup> By 2006, the general impression was indeed spreading in the United States that Somalia represented a special threat with regard to terrorism, but there was very little concrete about this impression, e.g. concerning who might do what to whom and how.

The US State Department in the 2006 edition of its Country Reports on Terrorism thus only listed one Somali organization as terrorist, namely the aforementioned (and probably no longer existing). It further claimed that three individuals were hiding in Somalia, enjoying the protection of the Council of Islamic Courts and Al-Shabaab leadership: Fazul Abdallah Mohammed, Abu Talha al-Sudani, and Saleh Ali Saleh Nabhan, suspected for complicity in the 1998 embassy bombings and a 2002 hotel bombing in Kenya.<sup>253</sup> The US Treasury further listed four individuals (Abbas Abdi Ali, Hassan Dahir Aweys, Ahmad Ali Jimale and Abdullahi Hussein Kahie) on its “Terrorist Exclusion List” along with several companies and other entities located in Somalia, i.e. Al Barakaat (several branches and subsidiaries), Al Haramain (several branches and subsidiaries), Heyatul Ulya and Somali Internet Company as well as two organizations located elsewhere but providing aid to Somalia—the Somali Network AB (in Sweden) and Somali International Relief Organization (in the USA).<sup>254</sup> AIAI was included in the US “Terrorist

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<sup>251</sup> *ibid*

<sup>252</sup> McGregor: loc. cit. (note 157).

<sup>253</sup> Chapter 2: “Africa Overview,” in Country Reports on Terrorism 2006 (op. cit., note 49), internet version at [www.state.gov/s/ct/rls/crt/2006/82730.htm](http://www.state.gov/s/ct/rls/crt/2006/82730.htm)

<sup>254</sup> US Treasury, Office of Foreign Assets Control: “Alphabetical Listing of Specially Designated Nationals and Blocked Persons,” at [www.treasury.gov/offices/enforcement/ofac/sdn/sdnlist.txt](http://www.treasury.gov/offices/enforcement/ofac/sdn/sdnlist.txt), (accessed 2 July 2007)

Exclusion List,” but not on the US StateDepartment’s list of designated “Foreign Terrorist Organizations”.<sup>255</sup> These US listings have seemingly been more or less carbon-copied to that of the United Nations. The UN Security Council’s “1267 Commission” thus included on its list of individuals and entities associated with either the Taliban or AlQaeda the AIAI, Al-Barakaat, HeyatulUlya, the Somali International Relief Organization, the Somali Network as well as Ali Abbas Abdi, MaxamedCabdullaahCiise, Hassan DahirAweys, Ali Ahmed NurJimale, AbdullahiHussein Kahie, and Abdulkadir Hussein Mahamud.<sup>256</sup> The European Union’s terrorist list, on the other hand, does not list any individuals or entities based in Somalia.<sup>257</sup> Thus as USA and its allies hunted the alleged terrorists it changed the lives of money Somalia who depended on *Hawala* system of money lending system among other benefits.

#### **Other issues:**

### **4.5 The culture of impunity**

The United Nations Commission on Human Rights defines impunity as “the impossibility, de jure or de facto, of bringing the perpetrators of violations to account—whether incriminal, civil, administrative or disciplinary proceedings—since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims”<sup>258</sup>. Impunity, then, implies a political and social climate or culture in which laws against human rights violations are ignored or insufficiently

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<sup>255</sup> <http://tkb.org/Group.jsp?groupID=4329>, and <http://tkb.org/FTO.jsp>, (both accessed 2 July 2007.)

