Policy brief

Citizens without states

The implications of non-recognition for people in de facto states

Theo Tindall
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Key messages

International non-recognition of de facto states has clear negative political, social and economic effects on civilians living in those territories.

International approaches to engaging de facto states and authorities remain ad hoc. However, the range of policies adopted by international actors under the umbrella of 'engagement without recognition' indicates that there is greater scope for engaging de facto states than the limits of non-recognition would suggest.

There is significant room for further research into the political viability of different approaches to engagement with de facto states, and for developing policies to address gaps and inconsistencies in current forms of engagement with de facto states.

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About this publication

This paper is a joint output of ODI and the Centre on Armed Groups. The Centre supports efforts to analyse and engage with armed groups to reduce violence and end armed conflict. It does so through conducting innovative research, creating spaces for dialogue, and providing advice.

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Introduction

To look at a map of the world, it would appear that its landmass has been divided into a complex, but clearly defined, tapestry of distinct entities – the 193 member states of the United Nations (United Nations, n.d.a). However, within many of these de jure states there exist numerous other forms of governance which claim de facto authority or statehood – in some cases, they claim authority over a state's whole territory instead of the internationally recognised (de jure) government (as in Afghanistan, Myanmar and Yemen), while in others they claim the independence of a part of an internationally recognised state's territory (as in the cases of Somaliland, Abkhazia and Transnistria).

Given the range of different forms of governance, ideologies and political aims they have, de facto entities share little beyond their formal exclusion from the international system. Indeed, de facto states and authorities can be seen as lying on a spectrum of 'stateness' – at one end, they may approximate cases of 'rebel governance',[1] while at the other extreme de facto states may fulfil many of the typical qualities of statehood and be deeply integrated into international political and economic systems (as in the cases of Kosovo and Taiwan). While not usually considered 'de facto', certain sub-national units which claim a high degree of autonomy from a central government – such as Puntland in Somalia or Iraqi Kurdistan (as of 2005 an autonomous region in Iraq) – exhibit many of the same political and economic characteristics, and face many of the same challenges, as 'true' de facto states (Johnson and Smaker, 2014; Jüde, 2017).

The vast differences between these various entities described as 'de facto' (or other equivalent terms) points to the fact that it is an externally applied and politically determined label, which tells us little about the diversity of the entities labelled as such. The decision to attach the label 'de facto' may have either a legitimising or delegitimising effect according to the circumstances in which it is applied. Designating armed groups in North East and North West Syria as 'de facto authorities' serves to legitimise them, for example, while in the case of the Taliban the label is a delegitimising one. At an analytical level, to call a state 'de facto' is an acknowledgement of the empirical fact of its existence in the absence of universal recognition; at a policy level, that same act of non-recognition is a political decision with clear and profound consequences for the lives of the millions of people living under de facto governance around the world.

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1   Indeed, the LTTE (Liberation Tigers of Tamil Eelam) and armed groups such as Karen National Liberation Army and Kachin Independence Army in Myanmar are mentioned in both the 'rebel governance' and 'de facto state' literatures (see Mampilly, 2015; Aliyev and Souleimanov, 2017; Dembinska and Campana, 2017; Brenner 2019).

De facto entities therefore occupy a key place in the international system even as they are unable to participate fully in it. However, non-recognition of statehood is not merely a question of denying symbolic recognition, but a political decision with complex ramifications for those living in unrecognised entities – whose lives are shaped in profound ways by the uncertainties and exclusions caused by living in political entities which are denied formal recognition.

While there have been some academic studies of domestic politics in de facto states (see Broers, 2013; O'Loughlin et al., 2015), these have tended to focus on the geopolitical dimensions of de facto states, with one notable strand exploring pathways for bilateral and multilateral 'engagement without recognition' (de Waal, 2018; Ker-Lindsay, 2018). The effects of engagement and (non-) recognition on civilians in areas of de facto governance have received less attention, particularly from a policy perspective. This briefing note offers an initial overview of the political, economic and social implications of non-recognition for de facto states, looking specifically at the ways in which it influences and shapes the day-to-day experience of life in unrecognised territories.

