

SEEKING SELF-DETERMINATION

The Practical Implications for Ogaden



UNREPRESENTED NATIONS AND PEOPLES WORKSHOP
LEWIS & CLARK LAW SCHOOL
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SEEKING SELF-DETERMINATION THE PRACTICAL IMPLICATIONS FOR OGADEN

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TABLE OF CONTENTS

PREFACE.....	iv
EXECUTIVE SUMMARY	v
MAP 1: The Ogaden Region in Ethiopia.....	vi
MAP 2: Ethiopia	vii
I. Ogaden and Its People	1
II. Self-Determination and Secession	9
A. Background	9
B. Legal Principle	10
C. Application.....	12
D. Secession in the African Union.....	14
E. Secession in Ethiopia.....	16
F. Self-determination and Ogaden	18
III. Oppression in Ogaden.....	20
IV. Abuse in Ogaden.....	28
APPENDICES	1
A Constitution of the Democratic Federal Republic of Ethiopia, Article 39.....	1
B The Ogaden National Liberation Front: Foundational Documents.....	2

PREFACE

This report is a product of work undertaken by law students in the Unrepresented Nations and Peoples Workshop at Lewis & Clark Law School in Portland, Oregon, in association with the Unrepresented Nations and Peoples Organization (UNPO) in The Hague. At the suggestion of UNPO, the Workshop selected for investigation and legal analysis the people of Ogaden's claim to self-determination.

This report analyzes the principle of self-determination in international law and its application to the people of Ogaden. Section I outlines the history of the Ogaden region throughout its colonial and Ethiopian eras, providing a context for the current claim. Section II examines the international law rules on the principle of self-determination with a view to their application in Ogaden. Section III investigates the extent that the people of Ogaden have a meaningful role in their own governance. Finally, Section IV examines the current state of human rights in the Ogaden region.

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EXECUTIVE SUMMARY

The people of the Ogaden region of Ethiopia, who are of Somali ethnicity and Muslim faith, have never had complete control over their own destiny. They have, since the middle of the 19th Century, been pawns in the hands of Great Britain, Italy, and Ethiopia, and their fate has been determined by these powers. They now find themselves part of a federation that they consider they have not freely chosen and that abuses them. Through their recognized representatives, the Ogaden National Liberation Front (ONLF), they demand the right to determine their own political destiny.

The right of a people to self-determination is a fundamental and peremptory principle of international law. The principle readily applies to colonial people, for whom it was originally intended, and the people of Ogaden see themselves as still in a colonial situation. Additionally, those subject to foreign occupation or alien subjugation, domination and exploitation are entitled to self-determination, so the people of Ogaden can claim that right. While there is no controverting the fact that all people have a right to a meaningful role in their own governance (internal self-determination, as it is termed), external self-determination as an independent State is still regarded as an extreme remedy, available only to colonies and, perhaps as a last resort, to people denied a meaningful role in their own governance and subject to systematic and egregious abuse at the hands of a State.

There is clear and ample evidence that the Ethiopian People's Revolutionary Democratic Front (EPRDF), which has governed Ethiopia and its nine ethnically based regional states for nearly 25 years, has consistently and often violently denied the Ogaden people a real role in their own governance. Further, there have been widespread, systematic and egregious human rights abuses in Ogaden and against the people of Ogaden, for which the EPRDF bears full responsibility. In the international law on self-determination, the absence of self-governance in Ogaden triggers a requirement of its immediate restoration; and the human rights abuses of the people of Ogaden, alone or coupled with the absence of self-governance, raise the possibility of a right to secede from the Ethiopian federation.

The situation for the people of Ogaden is complicated by the fact that, while the Constitution of Ethiopia allows for secession by any of the ethnic groups in the multi-ethnic federation, it is unlikely that this could be achieved; by the fact that the African Union is implacably opposed to any unilateral secession that would disrupt the territorial integrity of a State; and by the fact that a people with a self-determination claim have no mechanism in international law to assert and enforce that claim.

MAP 1: The Ogaden Region in Ethiopia



MAP 2: Ethiopia



I. Ogaden and Its People

The people of Ogaden have never been in control of their own destiny. Throughout modern history, their fortune has been determined by external powers. As early as the mid-1800s, colonial powers, such as Great Britain, France, and Italy, began staking claim to Somalia and invading Ogaden.¹ There was no unified resistance when the Ethiopian empire and colonial powers set their eyes on the Ogaden region, because the inhabitants were divided into clans and sub-clans.²

Ogaden is an arid region in the Horn of Africa, in the east of modern-day Ethiopia, occupying a barren plain that extends from the Ethiopian Highlands to the Somalia border.³ It comprises about 77,000 square miles in the southeastern portion of the Somali Regional State in eastern Ethiopia.⁴ The region is almost completely undeveloped,⁵ and it “is one of Ethiopia’s poorest states, with some of the lowest literacy rates and levels of services in the country.”⁶ More than four million inhabitants populate the region; they are predominantly ethnic Somali and Muslim.⁷ Ethnic Somalis comprise 97% of the total population in Ogaden⁸ and are culturally distinct from the Ethiopian “highlanders” that dominate the country.⁹ Historically, the people of Ogaden are closely linked with Somalia, both ethnically and culturally.¹⁰ Generally, ethnic Somalis are nomadic people and pastoralists or agro-pastoralists.¹¹

In contrast to Ethiopian highlanders, who base their society on “territoriality,” ethnic Somalis are rooted in kinship.¹² Every ethnic Somali is born into a clan or sub-clan and derives his or her identity from it.¹³ An individual’s lineage determines the clan or sub-clan he or she is

¹ I.M. LEWIS, A MODERN HISTORY OF THE SOMALI: REVISED, UPDATED & EXPANDED 40 (Ohio University Press ed., 4th ed. 2002).

² Tibebe Eshete, *Towards a History of the Incorporation of the Ogaden: 1887-1935*, 27 JOURNAL OF ETHIOPIAN STUDIES 69, 70 (1994).

³ *Ogaden*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/place/Ogaden> (last visited Nov. 19, 2015).

⁴ Ken Opalo, *The Ogaden Region: A Fragile Path to Peace*, 2 AFRICA PORTAL 3 (2010).

⁵ ETHIOPIA: PROSPECTS FOR PEACE IN OGADEN, INTERNATIONAL CRISIS GROUP: AFRICA REPORT N°207 4 (2013) [hereinafter AFRICAN REPORT I].

⁶ COLLECTIVE PUNISHMENT: WAR CRIMES AND CRIMES AGAINST HUMANITY IN THE OGADEN AREA OF ETHIOPIA'S SOMALI REGIONAL STATE, HUMAN RIGHTS WATCH 13 (2008) [hereinafter HUMAN RIGHTS WATCH I].

⁷ *Id.*; AFRICA REPORT I, *supra* note 5, at 2.

⁸ CENTRAL STATISTICAL AGENCY–ETHIOPIA, POPULATION AND HOUSING CENSUS REPORT–SOMALI REGION (2007) (showing that 4,445,219 live in the Somali Regional State (SRS), also known as Ogaden, and 4,320,478 are ethnic Somalis).

⁹ HUMAN RIGHTS WATCH I, *supra* note 6 (stating that Somalis perceive “habasha” or Ethiopian “highlander” as the dominated culture in Ethiopia).

¹⁰ UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION (UNPO), OGADEN REPORT 1 (2015).

¹¹ HUMAN RIGHTS WATCH I, *supra* note 6.

¹² JOHN MARKAKIS, ETHIOPIA: THE LAST TWO FRONTIERS 56 (James Currey ed. 2011).

¹³ *Id.*

born into.¹⁴ Within the Somali ethnic group, the Somali Darood are the largest clan family while the Darood Ogaadeen are the largest single clan, comprising 40-50% of Ogaden's population.¹⁵ Ogaadeeni clans predominately reside within six of Ogaden's nine administrative zones: Fik, Gode, Danan, Korahe, Afder, and Degehabur.¹⁶ In addition, non-Ogaadeeni clans, "such as the Marehan, and other clan families including the Dir (Isse), Isaaq, Hawiye, Bantu, and Rahaweyn," inhabit Ogaden.¹⁷ While the clan-based culture creates societal divisions, it is also a source of solidarity among ethnic Somalis, especially when clans unite under a common goal.¹⁸

Clans largely define the political and social organization of Ogaden because kinship ties play an integral role in ethnic Somali culture. An individual's clan determines his or her position within society.¹⁹ As a result, "clan composition is not constant;" descent groups combine and break apart in response to changing circumstances.²⁰ Traditionally, the ethnic Somali political system is egalitarian.²¹ A council, in which "every adult male has the right to speak," is responsible for the political decisions.²² The interaction between the egalitarian political culture of Somalis in Ogaden and the authoritarian political culture of the highlanders is a source of "misunderstanding and tension" between the two groups.²³

In 1887, the Ethiopian empire laid claim to Ogaden.²⁴ In 1895, Italy invaded Ethiopia but was defeated a year later and forced to retreat to Eritrea.²⁵ Italy, nonetheless, continued to lay claim to Ogaden.²⁶ Neither the Ethiopian empire nor Italy had the strength to bring Ogaden under its control.²⁷ In 1897, the Ethiopian empire signed a treaty with Great Britain wherein Great Britain surrendered its claim to Ogaden, but refused to recognize Ethiopian control over Ogaden.²⁸

¹⁴ *Id.*

¹⁵ HUMAN RIGHTS WATCH I, *supra* note 6; TOBIAS HAGMANN, TALKING PEACE IN THE OGADEN: THE SEARCH FOR AN END TO CONFLICT IN THE SOMALI REGIONAL STATE IN ETHIOPIA 40 (Catherine Bond and Fergus Nicoll eds. 2014).

¹⁶ MARKAKIS, *supra* note 12, at 58.

¹⁷ HUMAN RIGHTS WATCH I, *supra* note 6, at 13–14.

¹⁸ MARKAKIS, *supra* note 12, at 56.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 55.

²² *Id.* at 57.

²³ *Id.* at 55.

²⁴ Eshete, *supra* note 2, at 71.

²⁵ *Ethiopia Profile—Timeline*, BBC.COM, <http://www.bbc.com/news/worldafrica1335139> (last visited Nov. 19, 2015).

²⁶ LEWIS, *supra* note 1, at 62.

²⁷ *History of Somalia*, HISTORYWORLD.NET,

<http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad20> (last visited Nov. 19, 2015).

²⁸ Treaty between Great Britain and Ethiopia, Feb. 8, 1898, U.K. Treaty Series No. 2, C. 8715; LEWIS, *supra* note 1, at 59–60.

During the late 19th Century, Sheikh Sayyid Mohammed in Somaliland began to draw followers from all over the Horn of Africa.²⁹ In 1899, Sayyid Mohammed and his followers, known as the Dervishes, started what would turn into a 20-year campaign against Ethiopia, Italy, and Great Britain throughout Ogaden.³⁰ At this time, the Ethiopian empire continued to claim dominion over Ogaden even though it lacked control over the region.³¹ Campaign after campaign issued forth from Ethiopia into Ogaden, serving two broad purposes: “tribute collection and punishment of recalcitrant elements.”³² The campaigns, sporadic in nature and involving no permanent garrison, were largely ineffective in terms of maintaining control over Ogaden.³³ Ethiopian soldiers were undisciplined and largely unrestrained in their “punitive campaigns,” which were often ruthless.³⁴ The local Somalis came to view the Ethiopians more as raiders and marauders than as governing sovereigns.³⁵

The rise of fascism in Italy in the 1920s led to aggressive expansion into Africa and, in 1935, Italy launched a full-scale invasion into Ogaden.³⁶ By 1936, not only had Italy conquered Ogaden, it had taken full control over Ethiopia, Eritrea, and Somalia.³⁷ Italy unified the entire region into the Italian East African Empire.³⁸ For the first time in history, all ethnic Somalis were united into one nation, “creating a de facto ‘greater Somalia.’”³⁹ Although this “greater Somalia” was contained within a fascist Italian colonial regime, “[t]his temporary union had lasting effects on the political horizons of Ogadeeni and the broader Somali nation.”⁴⁰

However, the Italian East African Empire was short-lived.⁴¹ In 1941, the Allied powers defeated the Italians and determined the area would remain united under British rule.⁴² After the end of World War II, Italy was forced to relinquish its empire by treaty,⁴³ but the Four Power Commission, made up of Britain, the United States, the Soviet Union, and France, was unable to agree upon how the former Italian East African Empire was to be divided.⁴⁴ Instead, in 1948, in

²⁹ LEWIS, *supra* note 1, at 65–70.

³⁰ *Id.* at 65; HUMAN RIGHTS WATCH I, *supra* note 6.

³¹ LEWIS, *supra* note 1, at 70.

³² Eshete, *supra* note 2, at 73–75.

³³ *Id.* at 76.

³⁴ *Id.*

³⁵ *Id.*

³⁶ HISTORYWORLD.NET, *supra* note 27; ENCYCLOPÆDIA BRITANNICA, *supra* note 3.

