

Introduction and Background of the 2017 Police Force Law – back to the basics

Introduction

1. It not entirely clear why a new Somaliland police bill/law has taken decades to (a) reach the House of Representatives (HoR) and (b) is still being reconsidered again and again by the parliament. The fact remains, however, that with the re-establishment of a Somaliland Police Force in November 1993 and the adoption of the short Somaliland Police re-establishment laws¹ and more detailed police regulations² (based on pre 1990 laws) in 1994/5 which acted as the starting interim police legislation, no new police bill reached the House of Representatives until 2012³. Nonetheless, to their credit and despite budgetary and equipment limitations, the Somaliland Police Force has grown over the years as a formidable force that excelled in keeping the peace and combatting the threat of terrorism. The Force compares favourably with other larger and much more financed police forces in the countries of the Horn of Africa. The need for updating the 1994/5 police laws which were based, as a stop gap, on the 1970s dictatorship police laws, and the dated criminal laws (principally [the Italian based Penal Code](#)⁴) which the Somaliland Police Force has to enforce, remains increasingly pressing. The constitutional Art. 130(5) injunction to the effect that all pre 1991 laws which were still current *'and which did not conflict with the Islamic Sharia, individual rights and fundamental freedoms shall remain in force in the country of the Republic of Somaliland until the promulgation of laws which are in accord with the Constitution of the*

¹ Law on the Structure of the Somaliland Police Force No. 54/1994 of 3 November 1994 which was amended in 1995 (Law No. 7/95).

² The Somaliland Police Regulations 1995 (Regulations No. RSLP/D-1.131/95) consisting of 88 Articles and covering all aspects of the police force establishment, structure and ranks, recruitment, condition of service, discipline etc.

³ A Police Force Bill or draft law, was first considered by the HoR Internal Affairs Committee and the House in June/July 2012 and December 2012 when it had its first reading (Copy is available here: [Somaliland Police Force Bill 2012](#)). It had its further reading in June 2013 and September 2013, and was passed, with amendments, by the HoR on 5 October 2013 (on a vote of 35 for, 3 against and 10 abstaining). The House of Elders (HoE) considered it speedily and approved it, with amendments, on 29 October 2013. The HoR then considered the HoE's amendments and approved again their draft Bill on 29 December 2013 (on a vote of 45 for and 10 abstentions). The HoR then forwarded the Bill to the President for his signature on 15 January 2014. The Vice President (acting on behalf of the President) returned the Bill or draft law to the HoR on 3 February 2014 (as he is entitled to do so under Art. 78(3) of the Constitution) and set out the provisions of the Bill to which he objected. [I have set out in the footnotes to the English translation a summary of the proposed 2014 (acting) presidential objections under their relevant articles]. There is no set time limit for reconsideration of such returned bills to the HoR, but under Art. 78(4) of the Constitution, the HoR can pass the law again on a two thirds majority vote, in which case, the President will have to accept the Bill, as passed. If, however, the House cannot muster such qualified majority vote and do not accept the President's proposed changes, then the Bill (draft law) lapses. On 3 December 2017, the HoR considered the presidential objections and decided on a vote of over two thirds majority to reject all the presidential objections and approve again the text of the Law that they approved before on 29 December 2013. The President then signed the Law on 26 December 2017, and, as set out in Article 51 of the Law, it came into force on its signature by the President on that date. The Law was gazetted on 6 January 2018, but apparently has not been fully implemented as the Government sought further changes that are similar to the ones previously rejected by the parliament.

⁴ The Code which was almost entirely based on the Italian Penal Code of 1930 that was applied in (Italian Somalia) was prepared by the Somalia 'Court of Justice' in 1957 was finalised and approved in 1962 (Legislative Decree No. 5 of 16 December 1962) and came into force on 3 April 1964 when it replaced, in the territory of Somaliland, the Indian Penal Code that applied there (formally) since the 1899 Somaliland Order in Council – (see the Schedule titled 'Indian Acts Applied').

*Republic of Somaliland*⁵ has not yet been systematically put into effect, and, for example, many of the provisions in the dated Penal Code which will not pass the the test of conformity with the constitutionally guaranteed fundamental individual rights and freedoms are still enforced⁶.

2. Even the 2012 police bill⁷ (which departed from the initial 2011 version⁸ of of bill which was based on the re-adoption of the Somaliland ‘civil’ police status) took until

⁵ Art. 130(5) continues to lay down that ‘laws which conform to the Constitution shall be prepared, and each such law shall be presented within minimum time scales set by the House’.

⁶ Absent the statutory changes of these provisions, it is within the jurisdiction of of the constitutional court to consider and adjudicate litigation on these s. 130(5) cases brought by by persons affected by these provisions or organisations that have an interest in the promotion of such rights.

⁷ I use the ‘bill’ or the Somali equivalent ‘draft law’ ‘qabyo-qoraalka xeer’ interchangeably.

⁸ The first draft police law that was approved in 2011 by the relevant Minister of Internal Affairs (that I can trace) was based on Article 124 of Somaliland Constitution and stated in Art. 5 that the ‘ [i]n accordance with Article 124 of the Constitution, **there shall be a civilian police force of Somaliland to be known as ‘the Somaliland Police’**”. The draft law consisting of 66 articles was apparently turned down, in the end, because of the fact that it stated in Article 6 that the membership of the Somaliland Police shall ‘*comprise of the Somaliland Police Force and the members of the Somaliland Maritime Force*’. Whilst, I understand the objection to the lumping together of these two forces, it was, in my view, correct that Article 124 of the Somaliland Constitution does indeed propose a police force and a corrections corps which are entirely separate from the military ‘armed forces’ covered by the different Article 123 of the Constitution. Simply put, the term used in Article 123 is, in Somali ‘*Ciidanka Qaranka*’ i.e ‘The National Force’ or ‘The National Armed Force’ (in short, the Military). The Article describes the unique ‘defence’ of the country duties of the military and confirms that, unlike in the military dictatorship era, the Minister of Defence shall always be a civilian. The fact that military is described as the ‘*national force*’ does not preclude that it would comprise different forces (such as army, air force, navy or other specialist forces) which would be set out, as confirmed in Article 123(5), regulations on its structure. There are also two other provisions in the Constitution which relate to the national military force(s). The first is that, under Article 90(4) of the Constitution which states that the President leads the ‘the National Forces’ (*Ciidamada Qaranka*) ‘*as he is their Commander-in-Chief*’. This is a normal provision found in many constitutions of the democratic countries and refers specifically to the military forces of the state. Presidents do not act as Commanders in Chief of police forces or prisons services/corps in democratic states. Secondly, following the similar 1960 – 69 Somali Republic constitution provision, Article 104 of the Somaliland Constitution addresses specifically the “Forces’ Courts” and their procuracies and states that these courts are specifically for ‘*hearing criminal cases against the members of the National (armed) forces*’ in peace and in war (in Somali, *xubnaha ciidamada Qaranka*), and , in my view is referring to the force(s) described in Article 123 of the Somaliland Constitution described as being the ‘National Force’. I would also go further in stating that the criminal cases referred to are those which are proscribed in the military Codes and not necessarily offences under other laws which apply to everyone. It was only the military dictatorship draconian decrees that extended the jurisdiction of the military courts, as well those of the special security courts.

Significantly also this 2011 Police draft law dealt with in conderable way, the issues of ‘complaints against the police’ (Articles 34 -41) and ‘police accountability’ (Articles 42- 53) in considerable detail. Although complaints were still be to be investigated by a police complaints unit, there was provision for independent person to review the investigation, and confirmation that the complaints investigation shall not affect the power of the Somaliland Human Right Commission to undertake investigations under its own statutory powers. The Accountability provisions in the draft law dealt with consultation on the national policing plan, a national advisory committee and consultations on local policy and community partnership arrangements.