Just like civilians in areas governed by armed groups, and communities in areas of criminal group control, those living in de facto states are actively engaged in navigating the uncertainties, risks and challenges of life in an unrecognised entity (Jackson, Weigand and Tindall, 2022a; Jackson, Weigand and Tindall, 2022b). This note offers a perspective on how non-recognition and the various policies of 'engagement without recognition' adopted by international actors shape the lives of the inhabitants of de facto states. The paper is part of a programme on relations between civilians and armed groups conducted by the Centre on Armed Groups in partnership with ODI. This programme explores how armed groups and other non-state authorities influence and exert control over civilians – and how civilians negotiate life under their control. The objective of this paper is to shed further light on the demands of and possibilities for engagement with de facto states in their varied forms and capacities, and to encourage more detailed study of how people living in de facto states interact with and shape the political regimes in which they live.

What it means to be de facto

The term 'de facto' is used extensively in the academic literature to refer to a range of entities that aspire to be internationally recognised as governing a territory but have no, limited or provisional international recognition of their claims to statehood. Within the broader category of de facto entities, we can identify two sub-categories: de facto states – regions of internationally recognised states governed as a separate state and which seek formal international recognition of their independence (Somaliland, Transnistria and Northern Cyprus are all examples); and de facto authorities or governments which claim authority over the entire territory of a recognised state in place of the internationally recognised government (at time of writing, examples include the Taliban in Afghanistan, the Houthis in Yemen and the military governments and regimes of Burkina Faso, Guinea, Mali, Myanmar, Niger and Sudan).

A similar distinction can be made between de jure states and authorities. De jure states – the 193 recognised UN member states – do not always correspond neatly with de jure authorities (often referred to as internationally recognised governments) which may control only a limited part of their territory (as in the Central African Republic, Libya or Myanmar) or none at all (as in Afghanistan) but nevertheless are recognised by the 'international community' as that state's legitimate government and continue to be treated as such (for example, by continuing to represent that state in the United Nations General Assembly).

While the international community in general avoids judgements on the legitimacy of individual states' governments (in other words, they adhere to the principle that states recognise states rather than governments (see FDFA, n.d.)), the UN is nevertheless required to pass judgement in cases when multiple authorities claim to represent a member state. In these cases the Credentials Committee, acting under the guidance of UN General Assembly Resolution 396(V),[2] is called upon to adjudicate. An overview of cases from 1945 to the present indicates that there are no clearly defined principles on the basis of which decisions are made. Instead, criteria including territorial control, democratic legitimacy and respect for international human rights standards are considered on a case-by-case basis (Myanmar Accountability Project, 2021).

The designation 'de facto' itself does not have one singular meaning, even within the academic and legal literatures. 'Statehood' too remains poorly defined – as Crawford (2006: 37) notes, 'there has long been no generally accepted and satisfactory legal definition of statehood'. The use of the term 'de facto' (or equivalents such as a prefatory 'so-called' or inverted commas (as in 'president' or 'government') (Bryant and Hatay, 2020)) instead 'indicates an acceptance,

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2   '[W]henever more than one authority claims to be the government entitled to represent a Member State in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case'.

for practical purposes, of the authorities in control of a territory' (Coppieters, 2018), while still withholding any endorsement of that claim to authority. Thus, when employed analytically, the term 'de facto' serves to recognise a political reality (and a deviation from the significantly more clearly defined boundaries and responsibilities of de jure governance); however, in diplomatic and political fora, designating an entity as 'de facto' has clear political implications – it is at once an act of acknowledgement of that entity's existence and a simultaneous refusal to grant it the legitimacy of full recognition.

This note focuses on de facto states, recognising the overlaps in the challenges of engaging with de facto states and with other forms of de facto governance. A better understanding of the consequences of non-recognition for de facto states and those living in them can offer insights into the policy options open to actors wishing to engage in more productive ways with all kinds of de facto entities.

'De facto statehood'

Despite the growth of a substantial body of literature on 'de facto states' over the past three decades (Pegg, 2017), the criteria used to define 'de facto statehood' vary substantially between analyses. Florea (2014) identifies 34 de facto states in existence between 1945 and 2011, while other scholars, adopting more exclusive criteria, have counted significantly fewer. In a case study of European de facto states, de Waal (2018) argues that, of the non-recognised entities in the former Soviet Union, only Abkhazia and Transnistria should be considered 'de facto states' (while South Ossetia, Nagorno-Karabakh and the Donetsk and Luhansk People's Republics should not, due to their limited international relations and low degree of autonomy from their patron states).

This note uses a broad definition of 'de facto states' – focusing less on the specific parameters or typologies of different kinds of de facto governance, and aiming instead to sketch out some of the key ways in which non-recognition and the absence of fully fledged statehood have not only symbolic consequences, but also very real effects on both the forms of governance adopted by de facto states, and the day-to-day lives of the people living in them.