<sup>256</sup> Security Council Committee Established Pursuant to Paragraph 6 of Resolution 1267: “*The Consolidated List Established and Maintained by the 1267 Committee with Respect to Al-Qaida, Usama Bin Laden, and the Taliban and Other Individuals, Groups, Undertakings and Entities Associated with Them*,” at [www.un.org/sc/committees/1267/pdf/pdflist.pdf](http://www.un.org/sc/committees/1267/pdf/pdflist.pdf), accessed 2 July, 2007

<sup>257</sup> Council of the European Union: “*EU Terrorist List—Adoption of a New Consolidated List*,” EU Documents, no. 11309/07, at <http://consilium.europa.eu/uedocs>

<sup>258</sup> United Nations 2005

punished by the state. As the above definition suggests, impunity may be the result of discriminatory legal practices that insulate state agents from laws protecting human rights or that explicitly sanction such violations in certain contexts (e.g. during wartime or periods of emergency rule), or it may be the result of the weakness of political and judicial mechanisms needed to punish violations of human rights. Impunity, then, may be the result or outcome of deliberate policies of repression or the consequence of unbalanced power relations across the various arms of the state<sup>259</sup>.

Impunity continues to prevail in Somalia for serious human rights abuses, some of which constitute war crimes. No one has been held accountable for the massive human rights abuses committed in Somalia over the past two decades of armed conflict. Little progress has been made by the TFG in fulfilling its commitment to address justice and reconciliation under the 2008 Djibouti Peace Agreement. Human rights defenders have suggested that without any measure taken to address accountability for war crimes and other human rights abuses in Somalia, the protection of civilians and the human rights situation in Somalia will not improve. The establishment of an independent and impartial Commission of Inquiry, or similar mechanism, to investigate crimes under international law committed in Somalia and to make recommendations to address impunity in the country is therefore essential.<sup>260</sup>

Amnesty International which is a forefront agency in reporting atrocities committed in Somalia has welcomed statements by the Independent Expert on the situation of human rights in Somalia

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<sup>259</sup>Lopez and Stohl 1992

<sup>260</sup>OHCHR, Senior UN human rights official condemns "ruthless attacks" on civilians in Somalia, calls for concerted effort to tackle decades of impunity, 15 September 2010 ; Somalia: UN expert calls on international community to protect civilians and pursue rights violators, 10 August 2010

and the Deputy High Commissioner for Human Rights in favor of systematically documenting the most serious abuses in the country.<sup>261</sup>

Indiscriminate and brutal warfare between ranges of actors continues to increase in Somalia. The human rights situation in Somalia has significantly deteriorated following the December 2006 invasion of Ethiopian troops in support of the Transitional Federal Government of Somalia (TFG).<sup>262</sup>

The humanitarian situation is evidently dismissal and rapidly deteriorating as a result of current lifethreatening food and water shortages which have been further aggravated by high inflation and the global crisis in commodity prices.<sup>263</sup> Fighting has continued in civilian areas of Mogadishu whilst also intensifying in towns in South and Central Somalia. This has had devastating impacts on the civilian population. The current attention accorded to Somalia by the international community is inadequate and generally misdirected. Political issues continue to dominate the discussions and thus, as a result, the human rights situation is neglected and ignored at a terrible cost to civilians and in particular to human rights defenders (HRDs). There is currently no international human rights presence in Somalia.<sup>264</sup>

Civilians in general have suffered from massive rights violations but certain groups of the population, notably human rights defenders (HRDs) and in particular journalists, have been subjected to persistent and targeted violations. Human rights activists have come under considerable attack notably with the apparent closure by the TGF forces of the Elman Human

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<sup>261</sup>ibid

<sup>262</sup> ibid

<sup>263</sup>ICRC, Somalia: ICRC mounts relief operation for half a million people , 4th June 2008

<sup>264</sup> Report by the independent expert appointed by the Secretary- General on the situation of human rights in Somalia ( A/ HRC/ 5/2) , at <http://daccess-ods.un.org/TMP/904055.6.html>

Rights organization, which was one of the country's oldest human rights NGO.<sup>265</sup> As a result, a significant number have been forced into exile: the chairperson of Somali Human Rights defenders Network and its legal adviser are currently living in exile in Uganda. Peace activists have also fallen victim of targeted killings. Those still operating on the ground, notably the Peace and Human Rights Network (PHRN) have resigned themselves to using self-censorship in order to protect themselves from TFG and insurgent attacks. In spite of this they continue to be subjected to intimidations and threats. On the 11th June 2008 Somali peace activist, Executive Director of the Women Care Organization (WOCA) and founding member of the Peace and Human Rights Network (PHRN), Mr. Mohammed Abdulle Mahdi " Qeylow", was killed in SwkBa'ad in Northern Mogadishu.<sup>266</sup> Somalia is at present the second most deadliest place in the world to be a journalist, after Iraq, and the situation has continued to rapidly deteriorate ever since the Ethiopian invasion.<sup>267</sup> This has created a climate of intimidation and fear which greatly hampers freedom of expression amongst these key proponents of human rights. Journalists and media organizations in all regions have reported harassment, killings, detention without charges and assaults.<sup>268</sup>