There was also another second draft police law in early 2012 which still covered the police and the maritime police and consisted of 49 articles, but it proclaimed in Article 6(2) that ‘*the Somaliland Police is part of the national forces*’. This was a significant shift to the pre 1991 position and an overstretching of Article 124(1) of the Constitution, but, at least, there was no mention of the President being the ‘commander in chief’ of the police force (including the Maritime Police). Following somewhat the previous 1960 Somaliland Police laws, Article 31 of this second draft law stated that the ‘*President may,*

December 2017 when the the House of Representatives overruled (through a two thirds majority) the objections of the then acting president (the vice-president) to, among things, parts of the law dealing with the use of force by the police and introduction of a relatively modest system for addressing complaints against the police. Although the bill became law when signed by the President, further amendments to the Law were sought again by the President (in 2018) on mostly the same issues that were raised before, which have since been considered in an amendment bill passed by the HoR in December 2018. The Amendment bill⁹ is now (as at March 2019) still with the House of Elders.

'The UNDP police reform programme in Somaliland (and Puntland) is about changing behavior and attitudes. The desired transformation is from a colonial/authoritarian model, where policing is based on force and coercion, to a modern public service, where policing is based on democratically endorsed laws, mutual respect and assistance.'

('Rights-Based Partnership Policing Reform' Efforts Press Ahead as 300 More Officers Graduate the sixth batch of the Rights-Based Partnership Policing programme in Mandheera Police Academy on April 11, 2011)

'In my view, however, in Somaliland, it is not only the dictatorship laws that still pose a problem, but also the adoption of (and continued use) of the Italian Somalia colonial laws and systems relating to the military and to the police/prisons forces that replaced the existing Somaliland laws (in these matters) which were all updated in the 1950s.'

3. It unlikely, In my view, that some of the modest police accountability issues that the HoR was seeking to introduce can be achieved until we go back to the early version of bill which aimed to re-instate a Somaliland civil, and not 'military' police force. Sadly, the 2017 Law's unequivocal statements that the '*Police Force shall ... form part of the armed forces¹⁰ of the Republic of Somaliland*' (Art. 5) and that '*[t]he President is, in*

after consultation with the Minister of Interior, require the Somaliland Police to act in support of the Somaliland Armed Force', which somewhat underlines the difference between the police and the military force(s). When it came to the public's complaints about the police and the latter's accountability in a democratic state, which was amply addressed in the earlier first 2011 draft law in over 20 articles, a single article headed 'police accountability' stated that any such complaints will be dealt with by the 'office of the Internal Control Unit of the police' and that the Minister of Internal Affairs may be approached if the police fail to consider the complaint or their response is unsatisfactory (Article 9). **The previously proposed independent oversight and review of the internal investigation in the 2011 version was dropped.** It is indeed considered, nowadays, that there must be an independent oversight of police complaints for the public to have confidence in the investigation and consideration of such complaints. An example of a nearby country that had (in the past) civilian police legislation similar to that of Somaliland's is Kenya's [Independent Policing Oversight Authority Act 2011](#) which, as set out in its long title, is described as an Act '*to provide for civilian oversight of the work of the Police; to establish the Independent Policing Oversight Authority; to provide for its functions and powers and for connected purposes*'. [Kenya's main police Act is the [National Police Act 2011](#) (as amended)].

⁹ A consolidated unofficial copy of the 2017 Law and the December 2018 HoR approved text of the Amendments Bill (in Somali) is included in this compilation.

¹⁰ Art. 2 of the **1995 Somaliland Police Regulations** stated that the '*Somaliland Police Force shall provisionally remain part of the armed forces of the Republic of Somaliland*', which, in my view, indicated the re-born Somaliland's state's desire to move away from the military dictatorship era militaristic control of the police as soon as practicable. The Somaliland Constitution (approved in a national referendum held on 31 May 2001) deals, under separate Articles, with the National Armed Forces (Art. 123) on the one hand, and the Police and Corrections Corps (Art. 124) on the other. It is only in respect of the 'National Armed Forces' that the Constitution, under Article 90(4), is given to be the 'Commander-in-Chief. An earlier (2011) draft version of this Law (consisting of 66 Articles) made it clear that '*[i]n accordance with Article 124 of the Constitution, there shall be a civilian police force of Somaliland to be known as the 'Somaliland Police'*' (Article 5). The next version (consisting of 49 Articles, with a different Minister of Interior, by then) retained, in its Article 6, the reference to Article 124 of the Constitution in clause 1 of the Article, but then stated in second clause the Article that the '*Somaliland Police is part of the*

accordance with Article 90 of the Constitution of the Republic of Somaliland, the Commander-in-chief of the armed forces of the Republic of Somaliland of which the Police Force forms a part¹¹ appear not have been critically scrutinised by the House of

national forces! The final bill introduced at the House in June 2012 (and consisting of 45 Articles) made no mention of Article 124 of the Constitution in its Article 5(1) which simply asserted that *'Police is one of the forces of the Republic of Somaliland'* (*Ciidamada Jamhuuriyadda Somaliland*). There is nothing wrong with describing the Police as a 'force' (Ciidan) which was the case also in Somaliland from the formation of a national Somaliland Police Force in 1927 to the independence of State of Somaliland in 1960, but the police force was never considered as being of the military force or subject to the military laws until after Somaliland united with Somalia (see below).

Prior to 1991, Art. 2(1) of the 1972 Organisation of the Police Force Law (Law No. 2 of 23 December 1972), which was promulgated by the military dictatorship) declared that the Police Force was *'an integral part of the Armed Forces'* and the 1970 dictatorship amendments to the existing military laws further expanded the application of the military laws to the 'armed forces' including the police force and the prisons corps beyond offences other than those covered in the 1960s Military Criminal Codes. Unlike the Somalia police (which included members that dealt with prisons) that was covered by Somalia's military laws, the Somaliland police force (and the separate Somaliland Prison Service) were not covered by military law except at times of war or emergency (i.e. *'the occurrence or the apprehended occurrence of hostilities, internal disorder or other grave emergency of any kind, the Governor [the Minister after independence] may, by proclamation, declare that the Force or any part thereof shall serve and be employed as a military Force, and at any time after the coming into operation of such proclamation, the Force, or such part thereof, may by direction of the Governor [the Minister] be made subject to military law and may be placed under the command of and be subject to the orders of a military authority..* – section 10 of the 1958 Police Ordinance'.

The 1995 provisional status of the re-established Somaliland was likely to have been based on the concerns about militaristic police forces during the dictatorship and the yearning for a civilian police that may still participate in the defence of the country when called upon to do so, but do not act like the dictatorship forces. Sadly the 1995 Regulations adopted many of the provisions of the 1970s Police legislation including the provision of the President being the Commander in Chief of the police force (see Art. 2(1) of the Regulation) and, therefore, was not in step with the [1993 National Charter](#) which ruled out the continued use of post 20 October 1969 Legislation, it is also unfortunate, in my view, that these issue were not explored further before this 2017 Law re-adopted the pre 1991 police 'militarisation' model. Civilian Police Forces can still have specialised units and need not necessarily have military ranks as did the Somalian Police. The 1960 State of Somaliland police ranks had equivalent corresponding military ranks, but the die has now been cast as both the current Somaliland Police, Corrections Corps, Coast Guard and (even the Intelligence Service) have all been awarded military ranks and, as mentioned below, come under military law and courts. I often remember the remarks (a while back) of a former very senior (foreign) police officer remarking wryly about the seniority of military Generals over police Generals and the latter's sworn duty of following the commands of the latter, under military law! Since then, however, the Police Commissioner has been promoted to Major General – an equivalent rank of the Military Chief of Staff, but the underlying issue is the independent status of a police commissioner in enforcing the criminal laws, and that respect cannot have a 'commander in chief' whose orders on law enforcement issues he must follow, in military style, without any questions.