³⁷ BBC.COM, *supra* note 25; HISTORYWORLD.NET, *supra* note 27; AFRICA REPORT I, *supra* note 5, at 3.

³⁸ HUMAN RIGHTS WATCH I, *supra* note 6.

³⁹ AFRICA REPORT I, *supra* note 5, at 3.

⁴⁰ *Id.*

⁴¹ HISTORYWORLD.NET, *supra* note 27; HUMAN RIGHTS WATCH I, *supra* note 6.

⁴² HISTORYWORLD.NET, *supra* note 27; AFRICA REPORT I, *supra* note 5, at 3.

⁴³ Treaty of Peace with Italy arts. 33–34, 10 February 1947, 49 U.N.T.S. 126.

⁴⁴ LEWIS, *supra* note 1, at 129–31.

an agreement between Britain and Ethiopia, Britain returned control of Ogaden to Ethiopia.⁴⁵ Although Ogaden had never in its history functionally been a part of Ethiopia, Britain ended up giving control to Ethiopia “over the strenuous objections of Somali nationalists.”⁴⁶

The 1960s and 1970s were turbulent times in Ethiopia and Somalia. In the early 1960s, Somali nationals in Ogaden fought to liberate themselves from Ethiopian rule and, in 1966, the Ethiopian government declared martial law in the region.⁴⁷ After a number of military campaigns, Ethiopia was able to regain control of Ogaden in 1971.⁴⁸ The next few years were marked by political assassinations, coups, and the rise and fall of regimes.⁴⁹ The Derg, a military dictatorship, rose to power in Ethiopia in 1974. Led by Mengistu Haile Mariam, the Derg arrested, tortured, and killed tens of thousands of opposition party leaders and members during its rule.⁵⁰ “Ruthless political violence became the trademark of the Mengistu dictatorship.”⁵¹ The Derg faced opposition from various ethno-nationalist groups seeking to escape the regime’s violence, as well as seeking greater autonomy or even independence. The upheaval of the 1970s culminated in a Somalian invasion of Ogaden in 1977.⁵² Somalia, backed by Soviet allies, invaded Ogaden in an effort to unify the Somalis and achieve the dream of a greater Somalia.⁵³ “Ethnic Somalis welcomed the ensuing eight-month Somali occupation of Ogaden as ‘liberation’ from Ethiopian colonialism.”⁵⁴ The Somali victory, however, was short-lived due to swift betrayal by the Soviets.⁵⁵ The Soviet Union withdrew its support from Somalia and, seeing a potentially more powerful ally in Ethiopia, backed an Ethiopian campaign to retake Ogaden.⁵⁶ Yet again, the fate of Ogaden was determined by foreign powers.⁵⁷ After the Soviet betrayal, the Somalis looked to the West for aid, but their pleas went unheeded.⁵⁸ With support from their new Soviet allies, Ethiopia reconquered Ogaden.⁵⁹

⁴⁵ *Id.* at 125–28; HUMAN RIGHTS WATCH I, *supra* note 6.

⁴⁶ LEWIS, *supra* note 1, at 125–28; HUMAN RIGHTS WATCH I, *supra* note 6.

⁴⁷ HUMAN RIGHTS WATCH I, *supra* note 6.

⁴⁸ *Id.*

⁴⁹ BBC.COM, *supra* note 25; HISTORYWORLD.NET, *supra* note 27.

⁵⁰ ETHIOPIA: ETHNIC FEDERALISM AND ITS DISCONTENTS, INTERNATIONAL CRISIS GROUP: AFRICA REPORT N° 153 3 (2009).

⁵¹ *Id.*

⁵² BBC.COM, *supra* note 25; HISTORYWORLD.NET, *supra* note 27.

⁵³ Donna R. Jackson, *The Ogaden War and the Demise of Détente*, 632 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCES 26, 27–28, (2010).

⁵⁴ Opalo, *supra* note 4.

⁵⁵ HISTORYWORLD.NET, *supra* note 27.

⁵⁶ Jackson, *supra* note 53, at 28–29; HISTORYWORLD.NET, *supra* note 27.

⁵⁷ Jackson, *supra* note 53, at 31.

⁵⁸ *Id.* at 29.

⁵⁹ HUMAN RIGHTS WATCH I, *supra* note 6.

In the aftermath of its victory, the Ethiopian government carried out brutal retribution against the Somalis of Ogaden.⁶⁰ The Ethiopians made examples of entire villages. Once the Somalis were driven out, Ethiopia “proceeded to bomb and strafe Ogaden villages as reprisal for their complicity in the invasion.”⁶¹ With the Ethiopian military occupying Ogaden, “[m]any of the worst abuses against civilians occurred.”⁶² Ogaden was turned into a military zone and ethnic Somalis were increasingly oppressed.⁶³ Despite the brutality of the Ethiopian occupation, local resistance was fierce and, within a year, the Western Somali Liberation Front (WSLF), a separatist group from within Ogaden, controlled most of Ogaden.⁶⁴

In 1979, Ethiopia launched a further military offensive “more specifically directed against the population's means of survival, including poisoning and bombing water holes and machine-gunning herds of cattle.”⁶⁵ The Ethiopians were bent on breaking the will of the Ogadeeni; “[d]iplomats talked of the depopulation of Ogaden as the ‘final solution.’”⁶⁶ In this scorched-earth all-out offensive, crops were burned, entire villages were destroyed, and homes, animal herds, and fleeing civilians were torched with napalm.⁶⁷ There were reports of thousands of civilians dying in a “wall of fire” when bombs ignited ethylene gas that had been aerially sprayed over a village.⁶⁸ The mass destruction and displacement by the Ethiopian military caused widespread famine in Ogaden from 1979 to 1984.⁶⁹

The militaristic oppression of Ogaden has largely continued since the atrocities of the 1979–84 campaigns. In 2006, “the government of Ethiopia suspended food aid and blockaded commercial traffic to Ogaden, resulting in an acute humanitarian crisis.”⁷⁰ Human rights abuses carried out by the Ethiopian military against Ogaden Somalis continue to happen on a daily basis.⁷¹ The Ethiopian government has banned international media from the region and ousted many humanitarian aid groups from Ogaden.⁷² The Liyu Police, a special force established by

⁶⁰ EVIL DAYS: 30 YEARS OF WAR AND FAMINE IN ETHIOPIA, AN AFRICA WATCH REPORT, HUMAN RIGHTS WATCH 77–78 (1991) [hereinafter HUMAN RIGHTS WATCH II].

⁶¹ ENCYCLOPÆDIA BRITANNICA, *supra* note 3.

⁶² HUMAN RIGHTS WATCH I, *supra* note 6.

⁶³ AFRICA REPORT I, *supra* note 5, at 4.

⁶⁴ HUMAN RIGHTS WATCH II, *supra* note 60, at 81.

⁶⁵ *Id.* at 83.

⁶⁶ *Id.* at 84.

⁶⁷ *Id.* at 84–87.

⁶⁸ *Id.* at 85.

⁶⁹ *Id.* at 98.

⁷⁰ Opalo, *supra* note 4, at 4.

⁷¹ Graham Peebles, *The Pain of the Ogaden Somali People*, COUNTER PUNCH, (March 22, 2013)

<http://www.counterpunch.org/2013/03/22/the-pain-of-the-ogaden-somalipeople/>.

⁷² *Id.*

the central government, has carried out a reign of terror in the region.⁷³ Human Rights Watch has reported the rape, torture, and execution of civilians as part of the Liyu Police's counterinsurgency efforts.⁷⁴ In addition to the brutality of the Liyu Police, "[m]any Ethiopian Somalis share mistrust of the federal government and a sense of marginalization from their rightful national share of services and development."⁷⁵ Although the Somalis generally distrust the federal government, they are deeply divided by "clan, political, ideological, and resource based tensions."⁷⁶

Throughout the 1980s, the ongoing Eritrean fight for independence, combined with the efforts of such insurgent groups as the Tigray People's Liberation Front (TPLF), Oromo Liberation Front (OLF), Afar Liberation Front, and smaller groups including the Western Somali Liberation Front and Ogadeni Liberation Front, all challenged the military regime.⁷⁷ In the wake of their defeat, the Western Somali Liberation Front broke apart but re-emerged as the Ogaden National Liberation Front (ONLF) in 1984.⁷⁸ The ONLF claims to represent Ogaden on behalf of all ethnic Somalis in the region.⁷⁹ The group describes itself as a "grassroots social and political movement" struggling for the right of self-determination on behalf of all Somalis in Ogaden.⁸⁰ The use of "Ogaden" in its name meant to signify that the ONLF was a truly independent voice for the liberation of the Ogaden people, separate from the Somali government.⁸¹ Until the collapse of the Derg in Ethiopia, the ONLF's support was primarily diaspora-based and generally limited within Ogaden to Ogaadeeni sub-clans.⁸²

In 1992, the ONLF won an absolute majority in the first regional elections since the creation of the Somali Regional State (SRS),⁸³ with both the President and Vice President of the region being ONLF members;⁸⁴ however, the ONLF's administration lasted only two years.⁸⁵ As the ONLF continued to demand Ogaden self-determination under Article 37 of the 1994

⁷³ *Id.*; William Lloyd George, *Ethiopia's special police seek to build trust after rights abuse claims*, THE GUARDIAN, (July 17, 2013).

⁷⁴ William Lloyd George, *Ethiopia's special police seek to build trust after rights abuse claims*, THE GUARDIAN, (July 17, 2013).

⁷⁵ HUMAN RIGHTS WATCH I, *supra* note 6.

⁷⁶ *Id.*

⁷⁷ *Id.* at 3–4; See also Alem Habtu, *Multiethnic Federalism in Ethiopia: A Study of Secession Clause in the Constitution*, 35–2 PUBLIUS 313, 322 (2005).

⁷⁸ Opalo, *supra* note 4, at 4.

⁷⁹ Abdirahman Mahdi, *Political Objectives*, OGADEN NATIONAL LIBERATION FRONT (ONLF), http://onlf.org/?page_id=14 (last visited Nov. 19, 2015).

⁸⁰ *Id.*

⁸¹ HUMAN RIGHTS WATCH II, *supra* note 60, at 347.

⁸² AFRICA REPORT I, *supra* note 5, at 5.

⁸³ HUMAN RIGHTS WATCH I, *supra* note 6, at 21; ONLF, *supra* note 79.

⁸⁴ John Markakis, *The Somali in Ethiopia*, 23 REVIEW OF AFRICAN POLITICAL ECONOMY 567, 567 (1996).

⁸⁵ HAGMANN, *supra* note 15, at 19.

Ethiopian Constitution,⁸⁶ its relationship with the Ethiopian government, the Ethiopian People's Revolutionary Democratic Front (EPRDF), weakened considerably.⁸⁷ The federal government cracked down and several of the ONLF leaders were assassinated.⁸⁸ A number of ONLF members were imprisoned.⁸⁹ Additionally, the federal government "was involved in the removal of three successive Somali regional presidents."⁹⁰

In 1995 a new political party backed by the EPRDF, won 75 of the 110 regional seats while the ONLF won only 18.⁹¹ While the legality of the elections was contested by the ONLF,⁹² the EPRDF went on to dominate the political landscape throughout Ethiopia. In the national parliamentary elections of 2010, the EPRDF and affiliated parties won 545 of 547 seats.⁹³ In fact, the EPRDF's electoral supremacy has reached a point at which it is impossible to believe it could have been achieved by legitimate means.⁹⁴ In 2013, with regard to national, regional, and local elected positions "EPRDF-affiliated parties won all but five of approximately 3.6 million seats."⁹⁵

Furthermore, non-Ogaadeeni clans in Ogaden grew fearful of Ogaadeeni clan dominance due to disagreements over the name of the region and the location of the capital.⁹⁶ The ONLF refused to drop "Ogaden" from its name⁹⁷ and chose Gode as the capital, which is located in Ogaadeeni clan territory.⁹⁸ These issues were exacerbated by accusations of ONLF inexperience, mismanagement and corruption.⁹⁹

The Ethiopian government took advantage of the clan-based culture and attempted to undermine the ONLF by providing political backing to non-Ogaadeeni clan members.¹⁰⁰ Around this time, the ONLF split between moderate " 'legal' accomodationist wing," who united with

⁸⁶ BBC.COM, *supra* note 25; AFRICA REPORT I, *supra* note 5, at 3, 6 fn 30 ("Every nation, nationality or people in Ethiopia shall have the unrestricted right to self-determination up to secession."); *See infra* Section IV.

⁸⁷ HUMAN RIGHTS WATCH I, *supra* note 6, at 21–22; Abdirahman Mahdi, *Past and Present*, ONLF, http://onlf.org/?page_id=5 (last visited Nov. 19, 2015).

⁸⁸ Opalo, *supra* note 4, at 3.

⁸⁹ Markakis, *supra* note 84, at 569.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ ETHIOPIA HUMAN RIGHTS REPORT, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 2014, UNITED STATES DEPARTMENT OF STATE 1 (2014).