#### **4.6 The relevance of the ICC debate to Somalia: Lessons from the region**

Historically, the idea of retributive justice through prosecutions has existed for a very long time and has been considered as the most appropriate tool for addressing war crimes and past human rights abuses<sup>269</sup>. Thus, retributive justice is known to the respective legal systems of Africa and

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<sup>265</sup>HRW , Country Report: Somalia, January 2008

<sup>266</sup> EHAHRD-Net Index Som 022/005/2008: EHAHRDP/Net condemns the death in Somalia today of peace activist Mohammed Abdulle Mahdi

<sup>267</sup>CPJ, Attacks on the Press in 2007: CPJ annual report, [www.cpj.org](http://www.cpj.org)

<sup>268</sup> Ibid

<sup>269</sup>Amnesty International, 2001; Vinjamuri, L. & Snyder, J. 2004

appears in national criminal codes. In recent times however, the idea of prosecuting and punishing individuals, based on a set of international norms with supposedly universal application, has emerged.

Hitherto, states were the subjects of international law and hence individuals could not be held liable for crimes purportedly committed in breach of international law<sup>270</sup>. The belief was that the pursuit of international justice would prevent the reoccurrence of future abuses, provide retribution as a way for cleansing society of the evils, which were occasioned by the abuses, facilitates national reconciliation, and establish the truth of the abuses as well as serve as a catharsis for future prosecutions<sup>271</sup>. In light of this, the international community then embarked on initiatives to prosecute alleged violations of international crimes and other heinous breaches of human rights in Africa. In Rwanda and Sierra Leone ad hoc war tribunals were set up to prosecute alleged perpetrators of war crimes. Similarly, the International Criminal Court (ICC), which is a permanent international body, has initiated proceedings into alleged abuses in some respective conflict situations of Africa<sup>272</sup>.

International humanitarian law as encapsulated in the Geneva Conventions of 1949 (Conventions) with their 1977 protocols require State Parties to hold perpetrators accountable for “grave breaches” of the Conventions which occurs international conflicts within their territories. Alternatively, these states are required to hand over perpetrators to any of the contracting parties for accountability<sup>273</sup>. Article 50 of the Geneva Convention I defines “grave breaches” to include:

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<sup>270</sup>Kittichaisaree, 2001

<sup>271</sup>Stensrud, 2009

<sup>272</sup>Ssenyonjo, 2007; Jacobs and Arajarvi, 2008

<sup>273</sup>Kittichaisaree, 2001



“willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly” and which are meted out “against persons or property protected by the Convention.” Further, Article 3 and Protocol II of the Geneva Conventions provide for individual accountability for breaches which are committed during internal armed conflicts.

The International Criminal Court (ICC) is based at The Hague, in the Netherlands. The Court has been inaugurated on 11 March 2003.<sup>274</sup> As an international permanent judicial organ, this Court has been tasked to entertain those cases which are of concern to the international community as a whole. These cases are genocide, crimes against humanity and war crimes.<sup>275</sup> Perhaps, with the exception of genocide, these international crimes were committed in Somalia, and as a result, it is imperative to ask whether the ICC can have jurisdiction to prosecute those who bear the greatest criminal responsibility for the crimes against humanity and war crimes that occurred in Somalia from 1991 to 2012.<sup>276</sup>

The Statute of the Court defines one of the elements of the jurisdiction of the Court as *ratione temporis* jurisdiction.<sup>277</sup> The Court is limited to the crimes occurring after the entry into force of the Statute, namely 1 July 2002.<sup>278</sup> Therefore, the *ratione temporis* of the Court is only applicable to events that occurred after the entry into force of the Rome Statute, and as a result, the Court has no jurisdiction to consider the case of Somalia. Furthermore, the Somali

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<sup>274</sup> D. John, *International law: A South African perspective* (2005) 279

<sup>275</sup> *ibid*

<sup>276</sup> Rome Statute: Article v

<sup>277</sup> Rome Statute: Article 11

<sup>278</sup> D. John, *International law: A South African perspective* (2005) 279

government is not a state party to the Rome Statute and this renders that the ICC has no jurisdiction to entertain this case.