Case studies analysed for this report include Somaliland, the Chechen Republic of Ichkeria, Tamil Eelam, Nagorno-Karabakh, Transnistria, South Ossetia, Abkhazia and Northern Cyprus. Additionally, Western Sahara, Kosovo and Taiwan are sometimes considered de facto states. De facto authorities have also been analysed at the sub-national level – including Puntland, Iraqi Kurdistan and Marib governorate in Yemen (Johnson and Smaker, 2014; Jüde, 2017; Jautz et al., 2022). In Syria, the governments of opposition-controlled areas have also been described as de facto entities, pointing to the unclear distinction between 'rebel' and 'de facto state' governance (see Beaujouan, 2021).

De facto states can be thought of as occupying an intermediate point between 'rebel groups' and internationally recognised states, both in terms of the sophistication of their governance institutions and the degree of international engagement they enjoy. However, at its limits this boundary is unclear. Like many 'rebel' groups, de facto states seek independence from a state whose legitimacy they reject, and like many de facto states, 'rebel' groups seek legitimacy by developing relatively complex symbolic and material governance structures (Mampilly, 2011). At the other end of the spectrum, de facto states like Taiwan function much like any other state in both their domestic politics and international relations, even as they lack the formal status of de jure statehood and recognition by most other states.

The consequences of non-recognition

External (non-)recognition by international states has very real implications at the international and domestic levels for de facto states, to which their authorities, governments and inhabitants respond in a variety of ways.

This section explores some of the empirical consequences of non-recognition – both for the governance of de facto states, and for the everyday lives of people living in them. It breaks these down into three broad categories – political, economic and social – and addresses both the international and local dimensions of each of these categories.

Political

The single feature which unites all de facto states is the absence of universal recognition. However, the way in which this non-recognition manifests in practice varies hugely. For some, such as Kosovo (recognised by around 100 states (Buchholz, 2023)) or Taiwan (recognised by 13 (Curtis, 2023)), being 'de facto' may not come at the expense of extensive integration into the global economy and participation in international political processes. Palestine, meanwhile, has obtained only observer status at the UN, despite recognition by 139 states (Palestine UN, n.d.). Others, such as Abkhazia and Northern Cyprus, have extremely limited foreign relations, and are dominated by their close relations with their patron states (Russia and Turkey, respectively) and antagonism with their parent states (Georgia and Greece).

However, even in the absence of international recognition, de facto states can pursue active foreign policies and international development assistance can still flow into de facto states in significant volumes. Taiwan has a substantial network of 'de facto' embassies (Taiwan ROC, n.d.), while Abkhazia, Somaliland and Iraqi Kurdistan (the latter of which, it should be noted, is not actively pursuing independence from the Iraqi state) all maintain quasi-diplomatic offices in a number of states (Hoch and Rudincova, 2015; Ministry of Foreign Affairs of the Republic of Abkhazia, n.d.; KRGa, n.d.). Numerous countries have established consulates in Iraqi Kurdistan, and the UK has an office in Hargeisa, Somaliland's capital, as do a handful of other states including Ethiopia, Turkey and the United Arab Emirates (FCDO, 2023; Embassy Pages, n.d.; KRGb, n.d.).

Despite being recognised by no other state, Somaliland also receives significant international aid, primarily through INGOs and multilateral agencies. However, as the UN does not recognise Somaliland as separate from Somalia, often referring instead to the "18 pre-war regions of Somalia" in official publications, measuring the value of aid spent in Somaliland is challenging, leading Somaliland government representatives to complain of the 'uphill struggle' of tracking UN and INGO spending in Somaliland (Philips, 2020). The 2023 Humanitarian Response Plan for Somalia deals jointly with Federal Government of Somalia-controlled Somalia, Somaliland and Puntland, drawing into question the degree to which the international intervention is structured to address the vastly different political circumstances in each of these territories (UN OCHA, 2023).

Even within these structural limitations, there is some degree of both flexibility and inconsistency in international approaches to engagement with and in de facto states. The Somalia HRP does at points recognise the existence of Somaliland's de facto government – for example when acknowledging the role of the Somaliland Ministry of Defence in coordinating demining action. The Somaliland Development Fund (SDF), jointly funded by the UK, the Netherlands, Norway and Denmark, works directly with Somaliland ministries on areas including health, education and agriculture (SDF, 2020; SDF, n.d.).