⁹⁴ *Id.* at 22.

⁹⁵ *Id.*

⁹⁶ HUMAN RIGHTS WATCH I, *supra* note 6, at 21–22.

⁹⁷ AFRICA REPORT I, *supra* note 5, at 8–9.

⁹⁸ INYANI K. SIMALA ET AL., AFRICAN STUDIES IN GEOGRAPHY FROM BELOW 182 (Michael Ben Arrous & Lazare Ki-Zerbo eds., 2009).

⁹⁹ HUMAN RIGHTS WATCH I, *supra* note 6, at 21–22.

¹⁰⁰ *Id.* at 22.

government forces, and the “radical ‘illegal’ secessionist wing.”¹⁰¹ Neither ONLF faction proved successful in the 1995 elections and the ONLF struggled to garner strong and consistent support in Ogaden.¹⁰² The perception that the ONLF represented only the Ogaadeeni clan persisted even though the ONLF claimed that “Ogaden” referred to the historical name of the region.¹⁰³

The ONLF struggled to define its ultimate goal amidst competing movements in the area.¹⁰⁴ Non-Ogaadeeni clan fear of Ogaadeeni clan dominance played an important role in future political dynamics throughout the 2000s and continues to be used by the Ethiopian government as a counterinsurgency tactic.¹⁰⁵

While ONLF support within Ogaden persists as a source of debate, the ONLF is the only liberation movement voicing the rights of Ethiopian Somalis in Ogaden. Furthermore, the Unrepresented Nations and Peoples Organization (UNPO) recognizes the ONLF as the representatives of Ogaden.¹⁰⁶ According to the ONLF, Ogaden’s present status is a “visage” (probably vestige) of colonialism, derived from the unauthorized disposition of Ogaden by the British government, rather than a dispute between the Republic of Somali and Ethiopia.¹⁰⁷ Ultimately, the ONLF movement aims to obtain the right to self-determination on behalf of all Somalis in Ogaden, and not the realization of Ogaden as a nationality:

The vision of [the ONLF] is to enable the Ogaden people to exercise their fundamental right to self-determination through free and fair referendum under the supervision of the UN and the international community. Such a referendum shall give the Somali people under Ethiopian rule the right to choose:

- Complete independence and formation of an independent Somali state
- Voluntary confederation with Somalia or Djibouti
- Voluntary confederation with Ethiopia
- A higher form of autonomy than is currently available in the region (wht the Scots call “Devo-Max”) ¹⁰⁸

¹⁰¹ AFRICA REPORT I, *supra* note 5, at 7.

¹⁰² *Id.* at 8-9.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ HUMAN RIGHTS WATCH I, *supra* note 6, at 91.

¹⁰⁶ *Ogaden*, UNPO, <http://unpo.org/members/10714> (last visited Nov. 22, 2015).

¹⁰⁷ Mahdi, *supra* note 79. Mr. Mahdi is the chief negotiator for the ONLF and vice-president of the UNPO General Assembly. *See* Appendix B.

¹⁰⁸ Abdirahman Mahdi, chief negotiator for the ONLF and vice-president of the UNPO General Assembly, dated 10/14/2015. *See* Appendix B.

II. Self-Determination and Secession

A. Background

“All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”¹⁰⁹ The right of a people to self-determination is a core principle of international law, and held to be a preemptory norm that may not be derogated.¹¹⁰

The theory of self-determination as a political concept can be traced back to the United States Declaration of Independence¹¹¹ and the French Revolution which expressed the ideals of self-government of the people by the people, and the doctrine of “popular sovereignty.”¹¹² During World War I, the United States President Woodrow Wilson articulated the principle, stating that “national aspiration must be respected; peoples may now be dominated and governed only by their own consent. ‘Self-determination’ is not a mere phrase it is an imperative principle of action...”¹¹³ This “consent of the governed” principle was further articulated in the fifth of President Wilson’s Fourteen Points:

A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.¹¹⁴

The notion of self-government of peoples is the basic concept of self-determination, and means that “no people must be forced to live under foreign domination or under a constitutional system which it does not agree to.”¹¹⁵

¹⁰⁹ See UNGA, International Covenant on Civil and Political Rights art. 1(1), Dec 16, 1966, 999 U.N.T.S. 171; UNGA, International Covenant on Economic, Social and Cultural Rights art. 1(1), Dec 16, 1966, 993 U.N.T.S. 3; UNGA Resolution 2625(XXV): Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Friendly Relations Declaration) Principle 5, Oct 24, 1970, A/RES/25/2625.

¹¹⁰ See S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 75 (Oxford University Press, 1st ed. 1996).

¹¹¹ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

¹¹² DAVID RAIC, *STATEHOOD AND THE LAW OF SELF-DETERMINATION* 177–78 (Kluwer Law International ed. 2002); Chimene Keitner, *National Self-Determination in Historical Perspective: The Legacy of the French Revolution for Today’s Debates*, 2 *INTERNATIONAL STUDIES REVIEW* 3, 7 (2000).

¹¹³ M.K. Nawaz, *The Meaning and Range of the Principle of Self-Determination*, 1965 *DUKE L.J.* 82, 83–84 (1965) (citing THE PUBLIC PAPERS OF WOODROW WILSON, WAR AND PEACE 180 (Baker & Dodd eds. 1927)).

¹¹⁴ Woodrow Wilson, President of the United States of America, Address to a joint session of Congress: Fourteen Points of Wilson, point 5 (Jan. 8, 1918).

¹¹⁵ Nawaz, *supra* note 113, at 84.

In the 1920s and 1930s, the League of Nations (the predecessor of the United Nations (U.N.)) grappled with the principle of self-determination, which seemed to apply only to “abnormal situations.”¹¹⁶ For instance, while the Åland Islands was controlled by Finland, the Åland inhabitants sought to align with Sweden because of their ethnic, linguistic, and cultural ties.¹¹⁷ The issue was whether the Ålands, “should, according to international law, be entirely left to the domestic jurisdiction of Finland.”¹¹⁸ The Committee of Jurists stated that, although the principle of self-determination was recognized in some treaties, it did not rest “upon the same footing as a positive rule of the Law of Nations”¹¹⁹ While self-determination was not dispositive, it was an important consideration, particularly given that Finland itself was emerging from under Russian Control.

B. Legal Principle

Arising out of customary law, the principle of self-determination is now recognized as a core principle of international law.¹²⁰ In 1945, the U.N. incorporated the principle in the U.N. Charter. Article 1(2) specifies that one of the purposes of the UN is to develop “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”¹²¹ Articles 73 and 76 implicitly refer to self-determination in the colonial context; member States that administer “territories whose peoples have not yet attained ... full measure self-government” must recognize “the principle that the interests of the inhabitants of [those] territories are paramount”¹²² and that an object of the trusteeship system (established by Chapter XII of the Charter) is the progressive development towards self-government and the “freely expressed wished of the peoples concerned.”¹²³ However, while the UN Charter explicitly promulgated the general principle of self-determination, it failed to lay out the specific rights or obligations that arise from this principle.

The first significant development of the principle of self-determination under the UN was in the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples

¹¹⁶ Nathaniel Berman, *Sovereignty in Abeyance: Self-Determination and International Law*, 7 WIS. INT'L L.J. 51, 72–76 (1988).

¹¹⁷ REPORT OF THE INTERNATIONAL COMMITTEE OF JURISTS ON THE LEGAL ASPECTS OF THE ÅLAND ISLANDS QUESTION, LEAGUE OF NATIONS OFFICIAL JOURNAL, SPECIAL SUPP. NO. 3, AT 3 (1920).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Reference Re Secession of Quebec, [1998] 2 S.C.R. 217, para. 114 (Can.) [hereinafter *Reference Re Secession of Quebec*].

¹²¹ United Nations (U.N.) Charter, Ch. I Purposes and Principles art.1, (26 June 1945); *See also id.* at art. 55 (stating that the U.N. shall promote goals such as education, higher standard of living, employment and human rights “[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”).

¹²² *Id.* at Ch. XI art.73.

¹²³ *Id.* at Ch. XII art. 76(b).

(Res. 1514).¹²⁴ This resolution established a legal linkage between self-determination and the goal of decolonization.¹²⁵ Unanimously adopted, Res. 1514 emphasizes the notion that all people have the right to self-determination and provides for the granting of the right to independence by the complete elimination of “colonialism in all its forms and manifestations.”¹²⁶ Res. 1514 declares the “subjugation of peoples alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the U.N. and is an impediment to the promotion of world peace and co-operation.”¹²⁷ This declaration directed colonial powers to allow for self-governance, providing a legal basis for decolonization.¹²⁸

In 1966, both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights restated that the right of self-determination is available to all people and called upon the party States to respect and promote the realization of the right of self-determination in non-self-governing and trust territories.¹²⁹ The inclusion of self-determination in both Covenants gives the principle the characteristic of a fundamental human right and binding legal force on the ratifying countries as a treaty obligation.¹³⁰ Inclusion at the beginning of the article transforms the collective right of self-determination into a fundamental right. Thus, principle of self-determination has binding legal force on the ratifying countries as a treaty obligation and beyond.¹³¹

In 1970, the U.N. General Assembly’s Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the U.N., (Friendly Relations Declaration) was adopted.¹³² The Declaration restated that the principle of equal rights and self-determination provides all people, “the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development.”¹³³ The principle purpose of the achievement of the right is friendly relations and co-operation among States and the speedy end of colonialism.¹³⁴

Self-determination is now enshrined in many international treaties and court cases. Self-determination “has acquired a status beyond ‘convention’ and is considered a general principle

¹²⁴ U.N. GAOR, 15th Sess., A/RES/1514/XV (Dec. 14, 1960).

¹²⁵ *Id.* at para. 5.

¹²⁶ *Id.* at preamble.

¹²⁷ *Id.* at para. 13.

¹²⁸ Edward McWhinney, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, UNITED NATIONS AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW 2 (2008).

¹²⁹ U.N. GAOR, 21st Sess., A/RES/2200A/XXI, International Covenant on Civil and Political Rights, art. 1 (Mar. 23, 1976).

¹³⁰ Robert Araujo, *Sovereignty, Human Rights, and Self-Determination*, 24 FORDHAM INT’L L.J. 1477, 1479 (2000).

¹³¹ *See id.*

¹³² U.N. GAOR, 25th Sess., A/RES/25/2625, Friendly Relations Declaration, principle 5 (Oct. 24, 1970).

¹³³ *Id.*

¹³⁴ *Id.*

of international law.”¹³⁵ While there is an agreement of the existence of this principle, questions remain: to what extent the principle operates as a legal right, to whom does the principle apply, and what legal consequences flow from the exercise of the principle.

From its application in Res 1514 and the two International Covenants, self-determination became the legal foundation of decolonization. The International Court of Justice (ICJ) expressly affirmed that the right of self-determination is applicable to all non-self-governing territories.¹³⁶ The ICJ pushed the principle further in the *East Timor* case, stating the assertion that the right of people to self-determination has an *erga omnes* character and is “one of the essential principles of contemporary international law.”¹³⁷ Similarly, in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ observed that the obligation to respect the right to self-determination is an obligation *erga omnes*, even outside of the colonial context.¹³⁸

C. Application

The holders of the right of self-determination are “peoples.” The UN Educational, Scientific, and Cultural Organization described “peoples,” in the context of the “rights of peoples,” as a group of individual human beings who share some or all of the following common features: a common historical tradition; racial or ethnic identity; cultural homogeneity; linguistic unity; religious or ideological affinity; territorial connection; and common economic life.¹³⁹ The group must also be more than “a mere association of individuals within a state.”¹⁴⁰ The “people” must as a whole have “the will to be identified as a people,” and “institutions or other means of expressing its characteristics and will for identity.”¹⁴¹

Despite the acknowledgment that self-determination is a fundamental right, from which no derogation is possible, the practical implications of the right remain ambiguous, as there is no concrete remedy. The principle of self-determination is normally fulfilled through “internal” self-determination – the pursuit of political, economic, social, and cultural development within the framework of an existing State¹⁴² and the acquisition of “authentic self-government”¹⁴³ –

¹³⁵ *Reference Re Secession of Quebec* at para. 114.

¹³⁶ *Western Sahara, Advisory Opinion*, 1975 I.C.J. 31 paras. 54–55 (Oct. 1975).

¹³⁷ *East Timor (Portugal v Australia)*, 1995 I.C.J. 90 para. 29 (Jun. 1995).

¹³⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. 136 para. 155 (2004).

¹³⁹ UNESCO, INTERNATIONAL MEETING OF EXPERTS ON FURTHER STUDY OF THE CONCEPT OF THE RIGHTS OF PEOPLES, FINAL REPORT AND RECOMMENDATIONS 7–8 (Feb. 22, 1990).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Reference Re Secession of Quebec* at para. 126.