A number of states on the African continent have variously experimented with transitional justice. The Republic of South Africa<sup>279</sup>, Rwanda,<sup>280</sup> Chad, Sierra Leone,<sup>281</sup> Nigeria,<sup>282</sup> Ghana, Zimbabwe and Liberia have specifically established Truth and Reconciliation Commissions (TRCs). Some countries, such as Liberia, Sudan, Mozambique and Angola, have dealt with the question of justice by deciding (expressly or otherwise) to avoid it. While others such as the Democratic Republic of Congo (DRC) and Burundi<sup>283</sup> have inclusively agreed and signed.

With its diverse natural resources<sup>284</sup> the DRC suffered from thirty two years of dictatorship, the end of which resulted in a many year devastating and complex conflict. The colonial legacy of problematic citizenship of the *Banyamulenge*,<sup>285</sup> human rights violations arisen from years of dictatorship as well as the crisis in the Great Lakes, particularly the consequences of Hutu-Tutsi conflict in both Rwanda and Burundi<sup>286</sup> can be identified as its main causes. The Congolese conflict has been characterized by appalling widespread and systematic human rights violations. Many, if not all, sides to the conflict have regularly used the tactic of murdering, raping, maiming and terrorizing civilians. International and Congolese organizations have reported that most

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<sup>279</sup>Promotion of National Unity and Reconciliation Act 34 of 1995.

<sup>280</sup>Established by law No. 03/99 of 12 March 1999.

<sup>281</sup>Established on 29 December 1990 to investigate crimes committed during the eight year rule of Hissain Habre.

<sup>282</sup>Established by the TRC Act 4 of 2000

<sup>283</sup>The DRC: Global and inclusive Agreement on Transition, signed 17 December 2002 and Burundi: Arusha Peace and Reconciliation Agreement, signed 28 August 2000.

<sup>284</sup>Makonero.W, 'Background to the Conflict and Instability in the African Great Lakes,' in Kadina&alii (eds) *Whither Regional Peace and Security? The Democratic Republic of Congo After the War* (2000) 73.

<sup>285</sup>*Whither the DRC? Causes of the Conflict in the DRC, and the Way Forward*, <<http://www.cps.org.za/execsumm/pia1.htm>> (accessed 08-10-2006).

<sup>286</sup>Griggs *Geostrategies in the Great Lakes Conflict and Spatial Designs for Peace* <[http://www.cwis.org/hutu3\\_1.html](http://www.cwis.org/hutu3_1.html)

rebels were recruiting child soldiers, committed rape and sexual violence and atrocious acts like cannibalism, mutilation and the burying of live people as well as illegal exploitation and trafficking of natural resources of the DRC.<sup>287</sup>

Furthermore, On March 31, 2005, the U.N. Security Council adopted Resolution 1593<sup>288</sup> in light of findings of the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur,<sup>289</sup> deciding to refer the situation in Darfur since July 1, 2002, to the Prosecutor of the International Criminal Court (ICC). The Resolution requires the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with, and provide any necessary assistance to the Court and the Prosecutor. For the Security Council, such a resolution represented a precedent in exercising its power of referral.<sup>290</sup>

On June 6, 2005, the Prosecutor of the ICC announced he was opening investigations into the events in Darfur. These led to the indictment of two high-level Sudanese officials in 2007 against whom the ICC issued arrest warrants.<sup>291</sup> On July 14, 2008, the Prosecutor of the Court applied to the Court for a warrant of arrest against the Sudanese President, Al-Bashir, for aiding and abetting of crimes of genocide, crimes against humanity and war crimes in Darfur.<sup>292</sup>