As far as possible, the European Union (EU) avoids engaging with de facto authorities in non-recognised territories in Europe (despite the fact that it must negotiate with those same authorities in order to operate in areas under their control). As such, the EU works primarily with civil society, business and other 'non-political' entities – an approach 'based on the fiction that businessmen or civil activists exist in a virtual space without a state, recognized or not, or the policies set by a de facto government' (de Waal, 2018: 75).

The UN, meanwhile, engages with de facto states in order to fulfil a wide range of objectives, including in the areas of peacebuilding, humanitarian access, development cooperation, protection of civilians and promoting respect for human rights. The UN's approach to engaging de facto entities has, however, typically been both cautious and uneven, and is in most cases complicated by member states' political goals, and the absence of consensus on approaches to engagement in the UN Security Council and General Assembly.

Non-recognition, therefore, does not rule out the possibility of international engagement; instead, it shapes the kinds of engagement that are possible. The exact forms of engagement that take place vary dramatically according to the political circumstances of different de facto states, and are determined through the interactions of the different interests and demands of de facto states' governments, the populations of their territories, patron and parent states and the 'international community' as a whole.

In(security)

Non-recognition has clear and significant effects on the domestic political economies of de facto states and, as such, on the lives of people living in them. One of the clearest examples of this is the insecurity inherent in living in an internationally unrecognised entity whose claims to statehood are disputed or threatened by their parent state. In some cases, the precarity of de facto states' position leads their governments to spend heavily on security at the expense of other forms of social support. In Somaliland, the World Bank estimates that, in 2002–2011, on average 51.1% of the budget was allocated to the security services (Pegg, 2017). In neighbouring Puntland in 2014–2015 an estimated 60% of the state budget was spent on security (Varming, 2019).

In the border regions of de facto states, people are often exposed to significant risks, particularly where individuals must interact with overlapping or competing political orders. In the so-called

Donetsk and Luhansk People's Republics in Ukraine, pensioners were forced to regularly cross the Line of Contact to collect their pensions after the Ukrainian government stopped making social security payments in the occupied territories (Marandici and Lesanu, 2021). In Abkhazia, ethnically Georgian returnees navigate uncertain 'riskscapes' in order to cross between Abkhazia and Georgia proper (Lundgren, 2018).

Economic

High insurance costs, weak integration into global financial systems and risks stemming from political and legal uncertainties all ensure that foreign investment in de facto states is generally limited. As a result, de facto states are economically reliant on a small pool of interested external actors, namely donors, patron states and diaspora communities. For de facto states strongly reliant on a single patron – such as Transnistria or Abkhazia (around 95% of whose trade is with Russia (de Waal, 2018)) – this leads to clear patron-state dominance of national economies (and significant – if not total – influence over their politics). Likewise, South Ossetia is a sparsely populated and economically unviable statelet politically, militarily and economically maintained by Russian interests (de Waal, 2018). At the other extreme, Taiwan's integral position in the semiconductor industry has given it a crucial role in the global political economy (Miller, 2022).

Just as non-recognition does not completely prevent international development assistance, so too does it not totally cut off private financial flows. The four former Soviet de facto states have received significant remittance payments from diaspora communities (Fischer, 2016), while the Somaliland diaspora has provided over $700 million in remittances annually, compared to a 2018 annual government budget of $382 million (Kilcullen, 2019). Large-scale investment, however, remains the exception rather than the rule. One notable case of private investment is the $442 million contract signed by Dubai-based company DP World to develop Berbera port in Somaliland, alongside a $250 million deal to build a highway connecting Berbera with Ethiopia (Philips, 2020). This large international investment can be explained by Somaliland's geopolitical importance to Ethiopia, which lacks access to the sea, and to the UAE, which is increasingly politically active in both the Horn of Africa and Yemen (ICG, 2018).

Given their extremely limited prospects for 'legitimate' development, de facto states in many cases become hubs for illicit or illegal trade. In the so-called Donetsk and Luhansk People's Republics, a complex criminal economy based around the smuggling of licit and illicit goods flourished between 2014 and 2022 (Galeotti and Arutunyan, 2022). Northern Cyprus has become a hub for human trafficking and the sex industry. In Transnistria, a trade in smuggling counterfeit and contraband goods has developed (with the collusion of figures in Moldova and Ukraine). One theory suggests that an agreement signed in 2012 between Tiraspol and Chisinau allowing freight traffic to pass through Transnistria was intended to facilitate the trafficking of contraband cigarettes (de Waal, 2018).