¹⁴³ ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 111 (Cambridge University Press ed. 1999).

consistent with the maintenance of territorial integrity. A right to “external” self-determination (i.e. the right of secession) is only available in exceptional circumstances.¹⁴⁴ However, because the denial of the right to self-determination is regarded as a human rights violation, effective realization of self-determination becomes paramount.¹⁴⁵ The Declaration on Friendly Relations defined the modes of implementing the right of “external” self-determination as “The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people”¹⁴⁶

The right to external self-determination extends beyond the colonial context where the group at issue is subject to “extreme and unremitting persecution” coupled with the “lack of any reasonable prospect for ... challenge.”¹⁴⁷ The ICJ has not directly addressed the legality of external self-determination beyond the colonial context. “[I]nternational law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their ‘parent’ state,” but it also does not explicitly deny such a right.¹⁴⁸ The ICJ had the opportunity to address this question in Kosovo’s secession case, but chose not to.¹⁴⁹ The situation in Kosovo, as in any secession case, raised issues concerning the right of territorial integrity. The principle of territorial integrity is firmly established in international law.¹⁵⁰ The hesitancy of the ICJ to address the issue of “external” self-determination beyond the colonial context is perhaps linked to the tension that exists between the principles of territorial integrity and self-determination, as the full realization of external self-determination would threaten the territorial integrity of existing States.

In the *Quebec opinion*, the Supreme Court of Canada suggested secession may be available as a last resort in exceptional circumstances, such as where internal self-determination is completely blocked,¹⁵¹ and recognized self-determination in situations beyond the colonial context. The court stated, “the international law right to self-determination only generates, at best, a right to external self-determination in situations of former colonies; where a people is oppressed, for example under foreign military occupation; or where a definable group is *denied meaningful access to government* to pursue their political, economic, social, and cultural development.”¹⁵² The Court explained that “[i]n all three situations, the people in question are

¹⁴⁴ *Reference Re Secession of Quebec* at para. 126.

¹⁴⁵ World Conference on Human Rights, July 12, 1993, *Vienna Declaration and Programme of Action*, art. 1(2), U.N. Doc. A/CONF. 157/23 (Jun 25 1993).

¹⁴⁶ Friendly Relations Declaration, *supra* note 132, at principle 5.

¹⁴⁷ Cassese, *supra* note 143, at 120.

¹⁴⁸ *Reference Re Secession of Quebec* at para. 112.

¹⁴⁹ Kosovo Opinion, Advisory Opinion, 2010 I.C.J. 403 (Jul. 2010).

¹⁵⁰ See MALCOM SHAW, *INTERNATIONAL LAW* 443 (Cambridge University Press ed. 2003).

¹⁵¹ *Reference Re Secession of Quebec*, para. 348.

¹⁵² *Id.* at para. 135–38 (emphasis added).

entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination.”¹⁵³

Like the Supreme Court of Canada, scholars suggest the theory of external self-determination is based on the general legal principle *ubi jus ibi remedium*, where there is a right there is a remedy.¹⁵⁴ They propose that there should be a right to external self-determination or remedial secession after all other remedies are exhausted and future negotiated solutions are unlikely.¹⁵⁵ Namely, where a State persistently denies a people the right to self-determination, subjects them to gross human rights violations that cannot be prevented or remedied due to political oppression, and where that people have a territorial claim.¹⁵⁶

D. Secession in the African Union

The African Union (AU) does not recognize post-independence self-determination claims that impact the territorial integrity of a member State.¹⁵⁷ The AU believes secession does not promote African unity and recognition of secession may spark a domino effect of further secession attempts.¹⁵⁸ Though States that have unilaterally seceded can freely operate without AU assistance, the importance of AU recognition cannot be underestimated. Lack of AU recognition results in less aid and support from the region generally.¹⁵⁹ Further, AU recognition is a growing requirement for global recognition. For example, the United States, Europe, and

¹⁵³ *Id.* at para. 135.

¹⁵⁴ See ALLEN BUCHANAN, UNCOUPLING SECESSION FROM NATIONALISM AND INTRASTATE AUTONOMY FROM SECESSION, in NEGOTIATING SELF-DETERMINATION 85 (Hurst Hannum and Eileen Babbitt ed. 2005).

¹⁵⁵ See *id.*; see also Laura Rees-Evans, *Secession and the Use of Force in International Law*, 4 CAMBRIDGE STUDENT L. REV. 249, 259–60 (2008); ALLEN BUCHANAN, JUSTICE, LEGITIMACY, AND SELF-DETERMINATION 336–38 (Oxford University Press ed. 2004); Special Committee on European Affairs, *Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova*, 61 REP. OF THE ASS’N OF THE BAR OF THE CITY OF NEW YORK 202–03 (2006).

¹⁵⁶ See BUCHANAN, *supra* note 154; see also Laura Rees-Evans, *Secession and the Use of Force in International Law*, 4 CAMBRIDGE STUDENT L. REV. 249, 259–60 (2008); ALLEN BUCHANAN, JUSTICE, LEGITIMACY, AND SELF-DETERMINATION 336–38 (Oxford University Press ed. 2004); Special Committee on European Affairs, *Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova*, 61 REP. OF THE ASS’N OF THE BAR OF THE CITY OF NEW YORK 202–03 (2006).

¹⁵⁷ Organization of African Unity (OAU), *Charter of the Organization of African Unity*, May 25, 1963, 479 U.N.T.S. 39, entered into force Sept. 13, 1963 (respecting sovereign and territorial integrity of member States); see also O.A.U. Res. AHG/16(I) (July 1964) (reaffirming the declaration to respect Member states’ borders); S. Kwaw Nyameke Blay, *Changing African Perspectives on the Right of Self-determination in the Wake of the Banjul Charter on Human and Peoples’ Rights*, 29 J. AFR. L. 147, 150 (1985) (“[T]he Charter unequivocally rejects post-independent territorial claims.”).

¹⁵⁸ *Changing African Perspectives*, 29 J. AFR. L. 147, 153–54 (1985).

¹⁵⁹ See CHRISTOPHER CLAPHAM ET AL., AFRICAN GAME CHANGER? THE CONSEQUENCES OF SOMALILAND’S INTERNATIONAL (NON) RECOGNITION 9 (The Brenthurst Foundation ed., 2011) (quoting Somaliland newspaper discussing the negative effects lack of recognition brings to the country).

Canada have exhibited hesitance towards recognizing States that have succeeded that the AU does not currently recognize.¹⁶⁰

The Organization of African Unity, later replaced by the AU, adopted a resolution “that all Member States pledge themselves to respect the borders existing on their achievement of national independence.”¹⁶¹ Many argue that the maintenance of the territorial *status quo* in Africa is seen as the wisest course.¹⁶² The importance of stability for economic development and independence has induced African States to insist on the maintenance of colonial boundaries and interpret the principle of self-determination accordingly.¹⁶³ However, in some cases, most notably South Sudan, exceptional circumstances and specific historical contexts allowed secession.¹⁶⁴ Somaliland and South Sudan are two examples of the AU’s disposition towards secession.

The AU does not recognize Somaliland as an independent state.¹⁶⁵ Somaliland separated from Somalia in 1991 after the collapse of the existing Somalian government.¹⁶⁶ Though operating as a successfully independent country, Somaliland is not recognized within the AU because it unilaterally declared its independent rather than constitutionally separating from its parent State.¹⁶⁷ The prime example, however, of the AU’s modern disposition towards secession is South Sudan. The AU has recognized South Sudan as an independent State.¹⁶⁸ South Sudan, led by the Sudan People’s Liberation Movement, started a rebellion against the Sudanese government in 1983 that virtually lasted until 2005.¹⁶⁹ The conflict ended with the 2005 Comprehensive Peace Agreement, which allowed the South more regional autonomy, adequate representation, and a chance to hold a referendum in 2011 regarding the independence of South Sudan.¹⁷⁰ After holding the referendum in 2011, South Sudan declared independence from Sudan

¹⁶⁰ See Omar Guled, *Somaliland: African Union Has no Alternative but Recognition of its 56th Member*, SOMALILAND SUN (Jul. 15, 2015, 2:40 PM), (“[M]ost of the European countries including the US and Canada are hesitant to award an outright recognition but calls for the [AU] to initiate the charge first.”).

¹⁶¹ OAU first ordinary session, Cairo July 17–21, 1964.

¹⁶² Concerning the Frontier Dispute (Burkina Faso v Republic of Mali), 1986 I.C.J. 554, paras. 25–26 (Dec 22, 1986).

¹⁶³ *Id.*

¹⁶⁴ See, Kidane Mengisteab, *The OAU Doctrine on Colonial Boundaries and Conflicts of Separation in the Horn of Africa*, 38 SELF-DETERMINATION AND SECESSION IN AFRICA, THE POST-COLONIAL STATE (2005).

¹⁶⁵ *Somaliland Member Profile*, UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION (Mar. 25, 2008), <http://unpo.org/members/7916> (last visited Nov. 22, 2015).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* (suggesting that Somaliland should “operate under the backdrop of sovereignty”).

¹⁶⁸ *Id.* at 4.

¹⁶⁹ South Sudan profile—Overview, BBC NEWS, <http://www.bbc.com/news/world-africa-14069082> (last visited Nov. 22, 2015).

¹⁷⁰ *Id.*

by a 99% vote.¹⁷¹ The AU recognized South Sudan because the split was negotiated with the parent state.¹⁷²

E. Secession in Ethiopia

Article 39 of the Ethiopian Constitution provides an absolute right to secession.¹⁷³ The secession clause arose from the 1991 conflict that ousted the military dictatorship.¹⁷⁴ Although many of the ethno-nationalist liberation forces sought independence during the days of the military dictatorship, they expressed a willingness to be united under a single constitutional arrangement, provided secession remained an option.¹⁷⁵ Thus, during the 1991 national conference to create a Transitional Charter, ethnic self-determination was affirmed, most notably in the secession clause provided by Article 2.¹⁷⁶

The Transitional Charter elsewhere stressed the importance of ethnic nationality, requiring the “Head of State, the Prime Minister, the Vice-Chairperson and Secretary of the Council of Representatives” to “be from different nations/nationalities”¹⁷⁷ and local and regional representative bodies be established on the basis of nationality.¹⁷⁸ The Charter also required the Transitional Government to “make special efforts to dispel ethnic mistrust and eradicate the ethnic hatred that [has] been fostered by the previous regime.”¹⁷⁹

Secession proved the most controversial issue in the drafting of the new constitution.¹⁸⁰ The secession clause was eventually included because the EPDRF did not believe they could

¹⁷¹ *Id.*

¹⁷² Redie Bereketeab, *Self-Determination and Secessionism in Somaliland and South Sudan*, THE NORDIC AFRICA INSTITUTE 18 (2012).

¹⁷³ ETHIOPIA’S CONSTITUTION OF 1994 Dec. 8 1994 (Ethiopia) [hereinafter ETHIOPIAN CONSTITUTION]; *See also* Appendix A.

¹⁷⁴ Habtu, *supra* note 77, at 327.

¹⁷⁵ *Id.* at 322.

¹⁷⁶ TRANSITIONAL PERIOD CHARTER OF ETHIOPIA, July 22, 1991, art 2 (Ethiopia):

The right of nations, nationalities and peoples to self-determination is affirmed. To this end, each nation, nationality and people is [guaranteed] the right to: a) Preserve its identity and have it respected, promote its culture and history and use and develop its language; b) Administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation; c) Exercise its right to self-determination of independence, when the concerned, nation/nationality and people is convinced that the above rights are denied, abridged or abrogated.

¹⁷⁷ *Id.* at art 9b.

¹⁷⁸ *Id.* at art 13.

¹⁷⁹ *Id.* at art 17.

¹⁸⁰ Habtu, *supra* note 77, at 325–26.

maintain Ethiopia as a single sovereign entity without a secession provision.¹⁸¹ An “overwhelming majority” of the Constitutional Commission supported the inclusion.¹⁸²

Article 39(1) of the 1995 Ethiopian Constitution explicitly provides: “Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.”¹⁸³ Article 39 is in marked contrast to the secession provisions of Article 2 of the Transitional Charter. While the Transitional Charter allowed a nationality to secede following a showing that its right to autonomy or to adequate representation in the central government has been “denied, abridged, or abrogated,”¹⁸⁴ the Constitution requires no such predicate showing; the right to secession is provided “affirmatively and unconditionally.”¹⁸⁵

Article 39 furthers the right to secession by providing an elaborate procedure through which a nation, nationality, or people may secure its independence.¹⁸⁶ First, a two-thirds majority of the Legislative Council of the people seeking secession must approve of the secession demand.¹⁸⁷ Next, within three years, the Federal Government must organize a referendum “within the seceding state in order to double check as to whether or not the resolution” was a “true reflection of the will of the majority of the people” seeking secession.¹⁸⁸ If a majority votes for secession in the referendum, the Federal Government must then transfer its power to the seceding people, giving the government a “good faith” role in the procedure.¹⁸⁹ Article 39 ends by defining who is entitled to secession.¹⁹⁰ A group inhabiting a particular area that share a common culture, language and heritage may exercise this right.¹⁹¹ The people of Ogaden clearly qualify under this definition.