Under President Al-Bashir, Sudan signed the Rome Statute on September 8, 2000, but has not yet ratified it. Based on that, the Sudanese government rejects the jurisdiction of the ICC arguing

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<sup>287</sup> HRW 'War Crimes in Kisangani: The Response of Rwandan-backed Rebels to the May 2002 Mutiny', 20-08-2002; 'The War within the War: Sexual Violence Against Women and Girls in Eastern Congo', 20 June 2002. <<http://hrw.org/english/docs/2002/08/20/congo4226.htm>>;

<sup>288</sup> S.C. Res. 1593, U.N. Doc. S/RES/1593 (31 March 2005).

<sup>289</sup> U.N. Secretary-General, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General* 118 (January 25, 2005), U.N. Doc. S/2005/60 (1 February 2005).

<sup>290</sup> Julie B. Martin, *The International Criminal Court: Defining Complementarity and Divining Implications for the United States*, 4 *Loy. Int'l L. Rev.* 109 (2006).

<sup>291</sup> ICC, *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")* (2007), available at <http://www.icc-cpi.int/cases/Darfur/c0205.html>, [last accessed Dec. 05, 2008].

<sup>292</sup> ICC, *Prosecutor's Statement on the Prosecutor's Application for a warrant of Arrest under Article 58 Against Omar Hassan Ahmad AL BASHIR (July, 2008)*, available at: <http://www.icc-cpi.int/library/organs/otp/ICC-OTP-ST20080714-ENG.pdf>, [last accessed Dec. 05 2008, ]

that Sudan is not a signatory to the Rome Statute,<sup>293</sup> and that Sudan's own judiciary has sole jurisdiction over crimes in Darfur, and is thus qualified and ready to try those accused of any violations there.<sup>294</sup> Some observers consider such outside involvement a breach of the principles of national sovereignty since the Sudan had not ratified the Rome Statute.<sup>295</sup>

Although specific sanctions were supposed to be imposed within 30 days of the resolution, as of July 1, 2005, the United Nations had yet to implement these sanctions. The referral of the situation in Darfur by the United Nations Security Council to the International Criminal Court (ICC) is unprecedented. This was the first time that a country had been referred to the ICC by the United Nations. The international community is hoping that the involvement of the ICC, the first permanent criminal court established by the international community, will bring the people responsible for the violence in Darfur to justice. An investigation of the situation in Darfur was opened by the ICC in May 2005.<sup>296</sup>

In addition to the above mentioned cases, The ICC is currently undertaking investigations into the conflict situation in the Republic of Kenya.<sup>297</sup> Given the failure of the Kenyan Government to address impunity for the crimes perpetrated during the post-election violence of 2007-2008, the ICC opened an investigation into these crimes on March 31, 2010. The Government initially showed some willingness to cooperate with the ICC, which transformed into opposition when the ICC Prosecutor revealed its list of six suspects— including senior politicians – in December 2010. When on March 8, 2011, the ICC delivered its decision granting the Prosecutor request for the

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<sup>293</sup> U.N. Doc., A/CONF.183/9 (17 July 1998). The Statute entered into force on 1 July 2002.

<sup>294</sup> Sudan Tribune, *Sudan rejects ICC jurisdiction, says one suspect held* (Feb. 27, 2007), available at: <http://www.sudantribune.com/spip.php?article20473>, [last update Nov. 21, 2008].

<sup>295</sup> Dr. Hassan Haj-Ali & Ibrahim Adam, *Illiquid, Toxic and Not an Asset: End the ICC's involvement in Sudan* (Oct. 5, 2008), available at: <http://www.ssrc.org/blogs/darfur/2008/10/05/illiquid-toxic-and-not-an-asset-end-the-icc%E2%80%99s-involvement-in-sudan/>, [last accessed Dec. 05, 2008].

<sup>296</sup> Matthew Packer and Toluwanimi Fadeyi (Marshall-Brennan Fellow) ([www.wcl.american.edu/humright/center/rwanda/lesson.cfm](http://www.wcl.american.edu/humright/center/rwanda/lesson.cfm)).