¹¹ Note Article 90(4) of the Constitution sets out the President's role as *'commander in chief of the national armed forces (Ciidamada Qaranka, in Somali)*. The same phrase *'national armed forces'* is used, separately, in Article 123 of the Constitution which relates specifically to the military forces as distinct from the following Article 124 which deals with the Police Force and the Corrections Corps. In presidential democracies presidents are commanders in chief of the armed forces (i.e the military) but not the police or corrections (prisons) forces/services. In the US, for example, it is clear the role of the President as Commander in Chief is in respect of the armed forces, and it is often said that this also signifies the civilian supremacy over the military. Indeed Article 123(4) of the Somaliland Constitution entrenches this concept of *'civilian supremacy'* by stating that the Minister of Defence shall always be a civilian. The Somalian (Italian model) Constitution which became the constitution of the new united Somali Republic contained a similar clause (Article 75(f)) of the president being the commander in chief of the *'Forze Armate' (Armed Forces)* which, in Italian, consisted of the various military branches and did not include the ordinary police and prisons forces even though the latter may, in some respects, such as discipline, in Somalia, came under the military judiciary. The significant change to the status of the police

Representatives (HoR) which was seeking other very modest reforms. To paraphrase the Somali proverb that ‘the ‘A’ alphabet that you get wrong proves to be an obstacle when you reach the longest chapter’ (*Alifka kaa qaldamay, Albaqruu ku dhibaa*), declaring explicitly in this 2017 Police Force Law the ‘military’ status of the police force, when even the 1995 Regulations (based on the 1993 National Charter) opted only for a ‘provisional’ military status of the new Somaliland police force until new laws are adopted, is indeed the major obstacle to the introduction of any meaningful reform of police accountability in a democratic country. A military force, by its nature, is accountable only to its command structure and ultimately to its commander in chief. Police forces in democratic countries appreciate legitimate monitoring by statutory or public non-police committees or individuals and accept the importance of such accountability to the cementing of good relations with the public. A return to modernised new versions of the ‘civil’ police laws of Somaliland (which were finally only repealed in 1972) will ensure that the military dictatorship laws are finally swept away, as enjoined by Art. 13(5) of the Somaliland Constitution and will further strengthen the current good police-community relations. Additionally, repealing the outdated provisions of the Penal Code that are no longer in step with the provisions of the Somaliland Constitution would lessen police involvement in controversial issues¹².

force, however, happened after the military coup in October 1969 when the Constitution was abrogated. Indeed as early as 31 December 1969, the Military dictatorship issued a law on pensions and gratuities of the members of the Armed Forces and Para-military Organisations (Law No. 6 of 31 December 1969) in which, under Art. 1(3) the ‘*Armed Forces*’ were defined as meaning ‘*the National Army (including the Army, Navy and Air Force) and the Police Force*’. The Custodial Corps and the Illalio Corps were defined as being ‘*Para-Military Organizations*’ (a term used also in the Military Codes). Furthermore in 1972, the police force was declared as being ‘*an integral part of the Armed Forces of the Somali Democratic Republic and hierarchically and organically shall come under the Head of the State, in his capacity as the Commander-in-Chief of the Armed Force.*’ (see Art. 2(1) of the **1972 Organisation of the Police Force Law** (Law No. 2 of 23 December 1972). The ‘*Head of State*’ was of course then Military Chief. Article 3(1) of the 1972 also added that the police commandant ‘*may be selected from among the generals and colonels on effective permanent service in the Police Force or from the other Armed Forces*’. It was no surprise, therefore, that the first Somaliland Republic police regulations indicated the ‘provisional’ military status of the newly re-established police force, as a signal to move away from the dictatorship laws as soon as practicable.

¹² For example, the various provisions of defamation/libel (Art. 452 Penal Code) or insult (such as Arts. 269 insult to a political, administrative or judicial body or Art. 220 offending the honour or prestige of the Head of State which, incidently do not apply to the Head of Government, as in Somaliland the head of state is as also the head of government) would in their replacement (as civil and not criminal matters in the case of defamation) or repeal (in the case of ‘insult’ provisions that go back to the 1930s Italian Rocco Code) that are no longer acceptable in a democratic society that can criticise freely its political leaders and institutions. Criminal defamation cases unnecessarily involve the police and yet (as I have come across in my research) the civilian Somali Republic democratic government issued in 1969 a Decree Law relating to the Press, which, though dated now in its approach to the freedom of the press, **included an express provision introducing civil defamation suits for the press in place of the Penal Code defamation.** Art. 12 of the Press Law (Decree Law No. 1 of 1 January 1969 published in the Official Bulletin dated 30 January 1969, Supplement No. 4, Issue No. 1, p. 342) stated:

‘*Article 12 Civil Liability*

1. *The owner and the editor or assistant editor of a newspaper or other periodical, and the author of the article shall be jointly and severally liable for any damage caused to third parties by the publication of the periodical.*
2. *In case of defamation by means of the press, the party injured may ask for compensation of damages in the manner provided for in the Civil Procedure Code. The amount of such compensation shall be proportioned to the seriousness of the injury and to the diffusion of the periodical.’*

Art. 13 of the Law made it clear that other criminal offences committed by the press would be dealt with by the ordinary penal law, but the point is that the Decree Law saw no problem in removing the press

It will also be well worthwhile taking note of the modern developments of the (civilian) police laws of African and Asian commonwealth countries¹³ that, in the past, had police laws similar to those of the 1960 State of Somaliland¹⁴.

The long legal history of the Somaliland Police

4. The Somaliland Police Force has a long legal history stretching back to its establishment in the late 19th century as a small armed constabulary to police the coastal towns (Zeila, Berbera, Bulhar, Karan and Heis)¹⁵. In 1912 the Somaliland Camel Constabulary (disbanded in 1914 and not to be confused with the military Somali Camel Corps formed in 1914) was established to police the interior not far from Berbera, with some expeditions beyond. As far as the early police related laws were concerned, the **1899 Somaliland Order in Council**¹⁶ which laid down the criminal (such as Indian Penal Code 1860 and the Code of Criminal Procedure 1898) and civil laws applicable in Somaliland also gave power to the then Protectorate Consul General¹⁷ to make regulations for, among other things, *'the establishment of a constabulary or other force to be employed in the maintenance of order or ... in defence¹⁸ of the Protectorate'* (section 32(ii)). The earliest police law was promulgated in 1913 (the **Somaliland Civil Police Ordinance No. 3 of 1913**¹⁹). The most comprehensive police law which marked the

from suits of criminal defamation under the Penal Code. This was a Decree Law which needed, under the 1960 Constitution conversion into Law, which, as far as I can ascertain, was not so covered and so therefore had a short application period which was overtaken by the last elections in March 1969 and the military coup in October 1969 which ended the freedom of the press. The current [2004 Somaliland Press Law](#) does provide that infringements of the responsibilities set out in Art. 6 of the Law *'shall be dealt with in accordance with the sanctions set out in the Press Code of Conduct and in the other relevant civil laws of the country'*. Yet in a 2007 media 'insult' case, the Somaliland Supreme Court categorised the Press Law as being merely a *'civil law relating to the profession of specific persons and cannot trump the Penal Code and the other laws of the land...'*, thus sweeping away s. 6 of the 2004 Law – a matter that requires reassessment by the Supreme Court in any new similar cases or failing that an express repeal of criminal defamation (SC decision MS/C/7/07 of 25/02/2007 *Yusuf A Gabobe & others v AG of the State*, para 5). For a commentary on the lower court decision in that case see my 2007 Article; ['Using Insult Laws is an Insult to the Somaliland Media and Public'](#).