Although the right to secession is absolute under Ethiopian law, it has been claimed, “the exercise of the right is most unlikely, especially for small or medium-sized ethnic groups.”¹⁹² Many ethnic groups within Ethiopia are spread throughout several states and do not meet Article 39’s requirement of inhabiting “an identifiable, predominantly contiguous territory.” Even if that is true, it manifestly does not deny the eligibility of the people of Ogaden.

¹⁸¹ *Id.* at 327.

¹⁸² *Id.*

¹⁸³ ETHIOPIAN CONSTITUTION, *supra* note 173.

¹⁸⁴ TRANSITIONAL PERIOD CHARTER OF ETHIOPIA, July 22, 1991, art 2(c) (Ethiopia).

¹⁸⁵ Ahmednasir M. Abdullahi, *Article 39 of the Ethiopian Constitution On Secession and Self-determination: A Panacea to the Nationality Question in Africa?*, 31 VERFASSUNG UND RECHT IN ÜBERSEE / LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA, 440, 445 (1998).

¹⁸⁶ ETHIOPIAN CONSTITUTION, *supra* note 173, at art 39(4)(a)–(e).

¹⁸⁷ *Id.* at 39(4)(a).

¹⁸⁸ Abdullahi, *supra* note 185, at 445; *See also* ETHIOPIAN CONSTITUTION, *supra* note 173, at art 39(4)(b).

¹⁸⁹ Abdullahi, *supra* note 185, at 446; *See also* ETHIOPIAN CONSTITUTION, *supra* note 173, at art 39(4)(c).

¹⁹⁰ ETHIOPIAN CONSTITUTION, *supra* note 173, at art 39(5).

¹⁹¹ *Id.*

¹⁹² Habtu, *supra* note 77, at 328.

On a practical level, the Federal Government's control over the secession procedure makes it unlikely that any group would actually be permitted to secede. The EPRDF continues to dominate the federal political process, leaving little opportunity for smaller ethnic groups to assert their right to the Article 39 process.¹⁹³ The Federal Government is able to interfere "at will" with regions of the country;¹⁹⁴ and, as described in Sections III, the Ethiopian military and police regularly act to suppress secessionist movements.¹⁹⁵ Despite the existence of the secession clause, secessionist groups remain active without having engaged in the prescribed secession process.¹⁹⁶ The secession clause's symbolic importance in placating rebel groups and uniting Ethiopia's ethnic groups under a single federal government may be the reason Ethiopian authorities would never allow the process to take place. In a 1995 interview, then Prime Minister Meles Zenawi said: "There is no way the secession could take place one fine morning simply because the right is embodied in the Constitution. As a matter of fact, the secession clause was put into the Constitution in order to avoid such an eventuality."¹⁹⁷

F. Self-determination and Ogaden

The international legal rules on self-determination can be rendered into a number of propositions:

- Self-determination is a cardinal principle of contemporary international law; it is a peremptory norm from which no derogation is possible.
- Self-determination is the right of "all peoples" to freely determine their political status and freely pursue their economic, social and cultural development.
- For the purposes of self-determination, a "people" must be a distinct group by virtue of their ethnicity, language, religion or culture.
- All peoples have the right to internal self-determination in terms of a real and meaningful role in their own governance.
- Colonial peoples, for whom the right of self-determination was originally conceived and to whom it most readily applies, are entitled to external self-determination.
- There is authority for the contention that peoples subject to foreign occupation or alien subjugation, domination and exploitation, are entitled to external self-determination.

¹⁹³ *Id.* at 332.

¹⁹⁴ J. Abbink, *Ethnicity and Conflict Generation in Ethiopia: Some Problems and Prospects of Ethno-Regional Federalism*, 24 JOURNAL OF CONTEMPORARY AFRICAN STUDIES 392 (2006).

¹⁹⁵ Habtu, *supra* note 77, at 329.

¹⁹⁶ *Id.* at 329, 333.

¹⁹⁷ Abbink, *supra* note 194, at 394.

- The exercise of the right of eternal self-determination may result in a sovereign and independent State, free association or integration with an independent State or any other freely-determined political status.
- The exercise of external self-determination may not dismember or impair the territorial integrity or political unity of an existing State that is providing for equal rights and internal self-determination.
- There is an argument that a people systematically denied internal self-governance and/or subject to egregious human rights violations have a right to remedial secession even if it violates the fundamental principle of territorial integrity.
- There is no clear and simple mechanism in international law whereby a people can enforce the right of self-determination.

There is an irrefutable argument that the people living in Ogaden qualify as a “people” with a right of self-determination. The Ogaadeeni people are distinct from the other Ethiopian ethnic groups, sharing “a common historical tradition; racial or ethnic identity; cultural homogeneity; linguistic unity; religious or ideological affinity; territorial connection; and common economic life.”¹⁹⁸

This report investigates whether the people of Ogaden have been denied their right of internal self-determination through the absence of any meaningful role in their governance and the international legal implications of any absence of internal self-determination (Section III). It also investigates whether there have been breaches of human rights in Ogaden of such a scale and severity as to raise the possibility of the remedial right of secession (Section IV).

¹⁹⁸ INTERNATIONAL MEETING OF EXPERTS ON FURTHER STUDY OF THE CONCEPT OF THE RIGHTS OF PEOPLES, FINAL REPORT AND RECOMMENDATIONS, UNESCO 7–8 (1990).

III. Oppression in Ogaden

The Ogaden people lack internal self-governance.¹⁹⁹ The Ethiopian Constitution of 1995 promised strong regional governments through its “ethnic federalism” model. However, the Ogaden people have continued to be fundamentally denied basic civil and political rights essential for a self-determined people.

In 1992, the ONLF won 60% of the regional parliamentary seats.²⁰⁰ However, the ONLF’s continued push for self-determination created friction between the ONLF and the EPRDF.²⁰¹ In response, EPRDF began to exert political control and eventually removed ONLF members from office on “charges of corruption and neglect of official duties.”²⁰²

Election results since 2005 are evidence that the EPRDF will not allow the Ogaden people control over their own affairs. The Carter Center observed the 2005 Somali region elections to be “chaotic and disorganized and included reports of significant irregularities.”²⁰³ The Center also reported a large presence of armed militia and military personnel in the region, resulting in opposition parties withdrawing from most constituencies.²⁰⁴ Citizens opposing the 2010 elections were also reportedly detained in the Ogaden region prior to that election.²⁰⁵ This process was then repeated in the 2015 election, with hundreds of opposition party candidates seized and imprisoned.²⁰⁶ The EPRDF took an alarming 99.6% of the 547 seats in the national Parliament in 2015.²⁰⁷

The Federal Government exerted its influence on the election process in the Somali Regional State in many ways, including the use of the military and federal police.²⁰⁸ Candidates were “systematically pre-selected” by the EPRDF²⁰⁹ or “handpicked by the military commanders

¹⁹⁹ A lack of self-determination has been recognized long before now, at least as early as 1980. *See The Logic of Secession*, 89 YALE L.J. 802, 820–24 (1980) (demonstrating application of international law favorably to the Ogaden self-determination claim and argues that Ogaden secession could bring peace and stability to the region).

²⁰⁰ HUMAN RIGHTS WATCH I, *supra* note 6, at 21.

²⁰¹ *Id.*

²⁰² *Id.* at 22.

²⁰³ OBSERVING THE 2005 ETHIOPIA NATIONAL ELECTIONS, THE CARTER CENTER FINAL REPORT 6 (2009).

²⁰⁴ *Id.* at 35.

²⁰⁵ PEOPLE OPPOSED TO ELECTIONS IN SOUTHEAST BEING DETAINED—REBEL RADIO (BBC Summary of World Broadcasts) (Aug. 10, 2000).

²⁰⁶ *Id.*

²⁰⁷ DEMOCRACY AND HUMAN RIGHTS IN ETHIOPIA, UNPO 1 (2015).

²⁰⁸ Tobias Hagmann, *Beyond Clannishness and Colonialism: Understanding Political Disorder in Ethiopia’s Somali Region, 1991-2004*, 43 J. OF MOD. AFR. STUD. 509, 521–24 (2005).

²⁰⁹ *Id.* at 518.

in the region.”²¹⁰ Support of the EPRDF was necessary to be considered for nomination.²¹¹ Currently, the Somali People’s Democratic Party (SDPD), characterized as an “EPRDF Puppet by many in the region,”²¹² holds all seats in the regional parliament.²¹³

Evidence of the lack of self-governance for Ogaden does not end with the elections. Overt force is another tool the EPRDF has used to ensure total control. Many regional government officials have been arbitrarily arrested, detained, or killed by federal authorities or just disappeared.²¹⁴

Since 2009, these occurrences have been justified by the passage of the 2009 Anti-Terrorism Proclamation.²¹⁵ The Proclamation has been used as a means to silence independent media, international and local journalists, and political opposition.²¹⁶ Authorities are given, for example, full discretion to prosecute those who “promote” terrorism.²¹⁷ Indeed, political opposition leaders and journalists have been convicted for supporting terrorism under the Proclamation and sentenced to lengthy prison sentences. In 2011 alone, more than 108 opposition political leaders were arrested for terrorist involvement.²¹⁸

Also listing the ONLF as “terrorists,” gives the EPRDF an excuse to silence critics. At least 17 journalists have been charged under the Proclamation.²¹⁹ The so-called Zone 9 bloggers were arrested on April 25th and 26th of 2014 for their “links” with opposition groups such as the Ginbot 7, which remain sensitive to the Ogaden plight.²²⁰ International journalists have also been convicted as terrorists. In 2011, the federal judiciary convicted two Swedish journalists who

²¹⁰ Muktar M. Omer, *Somali Regional State of Ethiopia: The Corrosive Impact of Internalized Oppression*, WARDHEER NEWS (May 24 2015), <http://www.wardheernews.com/somali-regional-state-ethiopia-corrosive-impact-internalized-oppression>.

²¹¹ Hagmann, *supra* note 208, at 518.

²¹² HUMAN RIGHTS WATCH I, *supra* note 6, at 23.

²¹³ Karamarda Group, *Political Drama in the Somali Region of Ethiopia*, WARDHEER NEWS (Sep. 26, 2014), <http://www.wardheernews.com/political-drama-somali-region-ethiopia>.

²¹⁴ HUMAN RIGHTS WATCH I, *supra* note 6, at 26.

²¹⁵ ETHIOPIA: PROCLAMATION NO. 652/2009 OF 2009, ANTI-TERRORISM PROCLAMATION (2009).

²¹⁶ REPORT OF THE UN SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS TO THE GENERAL ASSEMBLY: QUESTIONNAIRE ON THE USE OF LEGISLATION, INCLUDING CRIMINAL LEGISLATION, TO REGULATE THE ACTIVITIES AND WORK OF HUMAN RIGHTS DEFENDERS, HUMAN RIGHTS WATCH 1 (2012) (“This law contravenes article 29 of Ethiopia’s constitution and the Freedom of Mass Media and Access to Information Law, both of which prohibit censorship.”) [hereinafter HUMAN RIGHTS WATCH III].

²¹⁷ ONE HUNDRED WAYS OF PUTTING PRESSURE: VIOLATIONS OF FREEDOM OF EXPRESSION AND ASSOCIATION IN ETHIOPIA, HUMAN RIGHTS WATCH 50 (2010).

²¹⁸ ETHIOPIA: PRELIMINARY RECOMMENDATIONS REGARDING OBSERVATION OF GENERAL ELECTIONS IN ETHIOPIA, AMNESTY INTERNATIONAL 2 (2015).

²¹⁹ *Id.*

²²⁰ UNPO, *supra* note 207, at 3.

entered Ogaden illegally to investigate alleged human rights violations.²²¹ Similarly, Heather Murdock, reporting in Ogaden on behalf of Voice of America (VOA), was deported for supporting terrorists under the Proclamation.²²² While Article 29 of the Ethiopian Constitution guarantees the freedom of expression, it is manifestly curtailed in Ogaden.²²³

Citizens in Ogaden are also arrested on claims of ONLF “terrorist” support.²²⁴ Some have even been arrested on the accusation of merely being a relative of an ONLF member.²²⁵ These citizens are often held several months or years and re-arrested after being released.²²⁶ While in captivity many are terrorized “into confessing involvement with the ONLF.”²²⁷ On one occasion in 2012, the Ethiopian regime organized what was termed “a national gathering for consultation with society,” involving political prisoners charged under the Anti-Terrorism Proclamation.²²⁸ The regime had the prisoners publicly “humiliate themselves,” in front of all village elders and religious leaders, forcing them to admit their “crimes,” denounce the ONLF, and express their full acceptance of the Ethiopian Constitution.²²⁹ Finally, whenever opposition groups, such as the ONLF, engage in armed strife with the EPRDF, the military goes to Ogaden and kills, jails, tortures, or rapes villagers in retaliation.²³⁰

Human Rights Watch (HRW) also reports soldiers killing villagers accused of being relatives of ONLF members who fail to surrender ONLF supporters to the military for prosecution.²³¹ In Dalal, soldiers accused a starving village of feeding ONLF members.²³² When the villagers denied the accusations, the soldiers killed three village elders and detained, beat, and raped multiple women.²³³ In Gudhis, after fighting with ONLF, soldiers killed seven men and confiscated five goats.²³⁴ The bodies of executed elders and other civilians were put on

²²¹ HUMAN RIGHTS WATCH III, *supra* note 216.