<sup>297</sup> ICC-01/09-1

delivery of summons against the six suspects to appear in April 2011, the Kenyan authorities intensified their efforts to prevent the proceedings from continuing, lobbying for the United Nations (UN) Security Council's deferral of the ICC proceedings for one year under Article 16 of the Rome Statute<sup>298</sup>. Moreover, on December 22, 2010, the Parliament passed a motion requesting the executive to take steps to withdraw from the ICC Statute<sup>299</sup>. In addition, a few days before the initial appearance of all suspects before the ICC, on March 31, 2011, the Government filed a request for inadmissibility of the cases on the ground that with the new Constitution it was now in capacity to investigate the case<sup>300</sup>.

Numerous Kenyan official Commissions' reports as well as International Non-Governmental Organizations' (NGO) reports have denounced the politically instigated ethnic clashes that occurred at the occasion of the 1992 and 1997 presidential elections. Despite State knowledge of such violations, no one was prosecuted for the massive crimes committed in Kenya. This culture of impunity is undoubtedly one reason for the recurrence of such human rights violations, notably those committed at the occasion of the December 2007 presidential elections. The fight against impunity of the most serious crimes is an important way of preventing further violations. Along this line, State Parties to the International Criminal Court (ICC) Statute have announced that they are "determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes"<sup>301</sup>.

Additionally, since the 2007/2008 post-election violence, Kenya initiated special committees, like the Waki Commission (officially the Commission of Inquiry on Post-Election Violence

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<sup>298</sup>Rome Statute: Article 16

<sup>299</sup>It was feared that a bill, seeking the same effect and repealing the International Criminal Act of 2008, would be tabled. However, as of the end of April 2011, no such bill had been tabled

<sup>300</sup>Observatory for the protection of human rights defenders annual report 2011

<sup>301</sup>Preamble of the ICC Statute

established by the Government in February 2008), to investigate the clashes in Kenya and the factors influencing human rights situations.<sup>302</sup>

The reports distinctly request national authorities to take every measure to fight against impunity of the most serious crimes. The Waki Commission released its report in October 2008 with the recommendation that a Special Tribunal for Kenya be formed, failure to which the International Criminal Court (The ICC) would takeover the case. However, so far the State has not been able to concretely address this issue showing a lack of commitment to putting end impunity. It is up to a judicial body, like the ICC, to qualify the crimes committed in Kenya.<sup>303</sup>

#### **4.8 Conclusion**

Somalia and its people have endured a lot of mistreatment from the people who were supposed to protect it. Even though the country is prone to cyclical drought; it is the persistent violence against civilians, repeated displacement, and predatory looting by armed groups, widespread pillaging and looting of civilian property; rape; attacks on humanitarian workers; mass arbitrary arrests and mistreatment of detainees that have produced serious human rights and humanitarian catastrophe on several occasions in the last 20 years. Notably among the violators as mentioned in this chapter are The TFG forces, Ethiopian forces, AMISOM forces and insurgent forces like the Al-Shabaab militia forces. For deterrence purposes the chapter has mentioned Somalia's neighboring countries like Kenya and Sudan whose leaders or citizens have committed international crime and the Hague-based ICC is taking over their case for investigation.

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<sup>302</sup>International Federation for Human Rights

<sup>303</sup> ibid

## CHAPTER FIVE.

### 5.1 CONCLUSION

#### SUMMARY

The overthrow of President SiadBarre in 1991 marked a turning point in Somalipolitics, economy and society. After the ousting of Barre regime by the Rebel forces in 1991,turmoil, factional fighting, and anarchy ensued in Somali. The Somali National Movement (SNM) gained control of the north, while in the capital of Mogadishu and most of southern Somalia, the United Somali Congress achieved control. Somalia had been without a stable central government since Mohamed SiadBarre fled the country in 1991.Since then, Somalia has suffered from civil-war, widespread famine, broken infrastructure, rampant human and civil rights abuses, poverty, human trafficking, rape, murder and corruption at every level of society. Somalia's history has been marked by permanent violence, military coups, murders and radical Islamic militancy.