¹³ Such as the East African countries including Seychelles and Asian countries (such as Malaysia, Pakistan etc.)

¹⁴ For example, a quick look of the current Seychelles police laws will show some similarities with the 1958 Somaliland police legislation and lessons can be learnt from other countries.

¹⁵ By 1906, there was a police complement of 52 mounted and 267 foot police headed by a superintendent of Police (Colonial Reports No. 508, Somaliland Protectorate 1905-6, p. 15).

¹⁶ Orders in Council often dealt with the 'constitutional issues' of the Protectorate.

¹⁷ The title of Consul General was dropped under section 3 of the **1904 Somaliland Order in Council**, and it was stated that His Majesty may appoint a fit person *'to administer the Government of the Somaliland Protectorate under the designation of Commissioner...'*. The title of Governor was adopted from October 1919.

¹⁸ On issues of defence, the Consul General, H E S Cordeaux (who was also Her Majesty's Commissioner and Commander in chief for the Somaliland Protectorate) issued in 1902 the Kings Regulations establishing *'and maintain[ing] in the [Somaliland] Protectorate a battalion of troops to be styled and known as the 6th Battalion of the King's African Rifles'*. The battalion was to form part of the King's African Rifles covering the East and Central African British Protectorates. (Sections 4 and 5 of the King's African Rifles Regulations No. 4 of 28 October 1902). Incidentally, under section 3 of the 1904 Somaliland Order in Council, the title of Consul General was dropped and it was stated that His Majesty may appoint a fit person *'to administer the Government of the Somaliland Protectorate under the designation of Commissioner...'*.

¹⁹ I can trace No copy this old 1911 law which was repealed by the more comprehensive 1927 police ordinance. I understand this 1911 law was based based on the East Africa Police Ordinance No. 4 of 1911.

‘formal enrolment’ or establishment of a nationwide²⁰ police force was, however, the **Somaliland Police Ordinance No. 2 of 16 June 1927** (originally titled the Somaliland Civil Police Ordinance). Despite being a colonial force, the Somaliland police was still a civil (non-military) force which could also be called upon, when necessary to assist the military in defence of the country²¹. Section 70 of the 1927 Ordinance empowered the Governor to ‘*cause such numbers of men and women as he shall think fit to be enrolled as **water police and prison police***’ who shall be police officers under the direction of the Chief Customs and the Superintendent of the Prisons. Both of these functions were later carried out by separate customs and prisons services (see, for example [the Somaliland Prisons Law](#)). The Somaliland Police Commissioner was also responsible for enforcement of the traffic laws, firearms licensing and Immigration (the Police Commissioner was appointed as the Principal Immigration Officer under s. 3 of the Immigration Ordinance No. 4 of 1924 (as amended)) and ‘*shall have charge of the administration of this [1924] Ordinance and may appoint such Assistant Immigration Officers as he may think fit*’. A Criminal Record Office and Finger-Print Bureau were started in 1951 (under the Finger-prints Ordinance No. 2 of 1 February 1948 (as amended) and the Finger-prints Rules, GN 4 of 1948 9as amended).

5. A separate armed rural constabulary (known as the *Illalo* (‘look out’ or ‘guard’ in Somali)) and numbering over 900 men (by 1959), supported the Police Force by bringing offenders to court, guarding prisoners, patrolling townships, and accompanying nomadic herders in their grazing and watering areas. Section 2 of the **Illalo Ordinance No 11 of 24 July 1936 (as amended)** stated that their purpose is to preserve the peace, prevent crime and apprehend offenders against the peace. They ‘*patrol[ed] the countryside and render[ed] assistance to local authorities by enforcing their orders*’ and were recruited from the districts in which they served under the relevant District Commissioner. The head in each district was a sergeant major. It was reported in the 1949 Protectorate Colonial Report that ‘*many of the (Ilalo) men now serving fought gallantly against the Italian invaders in 1940*’. The Ilalo remained a separate force until 1970 when the military government merged them with the police force²².

6. The last comprehensive State of Somaliland police law was the **1958 Police Ordinance No. 2 of 20 February 1958** consisting of 73 sections grouped into 11 Parts, which was accompanied by other linked Police subsidiary legislation²³, remained largely

²⁰ Section.3(1) of the Ordinance stated that the ‘*police force (to be known as “The Somaliland Police”) shall be formally enrolled ...*’ and that it shall act as a police force ‘*in and throughout the Somaliland Protectorate ...*’ (s. 4).

²¹ Section 4 of the 1927 law stated that the police force shall act as a police force ‘*in and throughout the Somaliland Protectorate for preserving the peace and preventing crime, and apprehending offenders against the peace, and as a military force when called upon by the Governor to discharge military duties*’ (underlining added). Note, however, that the obligation to act, when required, as a military force, did not make the police force part of the military forces, as the police (and the Somaliland Prison Service) were always considered to be ‘civil’ forces.

²² Integration of the Ilalo Corps into the Police Force, Law No. 5 of 12 January 1970.

²³ For full Copies of the 1958 Police Ordinance and its linked other police legislation, which were current on the independence of the State of Somaliland are available in a separatt volume of **Somaliland’s Past Police Laws 1911 to 1990** available at <http://www.somalilandlaw.com/police law .html> Examples of the of the other police legislation were: **The Police (Retiring Benefits and Compensation) Regulations, the Police (Leave) Regulations, and and the Police Association Regulations**, all three promulgated in 1958; and the earlier **1951 Somaliland Police Force Reserve Ordinance**. The latter 1951 Ordinance established the reserve force which ‘*shall consist of such persons, resident in the Protectorate who having*

in force (as were other various State of Somaliland laws) until its repeal in 1972. Section 4 of the Ordinance stated that the Force *'shall be employed in and throughout the Protectorate for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of property and the due enforcement of all laws and regulations with which they are directly charged, and, as a military Force when called upon...'* It was only in war or other emergency situations (described in s. 10) that the police might be called to serve as a 'military force' and may be placed under the command of and be subject to the orders of a military authority, but even then these police personnel were to remain under the control of the Commissioner for purposes of 'interior economy' or administrative management. Otherwise, as a civilian force, the Police were subject only to the police laws and regulations and the other laws of the land. The establishment of a Somaliland Police Association²⁴ to *'bring to the notice of the Commissioner and the Governor matters affecting the welfare and efficiency of the members of the force, other than questions of promotion affecting individuals and questions of discipline'* was another indication of a 'civil' police force. The ranks of the police force as set out in s. 5(1) were Commissioner²⁵, Deputy Commissioner, Senior superintendents, Superintendents, Assistant Superintendents, Chief Inspectors, Inspectors, Sub Inspectors, Sergeants major, Sergeants, Corporals and Constables (Askaris).²⁶, and the military ranks only came after the merger with the Somalia police.

Independence of the State of Somaliland and union with Somalia

7. On Somaliland's independence on 26 June 1960 and the birth of the new [State of Somaliland](#)²⁷, the Police Force was headed by the Commissioner of Police and came under the Minister of Interior. The separate Ilalo Force which came under the District Commissioners was put under the control of the 'regional' governor(s). Section 54(1) of the [1960 Somaliland Constitution](#) made it clear that, subject to any changes made after independence *'the existing law [before independence] shall continue to be the law of Somaliland as from the commencement of this Constitution except in so far as it is thereafter amended, modified, repealed or revoked by competent authority but shall be construed with such adaptations and modifications as may be necessary to bring it into conformity with the provisions of this Constitution'*. [My insertion of brackets and underling]. This wording is broadly similar to the current Art. 130(5) of the Somaliland Constitution. With the hasty union of Somaliland and Somalia in July 1960, both

attained the age of eighteen years volunteer for service in the Reserve and are considered by the Commissioner to be suitable for enrolment as Reserve police officers' (section 4). The Reserve may be employed *'for assisting the Somaliland Police Force in the maintenance of law and order, the prevention and detection of crime and the apprehension of offenders'* (section 5). The Reservists (who shall be trained and issued with uniform and equipment) may be called out 'during an emergency' or where any senior police *'considers that an imminent danger has arisen with which he cannot efficiently deal by use of the police officers under his control'*. The 1958 Police Law (see below) introduced Special Constables.