²²² Heather Murdock, *Ethiopia expels American journalist reporting in rebel area*, COMMITTEE TO PROTECT JOURNALISTS (June 19, 2010), <http://gadaa.com/oduu/4355/2010/06/19/voa-journalist-heather-murdock-expelled-from-ethiopia-cpj-report>.

²²³ ETHIOPIAN CONSTITUTION, *supra* note 173, at art 29.

²²⁴ HUMAN RIGHTS WATCH I, *supra* note 6, at 63.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.* at 64.

²²⁸ *The Ethiopian Government’s Search of False Legitimacy for its Constitution*, OGADEN NEWS AGENCY (Nov. 19, 2012), <http://www.ogadennet.com/?p=18147>.

²²⁹ *Id.*

²³⁰ *Ethiopia ‘Using Aid as Weapon of Oppression,’* BBC NEWS (Aug. 5, 2011), <http://news.bbc.co.uk/2/hi/programmes/newsnight/9556288.stm>.

²³¹ HUMAN RIGHTS WATCH I, *supra* note 6, at 49.

²³² *Id.* at 56.

²³³ *Id.* at 50.

²³⁴ *Id.* at 51.

display and not allowed burial despite the desperate pleas of relatives for many days.²³⁵

Even students who deny any connection to ONLF are targeted. 19-year-old Amina was detained for nine months in 2003 and six months in 2006.²³⁶ She fled Ethiopia in 2007 when the military came for her a third time.²³⁷ She was routinely tortured while detained.²³⁸ An 18-year-old student named Muhumed was detained three times on accusations of being an ONLF member or supporter.²³⁹ He was routinely beaten on the head with sticks and all over his body with an electric rope.²⁴⁰ One villager noted, “anyone with a bowl of water is suspected of supplying the ONLF”; and another said, “if you make tea in a teashop, the army will accuse you that the man who bought tea is an ONLF member... There is no way to escape.”²⁴¹ Villagers were not able to support anyone except the current government without facing threats of death, starvation, or physical abuse.²⁴²

In 2007, the military in Ethiopia launched a counter insurgency campaign in Ogaden and began forcefully displacing people before burning entire villages to the ground.²⁴³ Villages seen as supporting the ONLF or located in ONLF operation zones were targeted by the EPRDF.²⁴⁴ The military did not have a significant amount of control over rural areas, so it drove the villagers to major towns to make control of citizens easier.²⁴⁵ Villagers in towns being evacuated would be allotted two to seven days to leave.²⁴⁶ Often these evacuations would be preceded by military harassment of the villagers, including assault or public executions, before the villages would be set ablaze.²⁴⁷ Livestocks is also confiscated and killed.²⁴⁸

HRW summarized these attacks in 2008.²⁴⁹ The results of the report indicated “definite damage” to five villages, Dameerey, Lasoole, Labigah, Qamuuda, and Uubatale, “likely damage” to two villages, Bukudhaba and Garoonka, and “signs consistent with...forced

²³⁵ *Id.* at 72.

²³⁶ *Id.* at 64.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.* at 65.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.* at 66.

²⁴³ BBC NEWS, *supra* note 230.

²⁴⁴ HUMAN RIGHTS WATCH I, *supra* note 6, at 32.

²⁴⁵ *Id.* at 75.

²⁴⁶ *Id.* at 35.

²⁴⁷ HIGH-RESOLUTION SATELLITE IMAGERY AND THE CONFLICT IN OGADEN, AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE (AAAS) 8 (2008); HUMAN RIGHTS WATCH I, *supra* note 6, at 33.

²⁴⁸ HUMAN RIGHTS WATCH I, *supra* note 6, at 33.

²⁴⁹ AAAS, *supra* note 247, at 5.

relocation” in one village, Wardheer.²⁵⁰ In the villages listed, up to eighty-five structures were removed, signs of burning were detected, and forced relocation was reported.²⁵¹ The military also destroyed water sources within the villages.²⁵²

Those who refused to relocate or were caught in previously evacuated villages risked being shot, tortured, or raped by soldiers.²⁵³ Five men in Ela-Obo were shot dead by the military after arguing with soldiers about leaving.²⁵⁴ One man survived and the soldiers returned four days later, killing two female and two male relatives of the survivor.²⁵⁵ The soldiers again returned a few weeks later, suspecting ONLF presence in Ela-Obo, and executed nine more citizens.²⁵⁶

The Ethiopian government also uses starvation as a form of punishment. Almost all aid that arrives in Ethiopia is distributed through the government.²⁵⁷ The government has used this power to coerce citizens in Ogaden to support the ruling party or punish citizens for supporting opposing parties.²⁵⁸ There have been many reports of communities being “denied basic food, seeds and fertilizer for failing to support Meles Zenawi,” the Prime Minister of Ethiopia from 1995 till his death in 2012.²⁵⁹ One villager in Ogaden, who was being denied aid by the EPRDF, told BBC reporters, “We are denied the right to fertilizer and seeds because of political ideology.”²⁶⁰ Similarly, a member of an opposing party, the Medrek, stated “that is how [the EPRDF] recruit support, holding the population hostage.”²⁶¹ Aid does not go to those who need it, but to those who support the EPRDF.²⁶² All food stocks must be registered to the military and checked on a daily basis to ensure they do not head to Ogaden.²⁶³ The government claims that this was done to ensure ONLF members do not have access to food.²⁶⁴

²⁵⁰ *Id.* at 9.

²⁵¹ *Id.* at 11.

²⁵² HUMAN RIGHTS WATCH I, *supra* note 6, at 34.

²⁵³ *Id.*

²⁵⁴ *Id.* at 39.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ BBC NEWS, *supra* note 230.

²⁵⁸ *Id.*

²⁵⁹ Bruno Waterfield, *Britain and EU Increase Aid to Ethiopia While Ignoring Human Rights Warnings*, OGDEN NEWS AGENCY 1 (Oct. 9, 2015), <http://www.ogadennet.com/onawebsite/?p=3462>.

²⁶⁰ BBC NEWS, *supra* note 230.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ ETHIOPIA: REPORT ON THE FINDINGS FROM THE HUMANITARIAN ASSESSMENT MISSION TO THE SOMALI REGION, U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS 14 (2007).

²⁶⁴ *Id.*

Entire villages are starved.²⁶⁵ These villages are targeted because of EPRDF's perception of them as important ONLF support.²⁶⁶ One woman told the BBC that she feeds her children grass meant for cows and coffee leaves boiled in water to keep them alive.²⁶⁷ Another woman said her family has not eaten in four days and is "living day-to-day on the grace of God."²⁶⁸ A grandmother in the same village noted, "We are just waiting on the crop, if we have one meal a day we will survive until the harvest, beyond that there is no hope for us."²⁶⁹

At another village in Ogaden, a man attributes the lack of aid to political affiliations, "because we are in the opposition we're not able to survive in our country. Our integrity and conscience does not allow us to join the ruling party for these reasons we suffer greatly. We suffer if we want to get fertilizer."²⁷⁰ Those who voted for opposing parties in 2005 are claiming the EPRDF is still punishing them by withholding aid.²⁷¹ For many, who are pastoralists and farmers, this means their livelihoods have been destroyed.²⁷²

The Ethiopian government has even imposed restrictions on food and water removal from villages as a way to ensure opposition elements do not receive support.²⁷³ As a result, pastoralists cannot move their livestock and thus, no longer can make a living.²⁷⁴ If people are caught moving livestock from village to village, they risk their animals being confiscated or shot.²⁷⁵ Similarly, in 2007, a trade blockade was imposed on Ogaden after increasing attacks by the ONLF.²⁷⁶ The blockade was an attempt by the government to cut the ONLF from material support as well as a way to punish and control pastoralists.²⁷⁷ This trade blockade has created an increased dependence in Ogaden on food aid.²⁷⁸ Due to the blockade, vital trade routes have been shut down, and the cost of obtaining food has increased by 95%, making it impossible for many to afford food.²⁷⁹ Commercial traders have been forced to stop trade due to military confiscation

²⁶⁵ BBC NEWS, *supra* note 230.

²⁶⁶ HUMAN RIGHTS WATCH I, *supra* note 6, at 31.

²⁶⁷ BBC NEWS, *supra* note 230.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² "ECONOMIC WAR": CONFISCATION OF LIVESTOCK, THE TRADE EMBARGO AND OTHER RESTRICTIONS, HUMAN RIGHTS WATCH (2008).

²⁷³ HUMAN RIGHTS WATCH I, *supra* note 6, at 86.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ SALLY HEALY, CONFLICT IN THE OGADEN AND ITS REGIONAL CONNECTION, A HORN OF AFRICA GROUP SEMINAR REPORT, CHATHAM HOUSE 3 (2007).

²⁷⁷ *Id.*; HUMAN RIGHTS WATCH I, *supra* note 6, at 81.

²⁷⁸ HEALY, *supra* note 276.

²⁷⁹ *Id.*

of goods and trucks.²⁸⁰ The flow of commercial goods into the Ogaden region was reduced by 80-90% in 2007 according to the U.N.²⁸¹

While Article 31 of the Ethiopian Constitution protects the right to freely associate, the federal government has severely restricted this right. HRW, for example, was banned in 2007 from entering Ogaden to conduct a study on the burning of villages and displacement of citizens.²⁸²

Furthermore, the Charities and Societies Proclamation of 2009 (CSP) severely restricted the rights of domestic and foreign NGOs to conduct operations in the Ogaden region.²⁸³ Article 28 of the CSP requires all foreign NGOs to receive a letter of recommendation from the Ministry of Foreign Affairs to enter Ogaden, which is never granted.²⁸⁴ Article 69 allows the Ministry to deny registration if the NGO could be used for “unlawful purposes or for purposes prejudicial to public peace, welfare, or good order.”²⁸⁵ Indeed, HRW has concluded that the CSP makes human rights and governance related work impossible.²⁸⁶ For example, the Charities and Societies Agency (CSA), the Agency in charge of implementing the Proclamation, authorized an asset freeze on the Human Rights Council (HRCO), a leading human rights organization in Ethiopia.²⁸⁷ There were 32 incidents reported by humanitarian organizations of the law impeding on their work in the first half of 2014, with the majority of cases coming from the Somali region.²⁸⁸

Forced military recruitment is another tactic that the Ethiopian government has used to oppress Ogaden. Civilian settlements have been invaded and villagers given no choice but to join pro-government militias.²⁸⁹ Those who attempt to refuse or even raise concerns may be immediately victims of example killings.²⁹⁰ The military has also threatened to burn villages if citizens do not comply with orders to provide weapons or volunteers for pro-government militias.²⁹¹ Government employees “risk being fined, fired, or detained” if they do not join pro-government militias.²⁹² In 2007, a respected Ogaadeeni leader was executed after he refused to

²⁸⁰ HUMAN RIGHTS WATCH I, *supra* note 6, at 83.

²⁸¹ *Id.* at 84.

²⁸² AAAS, *supra* note 247, at 5.

²⁸³ ETHIOPIA: PROCLAMATION NO. 621/2009 OF 2009, CHARITIES AND SOCIETIES PROCLAMATION (2009).

²⁸⁴ *NGO Law Monitor: Ethiopia*, THE INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW (ICNL), <http://www.icnl.org/research/monitor/ethiopia.html> (last visited Nov. 22, 2015).

²⁸⁵ *Id.*

²⁸⁶ HUMAN RIGHTS WATCH III, *supra* note 216.

²⁸⁷ *Id.*

²⁸⁸ ETHIOPIA 2014 HUMAN RIGHTS REPORT, U.S. DEP’T OF STATE (2014).

²⁸⁹ HUMAN RIGHTS WATCH I, *supra* note 6, at 75.

²⁹⁰ *Id.*

²⁹¹ *Id.* at 79.

²⁹² *Id.* at 75.

follow military orders to “raise a pro-government militia.”²⁹³ Likewise, soldiers have also been known to retain much-needed food until villagers comply with orders to join the militia.²⁹⁴

In terms of the international law on self-determination, as discussed in Section II, the possession by a people of meaningful self-governance precludes any right to external self-determination in the sense of sovereign independence. However, in the words of the Canadian Supreme Court, in the landmark *Secession of Quebec Opinion*, external self-determination is available “where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development.”²⁹⁵ The people of Ogaden are, without question, a definable group.²⁹⁶ Despite the Ethiopian Constitution guaranteeing a role in local, regional, and federal governance for all ethnic groups in the country, there is ample evidence that the Ogaadeeni are in practice denied any meaningful role in the governance of their regional state and the federation. While the fundamental principle against any unilateral secession that would disrupt the territorial integrity of an existing State – a position resolutely supported by the African Union²⁹⁷ – would, of course, compromise the legal case of independent statehood for Ogaden, it would not diminish the moral and political claim of the people of Ogaden.