Social

Finally, non-recognition has a significant impact on the social lives of people living in de facto states. One effect of parent states' resistance of any attempts by de facto states to acquire the 'symbolic' trappings of statehood is that legal documents, currencies and domestically issued licences are of limited value elsewhere. As passports – alongside birth, marriage and death certificates – issued by de facto states are unlikely to be recognised in other countries, many of their inhabitants opt to take the passports of their patron state (as in the case of the 150,000 people in Abkhazia who took Russian citizenship following the expiration of their Soviet passports in 2002), or their parent state (as in the cases of Transnistria and Northern Cyprus). Non-recognition of university accreditations has clear consequences for individuals' capacity to access higher education in other territories. As de Waal (2018: 7) observes: 'The challenge of living in a de facto state is summed up by the drop-down box on an internet form that asks which country a person lives in. If Abkhazia or Transnistria is not listed, the person faces an immediate problem'.

However, in this case as in others, the possibilities for engaging de facto states are more extensive in practice than on paper. France, the UK and the US have for many years accepted Turkish Cypriot passports as valid travel documents (de Waal, 2018), while since 2018 a Somaliland passport, when presented alongside a residence permit, is accepted by the UK as a valid travel document (Somtribune, 2018).

Similarly, while the legal status of de facto states, as well as the application of international human rights law to them, remains uncertain, there is growing consensus that de facto entities exercising a government-like function (ranging from armed 'rebel' groups to de facto states) are covered by international human rights law and international humanitarian law (see Heintze, 2010; Tan, 2019). The European Court of Human Rights has placed responsibility on patron states for claims raised against de facto states by outsiders in cases involving Transnistria and Northern Cyprus (in this instance, Russia and Turkey). The picture for those living in de facto states is less clear. British case law has, for example, established a precedent holding that de facto states exercise legal and political authority over their citizens in everyday matters (de Waal, 2018). However, the scope for enforcement of such rulings in unrecognised states is likely to be extremely limited.

The drastic limiting of the life prospects of people in de facto states is one major result of the political and economic effects of non-recognition, and drives a process of continuous emigration, in turn further reducing the prospects for social, economic and political development. While precise statistics are hard to come by (perhaps unsurprisingly, given the resource demands of conducting a census and the political undesirability for de facto states' governments of publicly acknowledging a decreasing population), scholars have observed a trend of depopulation in the former Soviet de facto states (de Waal, 2018b; Kolosov and Zotova, 2021). It has been suggested that Somaliland and Puntland's official population figures of 3.5 million each are significantly inflated (given the standard total estimated population of Somalia is around 10 million) (Hoehne, 2015).

Implications

De facto states are awkwardly positioned on the boundaries of the international system. Even as their claim to statehood is rejected by some or all de jure states, and their access to the range of legal and diplomatic privileges afforded by de jure statehood is denied, de facto states are nevertheless integrated into the international system in a number of ways. They may be members of FIFA but not the UN, as in the case of Kosovo; sites of key geostrategic projects despite their universal non-recognition, as in the case of Somaliland; or their foreign relations may be more modest, dominated by their relative isolation and antagonism between parent and patron states, as in the cases of Abkhazia and Transnistria. Forms of engagement with de facto states remain largely ad hoc, and consideration of the effects of non-recognition on those living in them is often a secondary concern.

In practice, states and multilateral organisations can and do interact with de facto entities in a number of ways, pointing to the flexibility and still largely underexplored political space for new and innovative avenues of engagement with de facto entities, including through existing bodies such as the Unrepresented Nations and Peoples Organisation (UNPO). This highlights the need for further research into the political economy of non-/recognition and relations with de facto states, alongside analysis of the impeding and enabling factors which determine the political desirability and feasibility of different approaches. Research into internal political dynamics and the ways in which those living in de facto states negotiate the challenges stemming from non-recognition can also inform international actors' approaches to de facto states. Comparative analysis of current forms of engagement, including development assistance, adopted by states and multilateral organisations, is also needed to inform more systematic approaches to engaging de facto states.

Whether unrecognised governments or breakaway states, there are significant political sensitivities around engaging de facto entities for bilateral missions, international organisations or (I)NGOs. However, given the negative political, economic and social outcomes associated with the current paradigm of engagement, it is clear that new, politically nuanced policy approaches are needed. While these must address and respond to the specific political contexts of each case of de facto governance, developing new approaches which transcend the binary of non-/recognition and find more effective ways of engaging with de facto states and those living within them is essential.

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