²⁴ The Police Association Regulations, GN No. 44 of 1958.

²⁵ Indeed until June 1962 the Somaliland Police Commissioner retained his title and rank when he was appointed Vice Commandant of the Somali Republic Police Force, which had already appointed an overall Police Commandant and Vice Commandant from Somalia to these posts in June 1960 – DPR (Decree of the President of the Republic) No. 49 of 21 June 1962.

²⁶ This was once explained to me by a former senior (British) police officer, all the police ranks have equivalent status military ranks (i.e Commissioner levels equivalent to General levels down to lower ranks).

²⁷ For more information about the laws in force in the newly independent State of Somaliland see: http://www.somalilandlaw.com/state_of_somaliland_1960.html#Heading

versions (July 1960 and January 1961) of the planned treaty of union between the two independent states of Somaliland and Somalia indicated that the laws in force in the two countries will continue to be in force in the respective territories until they are changed. Secondly, Article 6(2) of the [belated 1961 Act of Union](#) stated that '[t]he Police Forces of Somaliland and Somalia shall constitute the Police Force of the Somali Republic and shall be under the authority of the Minister of the Interior'²⁸. As in many other areas, the integration of the different ranks and laws applied by the two Police Forces presented many challenges, but, perhaps, was not as volatile as that of the integration of the two armies²⁹.

Somalia and Somaliland Police mergers 1960 - 69

8. Briefly, in Somalia, the early coastal police forces led to forces under the Italian Carabinieri until the defeat of the Italian army in 1941. The British Military Administration established in 1941 a Gendarmerie as a police and security force which in 1943 numbered 3000 led by British officers – Somalia's Police still celebrate 20 December (1943) as the anniversary date of their establishment³⁰. In January 1956, the Somalia Police Force composition was reconstituted³¹ after the previously reinstated Italian military force, the Security Force (*Corpo di Sicurezza della Somalia*) was disbanded with effect from 1 January 1956³², with the Somali members joining the police force and Italian officers and members being repatriated to Italy. An Italian Lt. Colonel commanded the Police Force then³³ (as from the same date). By June 1958 there were 5 Somali officers holding the rank of Major and the most senior, Mohamed Abshir, was appointed on December 1958 as the Police Commandant with the rank of Lt. Colonel³⁴. On 24 June 1960, Lt. Colonel Mohamed Ibrahim Ahmed was appointed as Vice Commandant of the Somalia Police Force. (Incidentally, with the formation of the new Somalia Army in April 1960³⁵, another senior police officer, Lt. Colonel Daud Abdulle Hersi (formerly a Major) was appointed as its Commandant³⁶). On 30 June 1960, on the eve of Somalia's independence, the '*Ufficiale Superiore*' of the police and the new army were promoted to the rank of General³⁷. I mention these Somalian developments to point out the fact that there were no pre-union agreements between

²⁸ Unfortunately in various publications, it is stated wrongly that the Somalia Police Force merged with the Somaliland Scouts. The latter was the military force of the State of Somaliland and in fact did not merge with the newly formed (in April 1960) Somalia Army until January 1961.

²⁹ Indeed the merger of the two armies was unceremoniously hurried in respect of the Somaliland military, which remained under the command of British officers until 1 January 1961, whilst the police high command merger of the two police forces did kick start until mid 1962. (See para 10 below)

³⁰ They are welcome, of course, to commemorate the establishment of their police force by the British Military Administration in 1943, The comparable date for Somaliland police force is the establishment of the first nationwide (not confined to coastal areas) police force signified by their establishment Law - Somaliland Police Ordinance No. 2 of 16 June 1927 (even though the re-organisation started in 1926). It was very common during the union of Somaliland and Somalia for Somalian laws and anniversaries to be adopted and celebrated as 'national' Somali Republic laws or anniversaries.

³¹ Decree No. 18 of 1 January 1956.

³² Decree No. 17 of 1 January 1956.

³³ Decree No. 19 of 1 January 1956,

³⁴ Admin Decree No. 063604 of 25 December 1958.

³⁵ Establishment of the National Somalia Military – Law No. 15 of 6 April 1960.

³⁶ Admin Decree No. 20 of 12 April 1960.

³⁷ Admin Decree No. 34853 of 30 June 1960.

Somaliland and Somalia on the distribution of the leading governmental or police/military heads³⁸ after the start of the union.

9. Unlike the Somaliland police force, the Somalia police (including the prisons police and even the Ilalo) had military style ranks and were subject also to the military codes and tribunals (Ordinances No. 78 (the police), 79 (the prison guards), and 80 (Ilalo) of 15/11/1950 and the later updated Law No. 10 of 20 February 1958 relating to military tribunals). The Italian Military Criminal Code (as existing at that time) was further re-confirmed as extending to Somalia in February 1951³⁹. Furthermore, the Somalian (Italian) military laws adopted in 1963 and 1964 which included also a category of 'militarily organised bodies'. In Italy, apparently the national Gendarmerie (the Carabinieri) and the special national financial guards were considered as military forces, but local police forces were not, and the question then was (and is sadly still is in Somaliland) as to the ambit of the category of 'militarily organised bodies' which came to the fore during the dictatorship (see below, paras 12 - 15)

10. The initial merger of the two commands of the two police forces did not start until 1962. A 'back dated' Decree of the President (DPR) No. 48 of 21 January 1962 re-asserted that '*with effect from a 1 July 1960, General Mohamed Abshir is appointed as the Commandant of all Police Force of the Republic*'. The preamble of the Decree mentioned that following the union on 1 July 1960 of Somalia and Somaliland, constituting the Somali Republic, consideration was given to the necessity of the appointment of an overall Commander in chief of all the Police Forces of Republic. This was followed by Decree of the President No. 49 of 21 June 1962 which laid down that the (*Somaliland*) Commissioner of Police, Jama Ali Korshel, shall be appointed as Vice Commandant of the Somali Republic Police Force with '*back dated*' effect from 11 January 1962. The Decree added that Lt. Colonel Mohamed Ibrahim Ahmed shall cease, on that date, to be Vice Commandant of the Somalia Police Force. (On 22 April 1969, Jama Ali Korshel, then a Brigadier General, was promoted to Major General and Commandant of the Police Force⁴⁰).

11. With the command merger of the two police forces, there were no new police laws until 1972 and so technically the respective police laws in the two territories continued to apply subject to command changes and the new administrative arrangements. The two forces continued to enforce the differing substantive and procedural criminal laws⁴¹ until the Somalian (Italian based) Penal Code (was extended to both territories with effect from 2 April 1964 and the new Criminal Procedure Code

³⁸ This was mostly the failure of the Somaliland leaders to negotiate comprehensive terms of union which quickly dawned on them and the public that this was going to be a lopsided union when even few conditions in the Somaliland version of Law of union were rejected the Somalians.