Subsequent fighting among rival faction leaders had resulted in the killing, dislocation, and starvation of thousands of Somalis and this led the United Nations to intervene militarily in 1992.

The legal framework and jurisprudence in Somalia is manifested in three principle ways: traditional or customarylaw practiced through elder councils/clan leaders; Islamic law practiced through*sharia* courts, and secular law through an ordinary court system.<sup>304</sup> Accordingly, traditional or customary law is the most prevalent legal system in today's Somalia.In their role as enforcers of law and order within and between clans, traditional leaders have come under sustained pressure from Somalia's long-lasting environment of conflict, rapid socioeconomic

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<sup>304</sup> Ibid

change and the absence of law and order.

Traditional mechanisms and structures have faced major challenges in Southern Somalia. The traditional structures in South Central Somalia are different and more composite, fragmented, weakened and confused than in the North, for a range of reasons: First of all, the ethnic composition of people are very different due to a heterogeneous mix of sedentary agriculturalist, agro-pastoralist, old urbanized cultures along the coastline and pastoralist people - all with differing cultural heritage and traditional structures. Secondly, the history including the colonial experience is different and with that a diverse historical social construction of the traditional structures. Finally, the dynamics of the civil war in the South differed as well, resulting in an equally different impact on the traditional structures.

Like much of Africa, the impact of colonialism left its imprint on Somalia. During the time of colonialism, the European powers – France, Britain and Italy – divided the Somali nation amongst themselves, partitioning Somalia into five separate parts or “protectorates”. While one portion remained under the control of Kenya, the Ogaden province was given to Ethiopia’s King Menelik by the British Empire. Although British Somaliland and Italian Somaliland were united at independence on 1 July 1960, the French kept Djibouti under colonial administration, and the region did not gain independence until 1977. The effects of this partitioning continue to permeate Somali society today. A substantial minority of Somalis fall outside the country’s boundaries while the northern region of Somalia (former British Somaliland) continues to push for a withdrawal from the south. In Somalia, current patterns of development and human rights reflect the historical processes of state formation, marginalization, and exploitation. The development of the modern Somali State was not a peaceful process.



The intervention by state and non-state actors has not helped in ending impunity and human rights violations leading to fundamentalism

The Somali civil war can be ascribed to a number of multiple and complex factors, of which Elmi and Barise have identified three main causes. Prominent amongst these is Somalia's colonial legacy. While the "decolonization process created large numbers of new territorial states in the European image ... for the most part it neither took account of existing cultural and ethnic boundaries, nor created new nations to fit within them.". The second factor fuelling the conflict was the competition for power and resources among the various clans and militia groups. Here the control of key cities, ports and airports, checkpoints, agricultural areas and foreign aid became heavily contested resources amongst vying militia groups and various clans. Thirdly, state repression fuelled resistance. For 21 years, the military regime used excessive force and collective punishment to suppress opposition, with little regard for human rights. Inevitably, when the opportunity arises, repression leads to resistance.

In 1992, responding to the political chaos and humanitarian disaster in Somalia, the United States and other nations launched peacekeeping operations to create an environment in which assistance could be delivered to the Somali people<sup>305</sup>. By March 1993, the potential for mass starvation in Somalia had been overcome, but the security situation remained fragile. On 3 October 1993, US troops received significant casualties (18 dead over 80 others wounded) in a battle with Somali gunmen. When the United States and the UN withdrew their forces from Somalia, in 1994 and 1995 respectively, after suffering significant casualties, order still had not been restored.