²⁹³ *Id.* at 78.

²⁹⁴ *Id.* at 79.

²⁹⁵ *Reference Re Secession of Quebec*, at para. 126.

²⁹⁶ *See supra* Part I.

²⁹⁷ *See infra* Part IV.

IV. Abuse in Ogaden

In addition to the Ethiopian government's manipulation of the electoral process and suppression of opposition in Ogaden, it has an appalling human rights record, with widespread oppression of the people of Ogaden. In 2008, HRW reported abuses by both the central Ethiopian government and the ONLF.²⁹⁸ The information reported has been corroborated by multiple eyewitnesses and, in certain cases, by aerial photography.²⁹⁹ The abuses depicted in the HRW report run the gamut of human rights violations, including restrictions on freedom of speech and expression, restrictions on freedom of movement, assembly, and association, forced disappearances, confiscation and destruction of property, illegal searches and other violations of privacy, violent displacement, arbitrary, lengthy, and unlawful detention, abuse and mistreatment of detainees, rape, torture, and murder.³⁰⁰ Even violations that are non-violent on their face, such as trade embargoes, are enforced through brutality.³⁰¹

Various reports from bodies within the U.N. reinforce the accuracy of the HRW findings. In recent years these reports have shown that while some progress may have been made, Ethiopian authorities remain reluctant – and in some cases refuse – to abide by the international standards to which they have subscribed.

The U.N. Human Rights Council conducted a Universal Periodic Review for Ethiopia in 2009.³⁰² The Working Group report commended Ethiopia for various improvements, but also raised concerns on a vast array of issues, including the use of female genital mutilation,³⁰³ the application of the death penalty,³⁰⁴ and police brutality.³⁰⁵ Numerous recommendations were made and some accepted by Ethiopia.³⁰⁶ Unfortunately, the recommendations that were declined included some very basic protections, such as the recommendation to “[a]mend the Proclamation for the Registration and Regulation of Charities and Societies so as to bring it into conformity with international human rights standards,”³⁰⁷ and to “[t]ake effective measures, in line with the Committee on the Rights of the Child, to protect all children from torture, cruel and degrading treatment, particularly from members of the military.”³⁰⁸

²⁹⁸ HUMAN RIGHTS WATCH, *supra* note 6.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² U.N. Human Rights Council, 13th Sess., Report of the Working Group on the Universal Periodic Review, Ethiopia, U.N. Doc. A/HRC/13/17 (Jan. 4, 2010).

³⁰³ *Id.* at para. 77.

³⁰⁴ *Id.* at para. 86.

³⁰⁵ *Id.* at para. 33.

³⁰⁶ *Id.*

³⁰⁷ *Id.* at para. 26.

³⁰⁸ *Id.* at para. 20.

In 2007, The U.N.'s International Committee on the Elimination of all Forms of Racial Discrimination looked at the implementation of the Convention in Ethiopia.³⁰⁹ Article 9 of the Convention required reporting,³¹⁰ but at that time, the most recent report was submitted in 1988³¹¹ and considered in 1990.³¹² The Committee noted that they were aware of “internal unrest” and “serious economic hardship,” and that those factors could make it more difficult for Ethiopia to implement the Convention.³¹³ However, they stated that the extreme delay in Ethiopia’s reporting prevents effectively “monitor[ing] the implementation of the Convention at a national level.”³¹⁴ The Committee received the Ethiopian report by their seventy-fifth session in 2009, but stated that the report did not contain “sufficient information regarding the practical application of the Convention” and it failed to discuss all of the issues that the Committee inquired upon.³¹⁵ Failure to adhere to reporting requirements illustrates the Ethiopian government’s lack of respect for international bodies attempting to reduce human rights abuses. However, this failure is trivial compared to Ethiopia’s legislation at odds with The International Convention on the Elimination of all Forms of Racial Discrimination,³¹⁶ which it ratified nearly forty years ago,³¹⁷ but has not ensured is adequately enforced.³¹⁸ The ability of judges to enforce its provisions is strained by the fact that the Convention has not yet been translated into the languages spoken in the country.³¹⁹

In 2014, the U.N. Human Rights Council conducted another Universal Periodic Review.³²⁰ Many of the delegates commended Ethiopia for the steps they reported to be making, but grave concerns still exist. Among these concerns were restrictions on freedom of expression and freedom of association,³²¹ continued practices of female genital mutilation despite its criminalization,³²² the use of corporal punishment of children,³²³ mistreatment of prisoners,³²⁴

³⁰⁹ U.N. Committee on the Elimination of Racial Discrimination (CERD), UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Ethiopia, U.N. Doc. CERD/C/ETH/CO/15 (June 20, 2007).

³¹⁰ *Id.* at para. 2.

³¹¹ *Id.*

³¹² *Id.* at para. 3.

³¹³ *Id.* at para. 5–6.

³¹⁴ *Id.* at para. 2.

³¹⁵ *Id.* at para. 3.

³¹⁶ *Id.* at para. 11.

³¹⁷ *Office of the High Commissioner for Human Rights*, U.N. HUMAN RIGHTS, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=ETH&Lang=EN (last visited Nov. 22, 2015).

³¹⁸ *See generally* U.N. CERD, UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Ethiopia, para. 11, U.N. Doc. CERD/C/ETH/CO/7-16 (Sep. 7, 2009).

³¹⁹ *Id.* at para. 21.

³²⁰ U.N. Human Rights Council, 27th Sess., Report of the Working Group on the Universal Periodic Review, Ethiopia, U.N. Doc. A/HRC/27/14 (July 7, 2014).

³²¹ *Id.* at para. 49.

³²² *Id.* at para. 42.

³²³ *Id.* at para. 82.

³²⁴ *Id.* at para. 148.

torture, and arbitrary detention.³²⁵ The delegates made recommendations for changes, but yet again, Ethiopia turned down many of those that sought to reduce human rights violations.³²⁶ Multiple countries agreed that Ethiopia should ratify the Optional Protocol to the Convention Against Torture, yet Ethiopia declined.³²⁷ Ethiopia also rejected Namibia's recommendation that it "[f]urther enhance the institutional and financial capacities of the Ethiopian Human Rights Commission to effectively carry out its mandate vis-à-vis the affected communities, especially its working relations with the Oromo, Ogaden, Gambella, and Somali communities."³²⁸

While abuses are widespread, women and children are most at risk.³²⁹ The women of Ethiopia face myriad abuses rooted in societal practice. Atrocities such as female genital mutilation occur, despite being criminalized in the 2005 Criminal Code,³³⁰ and marital rape is not outlawed.³³¹ Women with disabilities, elder women, and rural women are subject to other forms of discrimination in addition to those based solely on their gender.³³²

Women in Ogaden are often victims of rape. While it is difficult to ascertain accurate figures, because the subject is taboo and there is fear in reporting, it is estimated that approximately one third of women have been victims.³³³ Government forces perpetrate systematic rapes, which have been called "a weapon of war"³³⁴ and a "crime against humanity".³³⁵ They often also detain and torture women believed to be affiliated with the Ogaden Women's Democratic Association or relatives of ONLF members.³³⁶ Women suspected of being spies for the ONLF are often raped during transport to, and while in, military custody.³³⁷ Women are also targeted when they trek into rural areas to collect firewood and water.³³⁸ HRW interviewed many victims and collected a variety of personal and eye-witness accounts, including that of one woman who had been raped thirteen times during a three-month detention,³³⁹ a group that was told they were being taken in only for "questioning,"³⁴⁰ a woman

³²⁵ *Id.* at para. 133.

³²⁶ *Id.* at para. 158.

³²⁷ *Id.* at para. 158.2.

³²⁸ *Id.* at para. 158.17.

³²⁹ UNPO, *supra* note 10, at 10.

³³⁰ U.N. Committee on the Elimination of Discrimination against Women (CEDW), Concluding observations of the Committee on the Elimination of Discrimination against Women, para. 5, U.N. Doc. CEDAW/C/ETH/CO/6-7 (July 27, 2011).

³³¹ *Id.* at para. 20.

³³² *Id.* at para. 38.

³³³ UNPO, *supra* note 10, at 11.

³³⁴ UNPO, *supra* note 10, at 10.

³³⁵ HUMAN RIGHTS WATCH I, *supra* note 6, at 58.

³³⁶ UNPO, *supra* note 10, at 10.

³³⁷ HUMAN RIGHTS WATCH I, *supra* note 6, at 58.

³³⁸ *Id.*

³³⁹ *Id.* at 59.

³⁴⁰ *Id.* at 61.

who was injured so badly from rape and a subsequent beating that she died from her injuries,³⁴¹ and a woman who had just given birth.³⁴² Despite the reports, the Ethiopian government denies these allegations;³⁴³ and HRW has stated that, to its knowledge, soldiers have not faced any disciplinary action for rapes they commit.³⁴⁴ In 2014, Ethiopia declined a recommendation from a delegate of the Human Rights Council to “allow civil society organizations to complement government [programs] in preventing violence and harmful practices against women and girls.”³⁴⁵

The conditions of children in the region are no better. Children are often living on the streets³⁴⁶ and malnutrition is not uncommon.³⁴⁷ Child labor is widespread, leading to many children being unable to receive an education.³⁴⁸ This is particularly true for those who are without parents or those from struggling families.³⁴⁹

The region’s sexual violence and exploitation extends into the abduction and trafficking of women and children.³⁵⁰ Human trafficking and marriage by abduction were outlawed in the 2005 Criminal Code,³⁵¹ but, despite their high frequency, investigations and prosecutions related to these abuses are rare.³⁵²

As stated earlier, any form of dissent against the government can result in arbitrary detention.³⁵³ The Anti-Terrorism Proclamation of 2009 allows up to 28 days of detainment without a charge brought against an individual,³⁵⁴ but in practice that detention may have no end date.³⁵⁵ Eyewitnesses interviewed by HRW have recounted detentions with no hope or promise of a judicial trial or other due process procedure.³⁵⁶ Former detainees also described witnessing or being subjected to interrogations that almost always involved beating or torture.³⁵⁷ Female detainees frequently reported being raped by interrogators, often with the knowledge,

³⁴¹ *Id.* at 60.

³⁴² *Id.* at 62.

³⁴³ U.N. CEDW, *supra* note 330, at para. 22.

³⁴⁴ HUMAN RIGHTS WATCH I, *supra* note 6, at 58.

³⁴⁵ U.N. Human Rights Council, *supra* note 320, at para. 158.38.

³⁴⁶ U.N. Committee on Economic, Social, and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights, para. 17, U.N. Doc. E/C.12/ETH/CO/1-3 (May 31, 2012).

³⁴⁷ *Id.* at para. 22.

³⁴⁸ *Id.* at para. 15.

³⁴⁹ *Id.*

³⁵⁰ U.N. CEDW, *supra* note 330, at para. 24.

³⁵¹ *Id.* at para. 5.

³⁵² U.N. Committee Against Torture, *supra* note 346, at para. 33.

³⁵³ UNPO, *supra* note 10, at 15.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ HUMAN RIGHTS WATCH I, *supra* note 6, at 70.

³⁵⁷ *Id.* at 74.

permission, or direct command of those in charge and in full view of other detainees.³⁵⁸ In general, eyewitnesses frequently spoke of rape, torture, beatings, and killings taking place in front of them for intimidation purposes.³⁵⁹ A delegate from the Human Rights Council in 2014 recommended Ethiopia “train personnel to investigate and prosecute all alleged cases of torture” but Ethiopia declined.³⁶⁰ Detainees also described a lack of due process; they were not given a reason for their detention, but were simply accused of supporting the ONLF.³⁶¹ Any affiliation or connection with the ONLF, however attenuated, appears to justify detention and with it, beatings, torture, rape and/or killing.³⁶²

In addition to enduring beatings, rape, and other torturous activities, detainees are faced with inhumane prison conditions.³⁶³ The U.N. Committee Against Torture is deeply concerned that, despite assurances from the Ethiopian government that they are attempting to mirror many international prison standards, the prisoners are subject to inhumane conditions including rampant overcrowding, scarce access to food and water, little to no proper health care, and unsanitary conditions.³⁶⁴ Overall, the standards at which these prisons are maintained are not compatible with the U.N. Standard Minimum Rules for the Treatment of Prisoners, according to observations made by the U.N. Human Rights Committee, who has urged them to take steps to fall in compliance.³⁶⁵ The conditions violate the rights of all humans detained there and have especially negative effects on women and children.³⁶⁶

In order to exert more control over the Somali region, the Ethiopian government has closed its borders to trade with Somalia and Somaliland.³⁶⁷ The stated reason for these trade restrictions is to prevent the ONLF from acquiring arms, as well as to reduce other supplies the ONLF may get from across the borders or the pastoral civilians.³⁶⁸ These borders are crucial to the nomadic and pastoral civilians of Ogaden, whose livelihoods depend on trade, especially in cattle, with Somalia and Somaliland.³⁶⁹ The Ogaden civilian population is disproportionately affected by the embargo; in addition, they are punished collectively and aggressively for the activities of a few.