³⁹ Ordinance No. 4 of 20 February 1951 (*Estensione al Territorio dei Codici penali Militari .. vigenti in Italia*)

⁴⁰ DPR No. 65 of 22 April 1969,

⁴¹ Somaliland applied the Indian Penal Code 1860 and the Indian Code of Criminal Procedure 1898 from 1899 but latter was superseded by (the broadly similar) 1926 Somaliland Criminal Procedure Ordinance No. 4 of 6 September 1926 (as amended). Evidential issues (both criminal and civil) were covered by the Indian Evidence Act 1872 since 1899. The Somalia main criminal laws were the Italian Penal Code 1930 and the Italian Penal Procedure Code 1930. Incidentally, the boundaries of Somaliland and Somalia remained unchanged for, among other reasons, the continued application of differing laws until well into the mid 1970s.

(based to a large extent on a combination the Somaliland Criminal Procedure Ordinance and the criminal law provisions of the Indian Evidence Act applied in Somaliland) with effect from 31 March 1965.

The application of military laws in the 1960 -69 period

12. As stated above, the Somalia police (as well as the Ilalo and prisons guards) were subject to military laws and tribunals. New military codes – the [1963 Military Criminal Code in Peace and War](#) (MCC)⁴², the [1964 Military Criminal Procedure Code in Peace & War](#) (MCPC)⁴³ (all based on the Italian military codes) were introduced as being applicable to the whole of the Somali Republic and replaced the Somaliland military laws⁴⁴. Prior to the adoption of these laws, however, a constitutional amendment (in January 1963⁴⁵) added the following paragraph 3 to Article 95 (dealing with the Judiciary in the 1960 Somali Republic Constitution⁴⁶) and so limited the jurisdiction of any military tribunals (courts) in peace time as follows:

‘Article 95(3): The jurisdiction of Military Tribunals in time of war shall be established by law. In time of peace, they shall have jurisdiction only in respect of military offences committed by members of the Armed Forces.’ (*My underlining*)

13. In reflecting Article 95(3) of the 1960 Constitution, Article 1 of the 1963 Military Criminal Code (MCC) defined the persons subject to military criminal law as follows:

‘Article 1: Persons subject to the military criminal law.

1. The Military criminal law applies to all military persons employed in the military service and to those considered to be so employed.

2. The law shall determine in which cases the military criminal law should apply to the temporarily discharged military personnel, definitely discharged military personnel, persons assimilated to the military service, members of the militarily organised civil bodies and any other persons unrelated to the armed forces of the state.’ (*My underlining and also, overall, improved translation*).

14. The term ‘military’ in military service was defined in Article 2(a) of the MCC as the National Army and any other person, who, under the provisions of the law gained such status, but the term ‘armed forces’ was defined as including the ‘military’ and the other ‘militarily organised bodies’. The Somalia 1950s legislation has already laid down that the police including the prisons guards and the Ilalos were subject military law⁴⁷. The term ‘*militarily organised bodies*’ was interpreted as covering the police, but until the military coup of 21 October 1969, the application of the military criminal law to the police (and to the military) was confined to offences set out explicitly in the MCC. Incidentally also the application of MCC to the non-military persons or civilians was also

⁴² Legislative Decree No. 2 of 24 December 1963

⁴³ Legislative Decree No.1 of 1 June 1963.

⁴⁴ The Somaliland military laws which were updated in the 1950s were similar to those in other British protectorates and colonies and their modern versions can now found in Commonwealth countries, such as the East African countries and Scyhellles. See List of main (1960 and beyond) State of Somaliland Laws:

http://www.somalilandlaw.com/State_of_Somaliland_Main_Laws_300660_2_.pdf, (p. 9 – military laws)

⁴⁵ Law No. 6 of 30 January 1963, Article 3(6)

⁴⁶ Copy available at: http://www.somalilandlaw.com/Somali_Republic_Constitution_1960.htm

⁴⁷ Ordinances No. 78 (the police), 79 (the prison guards), and 80 (Ilalo) of 15/11/1950 and the later updated Law No. 10 of 20 February 1958 relating to military tribunals.

limited to persons who aid or abet someone to commit a military offence or who commit some of the specific listed military offences⁴⁸ (Article 11 of the MCC). This was all to change during the military dictatorship.

The Military Dictatorship era and police laws

15. On 21 October 1960, a military coup overthrew the rule of the democratically elected government and legislative assembly. The coup leaders suspended initially⁴⁹ the 1960 Constitution of the Republic and then abrogated⁵⁰ it. The Command of the Police Force was co-opted into the military coup, but the (then) former Police Commandant, Major General Jama Ali Korshel was removed from the Supreme Revolutionary Council (SRC) in 1971. In one of the earliest laws passed by the SRC on 31 December 1969, **the Law on Pensions and Gratuities of the Members of the Armed Forces and Para-military Organisations**⁵¹ (Law No. 6 of 31 December 1969) the 'Armed Forces' were defined as meaning '*the National Army (including the Army, Navy and Air Force) and the Police Force*'. The Custodial Corps and the Illalo Corps were defined as being '*Para-Military Organisations*' (a term used also in the Military Code – see para 13 above) but were still included in the benefits of this Law. The Ilalos were, later, integrated with the Police Force with effect from 1 February 1970 .

The 1970s Police laws

16. The main police law introduced by the military SRC was the (relatively short -29 Articles) **1972 Organisation of the Police Force Law** – Law No. 2 of 23 December 1972. Article 2(1) of the Law stated unequivocally that '*[t]he Police is an integral part of the Armed Forces of the Somali Democratic Republic and hierarchically and organically shall come under the Head of the State, in his capacity as the Commander in chief of the Armed Forces*'. This was the first time that 'the Head of the State' as Commander in Chief of the '*National Army*' also became the Commander in Chief of the police force. In the abrogated 1960 Somali Republic Constitution, Article 75(f) addressed the role of President (elected by the National Assembly) as Commander in Chief of the '*Forze Armate*' (Armed Forces) which, in Italy on which this constitution was based, consisted of the various military branches and did not include the ordinary local police and prisons forces even though the latter may, in some respects in Somalia, such as discipline, come under the military judiciary. In any democracy where the law guarantees the independence of the police (and prosecution authorities) in their law enforcement roles, no head of state can claim to be the 'Commander in Chief' of the Police, a title which involves absolute overall command of the functions and duties of

⁴⁸ These military offences were listed in the MCC as Art. 78: Providing or disclosing confidential information; Art. 120: Abuse of power in the work of workshops or other military laboratories; Art. 124 Forced delivery; Art. 125. Resistance, threat or insult to a sentinel, lookout or guard; Art. 126. Violence to a sentinel, lookout or guard; Art. 129. Holding back dispatch riders; Art. 166. Seditious activities; Art. 168. Subscription for complaint or protest -Military gathering. They are all primarily offences committed by civilians in military areas.

⁴⁹ The First Charter of the Revolution preamble which also changed the previously agreed (in the Acts of Union) and the 1960 Constitution the name of the country from Somali Republic to the Somali Democratic Republic (*Repubblica Democratica Somalia*).

⁵⁰ Decree of the Supreme Revolutionary Council (SRC) No. 38 24 February 1970.

⁵¹ Copy of this 1969 Law and other 1970s Police laws set out below are available in Part Three of the ***Somaliland's Past Police Laws 1910 to 1990*** Compilation.

the military forces. It was, however, the kind of power that a military dictatorship bestowed on itself which included absolute power over all state activities including the judiciary and the courts. Furthermore, although, as set out below, this 1972 Police Law keeps (with some military related modifications) the pre 1969 position of the police coming under the Ministry of Internal Affairs, by 1977, the law was amended and the police force was brought directly under the SRC president who was, by then, titled the President of the Somali(a)⁵² Democratic Republic.