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<sup>305</sup>RDP – note however that population figures are extrapolations, and are highly contentious

Finally, the study highlighted the significance of the International Criminal Court (ICC) intervention in Somalia since crimes against humanity is allegedly committed. The International Criminal Court (ICC) is based at The Hague, in the Netherlands. The Court has been inaugurated on 11 March 2003. As an international permanent judicial organ, this Court has been tasked to entertain those cases which are of concern to the international community as a whole. These cases are genocide, crimes against humanity and war crimes. Perhaps, with the exception of genocide, these international crimes were committed in Somalia, and as result, it is imperative to ask whether the ICC can have jurisdiction to prosecute those who bear the greatest criminal responsibility for the crimes against humanity and war crimes that occurred in Somalia from 1991 to 2012

## **5.2 Key findings**

The study found that Somali state was heavily dependent on foreign aid. As this aid declined in the late 1980s, political and economic competition among the elite was turned inwards over Somalia's local resources. The study depicted that the conflict in Somalia from its onset was caused by clannism and nepotism and unequal distribution of the natural resources whereby the country was divided between the northerners (marginalized) and the southerners (elites) as some quarters had claimed in this study.

As a result of the continuous fighting in Somalia since 1991 a very large number of Somalis have become internally displaced persons (IDPs). There are approximately 184, 000 IDPs in Mogadishu and its surroundings alone. The total figure for IDPs in all of Somalia is now estimated to be 1 129 000 persons<sup>306</sup>

The study further found that external forces is never a solution for Somalia conflict, this is clearly indicated by the fact that Somalis view this as external aggression hence a home ground

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<sup>306</sup>UN High Commissioner for Refugees, *UNHCR alarmed by resumption in mortar attacks in Somalia's Mogadishu*,

efforts is the solution for that matter. Fundamentalism and extremism took centre stage whenever chaos erupted in Somalia that is why Al-Shabbab is a menace in Somalia at the moment.

Crimes against humanity were allegedly committed in Somalia. In this study, it has been determined that they fit the conventional and jurisprudential requirements, and therefore, such crimes were committed in Somalia during the military regime in Somalia.

War crimes were also allegedly committed, and the study exposed that such crimes were committed against the people of Somalia. The Four Geneva Conventions and other international humanitarian laws have been violated during the armed conflict in Somalia by all parties; murder, torture, inhuman acts, killings, war prisoners, wanton destruction of cities, towns, villages or devastation not justified by military necessity, attack, or bombardment, of whatever means, of undefended towns, villages, dwelling or buildings were the order of the day.

The study has examined the failure of the governments of Somalia for not establishing a national criminal tribunal for the gross human rights violations that occurred in Somalia. Because the primary onus of accountability for the acts of human rights violators rests with the Somali government, domestic trials must be considered as an important potential mechanism for accountability.

### **5.3 Recommendations**

The following policy recommendations are considered crucial in the efforts to address the human rights issues in Somalia.

The study recommends that future Security Council resolutions strongly condemn violations of international human rights and humanitarian law by all parties to the conflict, including Somalia Federal government, Ethiopian forces and AMISOM forces; stress that individual perpetrators of

serious international crimes will be held accountable; emphasize the applicability of international human rights standards to Somalia; urge that all parties to the conflict protect journalists, human rights defenders and humanitarian aid workers from attacks; and call on the Somali Federal Government, and other actors to facilitate the delivery of impartial and independent humanitarian assistance to all vulnerable civilians.<sup>307</sup>

The study is making a call for the capacity of the UN Office of the High Commissioner for Human Rights to be increased in order to monitor and publicly report on human rights abuses, provide technical assistance to the international agencies on human rights and justice sector reform, support the establishment of a human rights commission and support human rights defenders throughout Somalia.<sup>308</sup>

The study further calls for the establishment of an international commission of inquiry to investigate reports of violations of international human rights and humanitarian law in Somalia since 1991 to date by all parties; identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable; map the most serious past crimes that might require further future investigation; and formulate recommendations on appropriate mechanisms for justice and accountability, including criminal prosecutions.<sup>309</sup>

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<sup>307</sup>Shell-shocked, August 13 2007, [www.hrw.org/reports/2007/08/12](http://www.hrw.org/reports/2007/08/12)

<sup>308</sup> Ibid

<sup>309</sup> Ibid

Ensure that any international peacekeeping force in Somalia is authorized to protect civilians and includes a strong human rights component tasked with monitoring, investigating and publicly reporting on human rights abuses throughout Somalia.<sup>310</sup>

Equally important, the study recommends that, the Somalia Federal government should distribute the natural resources fairly.

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<sup>310</sup> Ibid

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