³⁵⁸ *Id.* at 58.

³⁵⁹ *Id.* at 72.

³⁶⁰ U.N. Human Rights Council, *supra* note 320, at para. 158.30.

³⁶¹ HUMAN RIGHTS WATCH I, *supra* note 10, at 96.

³⁶² *Id.* at 50, 63.

³⁶³ *Id.* at 63.

³⁶⁴ U.N. Human Rights Committee, Concluding observations of the Human Rights Committee, para. 26, U.N. Doc. CCPR/C/ETH/CO/1 (Aug. 19, 2011).

³⁶⁵ *Id.* at para. 23.

³⁶⁶ *Id.*

³⁶⁷ HUMAN RIGHTS WATCH I, *supra* note 6, at 81.

³⁶⁸ *Id.*

³⁶⁹ *Id.* at 82.

Although economic tactics, like trade embargoes, are nonviolent in themselves, the Ethiopian government enforces them through violent means.³⁷⁰ Such measures include the confiscation of private and commercial automobiles used or suspected of being used in cross-border transport, the confiscation and/or killing of livestock suspected of being associated with prohibited trade, the confiscation (and often consumption without compensation) of goods, and the beating and/or murder of those suspected of disobeying the order.³⁷¹

In addition to prohibiting the export of livestock and other goods from Ogaden to neighboring countries, the government prohibits the import of goods into Ethiopia.³⁷² This creates a dangerous black market for staples like rice and sugar.³⁷³ The smuggled goods are unaffordable to most civilians in Ogaden.³⁷⁴ The policy of the embargo has the effect of starving Ogaden civilians.

Beyond the food shortages caused by the trade embargo, civilians in Ogaden face additional challenges through the “closing” of their villages to curtail the activities of and support for the ONLF.³⁷⁵ Closing a village entails the forcible displacement of the people who live there, confiscation and monitoring of the food supply, restriction on or destruction of the water supply, and prohibition of any civilian movement to or from the village. Violators of these rules are often killed.³⁷⁶ The villagers are forced to relocate closer to city centers, making it easier for the government to monitor their activities.³⁷⁷ This policy negatively affects the livelihood of Ogaden’s pastoral nomads³⁷⁸ and women and children trying to gather water from wells in closed villages.³⁷⁹

Unfortunately, the HRW report also contains equally credible reports of abuses by the ONLF.³⁸⁰ The ONLF has been accused of serious abuses such as abductions, beatings, planting landmines, and murder.³⁸¹ While the ONLF targets the Ethiopian government and military, some abuses have allegedly been perpetrated against civilians suspected of supporting the government.³⁸² Additionally, some methods of attack, like landmines, are indiscriminant.³⁸³ In

³⁷⁰ *Id.* at 83.

³⁷¹ *Id.*

³⁷² *Id.* at 84.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.* at 85.

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.* at 86.

³⁷⁹ *Id.* at 88.

³⁸⁰ *Id.* at 89.

³⁸¹ *Id.* at 99.

³⁸² *Id.*

³⁸³ *Id.*

general, abuses in Ogaden terrorize the civilians, who are at the mercy of military and opposition forces and risk being collectively punished for suspicion of supporting either entity.

Much of the oppression and human rights abuses in Ogaden were published in a 2008 HRW report and were fully corroborated. It has been difficult to find credible and comprehensive reports on the status of human rights in Ogaden since then. The U.S. Department of State released a Human Rights Report on Ethiopia in 2014.³⁸⁴ The U.S. Department of State is generally a credible source for country-specific information. The 2014 report is also comprehensive in the scope of abuses that it documents; however, there are concerns with relying on the State Department report for information concerning the abuses in Ogaden. First, the report is not specific to Ogaden or the Somali Region, but addresses human rights concerns that affect Ethiopia at large.³⁸⁵ There is a short paragraph entitled “National/Racial/Ethnic Minorities,” but the section only discusses the largest ethnic minority, the Oromo.³⁸⁶

The report includes numerous references to conflict in the Somali Region, but again, lacks the specificity found in the HRW report, and may not be relevant to Ogaden. Second, to the extent that Ogaden is mentioned in the report, it is in the context of the ONLF. The report alludes to the use of torture against alleged supporters of the ONLF,³⁸⁷ but fails to describe the prevalence of abuses against Ogaadeeni civilians and how attenuated an alleged connection to an ONLF soldier has to be for a civilian to be termed an “ONLF supporter” by the Ethiopian government. The crux of Ethiopia’s strategy against the ONLF is to severely punish anyone suspected of moral, physical, or monetary support of the separatist group. Thus, by omitting an explanation of how attenuated connections to the ONLF are used by the Ethiopian government to target civilians and justify abhorrent human rights violations, the State Department report misses a key component of the abuses in Ogaden. Nonetheless, the State Department report is a useful overview of the general issues present in Ethiopia; the inhumane conditions of prisons and illegal detention centers,³⁸⁸ unconstitutional arrests and trial procedures,³⁸⁹ censorship and restriction of freedoms,³⁹⁰ and many other human rights abuses.

While there is no reason to believe that the situation has substantially improved since the 2008 HRW report, it is difficult to verify conditions in Ogaden because of the restriction the Ethiopian government places on humanitarian aid organizations and international and foreign media – the very organizations that would be able to accurately and impartially report on the current situation in Ogaden. The 2008 Collective Punishment report recounted that the Ethiopian

³⁸⁴ HUMAN RIGHTS REPORT, *supra* note 288.

³⁸⁵ *Id.* at 34–35.

³⁸⁶ *Id.*

³⁸⁷ *Id.* at 3.

³⁸⁸ *Id.* at 4.

³⁸⁹ *Id.* at 5–9.

³⁹⁰ *Id.* at 11–18.

government expelled the Red Cross from the Ogaden in July of 2007.³⁹¹ Since then, HRW has documented how severely the Ethiopian government limits the operation of human rights workers in Ogaden. Ethiopia accomplishes this through the Charitable Societies Proclamation (CSO law), which prohibits charities from administering any form of aid to any groups that the government considers to be related to the ONLF.³⁹² Under the CSO law, it is exceedingly difficult to get an accurate picture of the current humanitarian situation in Ogaden.³⁹³

As explained in Section II, the international right of external self-determination becomes engaged only in certain extreme circumstances. Where an identifiable group within a State has a meaningful role in its own governance and an ample measure of constitutional and international human rights, that group has internal self-determination and is entitled to nothing further. In the words of the Canadian Supreme Court, in the *Secession of Quebec Opinion*, internal self-determination is “a people’s pursuit of its political, economic, social, and cultural development within the framework of an existing state.”³⁹⁴ On that basis, internal self-determination – in terms of governance and rights – is to be regarded as the norm; something all people are entitled to without question or reservation.

However, where an identifiable group is subject to colonialism, to foreign occupation or alien subjugation, domination and exploitation, external self-determination becomes engaged, offering that group a range of possible options from sovereign independence to free association with a State to anything that commands support within the group. These options are, arguably, limited for all but colonial peoples by the recognition, particularly strongly held in the African Union, of the paramountcy of the principle of territorial integrity.

The first question that arises is whether Ogaden is a colony. While there is no doubt that historically Ogaden has been subject to various colonial administrations, it has, since at least 1994 and the adoption of the multi-ethnic constitution, been part of the Federal Democratic Republic of Ethiopia, with its own ethnic regional state. If Ogaden is not a colony, four of its preferred outcomes (independence, free association with Somalia or Djibouti, and confederation within Ethiopia)³⁹⁵ become problematic in the face of the principle of territorial integrity.

It only remains to assess whether the people of Ogaden have a right to remedial secession; secession justified by a denial of internal self-determination and/or by gross violations of human rights. While the International Court of Justice in the *Kosovo Opinion*³⁹⁶ declined to

³⁹¹ HUMAN RIGHTS WATCH I, *supra* note 6, at 88–89.

³⁹² HUMAN RIGHTS WATCH III, *supra* note 216.

³⁹³ *See generally id.*

³⁹⁴ *Reference Re Secession of Quebec*, para. 126.

³⁹⁵ *See supra* Part I.

³⁹⁶ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 402 (July 2010).

consider self-determination or remedial secession in giving its opinion, it questioned “whether international law provides for a right of ‘remedial secession’ and, if so, in what circumstances.”³⁹⁷ Even those who assert a right of remedial secession concede that it, like all aspects of external self-determination, is exercisable only in the most exceptional circumstances and as a last resort. The widespread, systematic, and egregious human rights abuses recorded in this section certainly appear to qualify the people of Ogaden for remedial secession – if such a right exists. The Ogaden case for remedial secession becomes even stronger if the oppression and consequent denial of self-governance are added; but, again, there are doubts about the existence of any such right and any unilateral secession is confronted by the principle of territorial integrity.

³⁹⁷ *Id.* at para. 82.

APPENDICES

A

Constitution of the Democratic Federal Republic of Ethiopia, Article 39¹

Article 39: Rights of Nations, Nationalities, and Peoples

1. Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.

2. Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.

3. Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.

4. The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:

(a) When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned;

(b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;

(c) When the demand for secession is supported by a majority vote in the referendum;

(d) When the Federal Government will have transferred its powers to the Council of the Nation, Nationality or People who has voted to secede; and

(e) When the division of assets is effected in a manner prescribed by law.

5. A "Nation, Nationality or People" for the purpose of this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.

¹ ETHIOPIAN CONSTITUTION, *supra* note 173.

B

The Ogaden National Liberation Front: Foundational Documents

Fundamental Considerations of the ONLF²

1) The Ogaden cause is not at the heart of a dispute between the Republic of Somalia and Ethiopia. It is one of the visages of European colonialism in Africa. It is the cause of a nation betrayed by Britain and other colonial powers and annexed by Ethiopia in a manner contrary to the agreements concluded between the Ogaden people and Britain and in conflict with International Law and the charter of the United Nations.

2) The struggle of the People of Ogaden and the aim of their movement is to obtain the right of self-determination, rather than a struggle aimed at realizing the identity of a nationality. This is because Ogaden has never been historically or politically part of Ethiopia.

3) The revolution of the People of Ogaden is based upon their absolute rejection of the unauthorized disposition of their territory by the British Government; and subsequently on their constant appeals to obtain the right of self-determination based on the principle that the people of Ogaden alone reserve the right to determine their political future.

It is moreover based on the charter of the United Nations and its resolutions, which call for the elimination of colonialism and on the declaration of the General Assembly of the United Nations in 1960; and on the sixth principle supplemented to the United Nations Charter regarding the elimination of colonialism.

4) The Ogaden National Liberation Front (O.N.L.F.) is a vanguard organization leading the struggle of the people in an appropriate manner; making use of the experiences gained from other liberation movements free from any kind of foreign pressure and intervention.

ONLF Current Vision³

The vision of The Ogaden National Liberation Front (ONLF) is to enable the Ogaden people to exercise their fundamental right to self-determination (Right of Choice) through free and fair referendum under the supervision of the UN and the international community. Such a referendum shall give the Somali people under Ethiopian rule the right to choose:

- Complete independence and formation of an independent Somali state
- Voluntary confederation with Somalia or Djibouti

² UNPO, *supra* note 106.

³ Communication from Abdirahman Mahdi, chief negotiator for the ONLF and vice-president of the UNPO General Assembly, to authors (Oct. 14, 2015) (on file with authors).

- Voluntary confederation with Ethiopia
- A higher form of autonomy than is currently available in the region (what the Scots call “Devo-Max)

To reach this vision, ONLF has prepared and is proposing a phased Road Map - see below. The above vision is phase III of that Road Map. Phase I and phase II will deal with key issues such as workable federal-regional political arrangements, security, rule of law and elections in order to create legitimate political representation and institutional framework that will lay the basis of a peaceful transition.

ONLF Roadmap⁴

Phase I: Negotiation

- a. Normalization of relationship between ONLF and the Ethiopian government
- b. Cessation of hostilities and confidence building measure
- c. Ceasefire and joint security arrangements
- d. Popular consultation and consensus among all Somalis in Ethiopia.

Phase II: Transition

- a. Building an ONLF-led transitional administration
- b. New basic organic law
- c. Demilitarization of the Ogaden and joint security arrangements
- d. International monitoring
- e. Laying the foundations of democratic institution
- f. Rehabilitation and reconstruction
- g. Holding of a free Transfer and fair regional elections
- h. of power to the freely elected self-government

Phase III: Interim phase

- i. Consolidation of local institutions and strengthening the foundation of the local government and civil societies
- j. Boosting education, reconstruction, security and trade and the economy
- k. Finalizing the modalities for referendum and completing the census
- l. Holding of a referendum

Phase IV: A peaceful Ogaden

- m. Implementing the choice of the people
- n. Creating new relationships based on people’s choice

⁴ *Id.*