17. On the 'deployment' of the police force (which is usually a matter within the purview of the Police Commandant) Article 2(2) of the Law stated that it *'shall come under the Secretary of State for Interior who may issue directives relating to the general policy of the operational activities of the Police'*. The Commandant of the Force was said to *'have the command and the effective responsibility of the operational activity of the Police Force'* (Article 20(2)). Exceptionally, the Law stated that the Commandant of the Police Force *'may be selected from among the generals and colonels on effective permanent service in the Police Force or from the other Armed Forces'* (Article 3(1)) (underling added). However, under Article 2(3), the organisation of the police force *'shall be inspired by the principles of democracy (?) and of scientific Socialism proclaimed in first and second Charter of the Revolution'* issued by the coup leaders on the day of the coup.

18. The Law re-confirmed the military ranks of the Force (Article 23) and stated that *'the members of the Police Force, in their capacity as members of the Armed Forces, shall be subject to the Military penal laws in force and to the provisions established by the Police Regulations'* (Article 14(3)). This is indeed now the position adopted in the 2017 Somaliland Police in sharp contrast to the plan in the 1995 Police Regulations which only adopted this pre 1990 position provisionally until the new Somaliland police laws were enacted, and was also sadly a clear departure from the proposed civil force status for the Somaliland police in the first 2011 new draft police bill.

19. The **1973 Police Regulations**, Decree of the President of the SRC No. 14 of 4 January 1973 were issued under the 1972 Law consisted of 63 Articles grouped into ten Parts⁵³. Earlier in 1970, The Ilalo Corps was merged with the Police Force in 1970 (Law No. 5 of 17/1/1970⁵⁴). Furthermore Law No. 13 of 3 February 1977 titled **'Somali Police Force Structure to come under the President of the SDR'** stated, in Article 1, that *'the Police Force established under Law No. 2 of 23 December 1972 which was structurally attached to the Ministry of Internal Affairs shall, as from 3 February 1977, come directly under the Office of the President of the SDR'*. Finally Law No. 30 of 13 August 1979 titled **'Reform of the Uniform and Equipment of the Somali Police Force'** (in Somali only) set out in detail the uniform, kit and military equipment of the police force.

Post 1991 Somaliland Republic Police laws.

⁵² The official Somali version of the Siyad Barre 1979 Constitution was titled the Somalia Democratic Republic ([Dastuurka Jamhuuriyadda Dimoqraadiga Soomaaliya](#)).

⁵³ Some of the Regulations were based on similar provisions in the Somaliland 1958 Police Ordinance (see above), which was possibly due to the fact that, from February 1970 to December 1974, the Commandant of the Police Force, Jama Mohamed Ghalib, was formerly a member of the Somaliland Police.

⁵⁴ [Law No. 5 of 17/1/1970](#)

20. In re-asserting their sovereignty on 18 May 1991, after suffering in the 1980s what was described as a targeted Somalia ‘Government at War with its People’, the first [1993 Somaliland National Charter](#) laid down that only laws in force in Somaliland before 20 October 1969 (the day before the military coup on 21 October 1969) shall be applied in Somaliland so long as they are not in conflict with Islamic Sharia or with the fundamental rights and freedoms of the individual. The newly elected President Mohamed I Egal set out to introduce a body of essential laws covering the civil service, public finance, criminal law and procedure, immigration, civil law and procedure⁵⁵ etc (primarily from the pre October 1969 era) were adopted in a **Presidential Decree** titled **Implementation of Laws** (RSLP,/D.119/1093 of 16 October 1993). When it came to the Police laws. with the reestablishment of a Somaliland Police Force in November 1993, the short re-establishment laws did not implement directly the 1972 Police Law and the 1973 Regulations, but the Somaliland Police Regulations contained many of the provisions of the the 1970s legislation and significantly adopted the presidential police commander-in-chief formula which as I have explored above was not explicitly in the pre October 1969 Constitution.

Final Summary highlights of the Republic of Somaliland Police Laws

21. With the formal re-establishment of the Somaliland Police Force on 2 November 1993, the initial police laws addressed the local and national forces in, for example the **Law on the Structure of the Somaliland Police Force No. 54/1994 of 3 November 1994** which was amended in 1995 (Law No. 7/95) so that the local police forces were added to the national police force⁵⁶. **The Somaliland Police Regulations 1995** (Regulations No. RSLP/D-1.131/95) consisting of 88 Articles and covering all aspects of the police force establishment, structure and ranks, recruitment, condition of service, discipline etc. were also issued in 1995⁵⁷. Despite the injunction in Article 31(1) of the **1993 Somaliland National Charter**⁵⁸ to the effect that that only pre 20 October 1969 laws that do not with Sharia or the fundamental rights and freedoms could continue to be used, the 1995 Police Regulations were almost entirely based on pre 1972 Police Law and 1973 Police Regulations, hence the critical examination above of the retention of the ‘military’ status of the police force, albeit on ‘a provisional’ basis. At the same time, it was declared in Article 2(3) that ‘*the structure of the Police Force shall be based on democratic principles of widening (or de-centralisation of) the administration of the country*’. Nevertheless, the preamble to the 1994 Police Structure Law reference to fact that Article 14(7) [*i.e Article 15(7)*] of the National Charter listed, among the powers of the President, as being the Commander in chief of the National Force (*Ciidanka Qaranka*) (which as I have explained above is, in my view, referring to the military force) appears to indicate an element of reliance on the 1972 Police laws, which were

⁵⁵ On Civil law and civil procedure, both codes of which were introduced in the 1970s, but in the light of the non-availability of the pre 1970s Somaliland (Indian and British civil laws applicable in these areas), the 1973 (Egyptian based) Civil Code and the 1974 Civil Procedure Code (actually Italian based, but wrongly identified as being of Arab origin, as well) were also adopted in the same decree.

⁵⁶ A consolidated copy of these early laws are available at:

http://www.somalilandlaw.com/police_law.html

⁵⁷ The Regulations were also slightly amended by Article 4 of Law 07/95

⁵⁸ The National Charter: http://www.somalilandlaw.com/somaliland_national_chartercha.htm

perhaps more readily available (and known to those who served in the police force in those years) than either the 1960 constitution or the previous Somaliland police law.

22. It took until 2011 for a new draft Police Law police law (approved by then Minister Internal Affairs) that was based on Article 124⁵⁹ of Somaliland Constitution to state that

'Article 5 Somaliland Police

In accordance with Article 124 of the Constitution, there shall be a civilian police force of Somaliland to be known as 'the Somaliland Police''

The draft law consisting of 66 articles was apparently turned down in the end because of the fact that it stated in Article 6 that the membership of the Somaliland Police Force shall *'comprise of the Somaliland Police Force and the members of the Somaliland Maritime Force'*. Whilst, I understand the objection to the lumping together of these two forces, it was, in my view, correct that Article 124 of the Somaliland Constitution does indeed propose a police force and a corrections corps which are entirely separate from the military 'armed forces' covered by the different Article 123⁶⁰. As explained above the last version of the draft police law submitted to the House of Representative in 2012 was entirely different and followed 1972 -3 police legislation on the issue of the military status of the Somaliland Police Force and their 'Commander in chief 'being the nationally elected president of the democratic Republic of Somaliland.

23. The 2012 version of the draft police laws was, in contrast to the preceding first and second draft of the law distinctly different in that police accountability and community consultation in a democratic society (including independent oversight and review which was covered more amply in preceding first draft) was barely addressed. The

⁵⁹ 'Article 124: The Police and the Corrections Forces

1. The Police Force shall be responsible for protecting the peace and for enforcing the law, and its structure and duties shall be set out by law.

2. The Corrections Force shall be responsible for guarding and reforming prisoners and its structure and duties shall be set out by law.'

'Qodobka 124aad Ciidamada Booliiska Iyo Asluubta

1. Ciidanka Booliisku waxa uu u xilsaaran yahay ilaalinta nabadgelyada iyo dhaqangelinta xeerarka; qaab-dhismeedkooda iyo waajibaadkoodana xeer ayaa qeexaya.

2. Ciidanka Asluubtu waxa uu u xilsaaran yahay haynta iyo toosinta akhlaaqda maxaabiista; qaab-dhismeedkooda iyo waajibaadkoodana xeer ayaa nidaaminaya.'

⁶⁰ Article 123: The Principles of the National Armed Forces

1. The national Armed Forces shall be responsible for protecting and defending the independence of the country. In addition, they shall, when needed, undertake duties in periods of state of emergency, in accordance with the Constitution.

2. The national armed forces shall always obey and act in accordance with the Constitution and the laws of the country.

3. The structure (*and composition*) of the national armed forces shall reflect all the various Somaliland communities[213].

4. The person who is appointed as Minister of Defence shall be a civilian citizen.

5. The command structure of the national Armed Forces shall be determined by law.'

'Qodobka 123aad: Mabaadi'da Ciidanka Qaranka

1. Ciidanka Qaranku wuxuu u xil-saaran yahay ilaalinta iyo difaaca madaxabannaanida dalka; waxa intaa u dheer marka loo baahdo hawlaha xilliga xukunka degdegga ah ee waafaqsan Dastuurka.

2. Ciidanka Qaranku waxa uu had iyo jeer u hoggaansamayaa oo tixgelinayaa Dastuurka iyo xeerarka dalka.

3. Dhismaha Ciidanka Qaranku wuxuu ka koobnaanayaa dhammaan deegaannada Somaliland.

4. Qofka loo magacaabay Wasiirka Gaashaandhigga waa inuu ahaadaa muwaadin madani ah (Civilian).

5. Qaab-dhismeedka ciidanka Qaranka xeer-baa nidaaminaya.'

2012 draft law was finally approved by both Houses of Parliament⁶¹ and forwarded to the President for signature on 15 January 2014. The Vice President (acting on behalf of the President) returned the Bill or draft law to the HoR on 3 February 2014 (as he is entitled to do so under Art. 78(3) of the Constitution) and set out the provisions of the Bill to which he objected. [*I have set out in the footnotes to the English translation a summary of the proposed presidential objections under their relevant articles*]. There is no set time limit for reconsideration of returned bills by the HoR, but under Art. 78(4) of the Constitution, the HoR can pass the law again on a two thirds majority vote, in which case, the President will have to accept the Bill, as passed. If, however, the House cannot muster such qualified majority vote and do not accept the President's proposed changes, then the Bill (draft law) lapses. On 3 December 2018, the HoR considered the presidential objections and decided on a vote of over two thirds majority to reject all the presidential objections and approve again the text of the Law that they approved before on 29 December 2013. The President signed the Law on 26 December 2017, and, as set out in Article 51 of the Law, it came into force on its signature by the President on that date. The Law was gazetted on 6 January 2018, but apparently has not been fully implemented as the Government sought further changes that are similar to the ones previously rejected by the parliament

24. The further Governmental proposals for changes to the 2017 Law, which were largely similar to the 2014 proposed changes were considered by the HoR relevant Committee in mid-2018, and the HoR then passed amendments which, in many respects were different from Governmental proposals, as can be seen from this final text they approved on 1 December 2018, which is available in this compilation in Somali. I have noted in italics under the relevant translated current provisions of the Law, the proposed changes the HoR have approved, which are now with the House of Elders (HoE). On 18 December 2018, the HoE referred the Bill to a Committee and then rose for the recess. ***Briefly the HoR Amendments affect Articles 6, 10, 12, 16, 17, 32, 34, 35, 36, 37, 44, 45, and 46 of the Law.*** As mentioned above, I have included here, for ease of reference, a consolidated Somali copy of the current Law with the HoR proposed changes noted in their relevant places. The HoR numbering of the articles of the amending bill still requires revision.

'Back to the future' Final comments

25. Somaliland had a long legal history of 'civil' policing and it was only after the union with Somalia and the merger of two police forces that 'military' status of policing has overtaken that past history. The previous Somaliland police laws were finally repealed fully in 1972 during the dictatorship era when the police was fully co-opted into the military and the reach of the military law, even to civilians, was widely extended. Although the use of pre 1991 laws is acceptable, subject to express conditions, under Article Article 130(5) of the Somaliland Constitution, it is difficult to comprehend why

⁶¹Briefly, the draft law was first considered by the House of Representatives Internal Affairs Committee and the House in June/July 2012 and December 2012 when it had its first reading. It had its further reading in June 2013 and September 2013, and was passed, with amendments, by the House of Representatives (HoR) on 5 October 2013 (on a vote of 35 for, 3 against and 10 abstaining). The House of Elders (HoE) considered it speedily and approved it, with amendments, on 29 October 2013. The HoE considered the HoE's amendments and approved the amended again the draft Bill on 29 December 2013 (on a vote of 45 for and 10 abstentions).

the military status of policing which was already described in 1995 as being only 'provisional' has being re-affirmed in the first police law that was passed 22 years after the 1995 police legislation. It is incongruous to state in the 2017 Law that Somaliland Police Force 'shall be independent in the performance of its functions' (Art. 8(2)) and at the same time confirm that it is a military force, subject to the dated (Italian) military law as amended by the military dictatorship, and under the over all command of the popularly election President in a democratic country. A military force cannot be subject to accountability outside its command structure and it is not surprising that the modest accountability requirements proposed by the House of Representatives were repeatedly resisted.

OUR MISSION: We, the Somaliland Police will work with the Somaliland people to uphold our Constitution, human rights and the rule of law, and will maintain strong community partnerships against crime, which will support Somaliland's social, economic and political development.
(April 2010 National Charter for the Somaliland Police)

26. The African Commission on Human and Peoples' Rights adopted a 'Resolution On Police Reform Accountability And Civilian Police Oversight In Africa' in 2006⁶² in which, among other things it expressed its concern -

'that in many of the African States, there exist no independent policing mechanisms, to which members of the public may report police misconduct and abuse of their powers for redress and that where they do, they are directly under the police authorities';

and noted that -

'accountability and the oversight mechanisms for policing forms the core of democratic governance and is crucial to enhancing rule of law and assisting in restoring public confidence in police; to develop a culture of human rights, integrity and transparency within the police forces; and to promote a good working relationship between the police and the public at large'.

The Commission then urged all African states to '***establish independent civilian policing oversight mechanism, where they do not exist, which shall include civilian participation***'.⁶³

27. The Somaliland Police Force has achieved considerable progress in maintaining public order and combatting serious crimes and it has also maintained the support of the community. There is no reason why it cannot retain its current rank structure but the way forward is for the Somaliland Police (and the prisons, as well as the new coastguard, forces) to re-claim their non-military status prior to the the union with Somalia and adapt the modern versions of our 1960 laws which are used by many African and Islamic police (and prisons corps) s that are armed and have updated laws similar to to the previous Somaliland laws. As illustrated in the 1958 Somaliland police laws, a police force can have rank and discipline structure without being subject to military laws and courts – hence my reference to '*going back to the future*'.

28. It is also important that the Somaliland Government and Parliament should start the long overdue law reform of old pre 1990 laws as enjoined by Article 130(5) of the

⁶² ACHPR at its 40th Ordinary Session held in Banjul, The Gambia, from 15th to 29th November, 2006. Accessed at: <http://www.achpr.org/sessions/40th/resolutions/103a/>

⁶³ For examples of some of the changes made by African countries, see the following reports:

Constitution and to seek international assistance for a comprehensive law reform programme, starting with laws that impinge on fundamental human rights and freedoms enshrined in the Constitution. Countries that come out of oppressed rule of dictators often undertake a root and branch reform of the old laws and whilst many of the draconian military security laws have been informally disapplied, it is time that police (and military) pre-1991 legislation are aside.

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