



SUMMARY: WHY THE SOMALILAND FORUM IS CALLING FOR THE IMMEDIATE END OF THE EXTRA-JUDICIAL ACTIVITIES OF THE SOMALILAND REGIONAL SECURITY COMMITTEES

Introduction

1. The continuing use of Security Committees exercising extra-judicial powers in all the regions of Somaliland, and in particular the main towns, has been a matter of considerable concern to both the Somaliland civil and human rights organisations, political parties, and, of course, to the many individuals whose freedoms were curtailed by the decisions of these Committees. As an independent non party-political organisation, the Forum is justly proud of its record of reaching conclusions about controversial issues on the basis of sober and balanced analysis, and of supporting, without fear or favour, the advancement of democracy and the entrenchment of the rule of law and respect for human rights in Somaliland.
2. Our conclusions will surprise no one. In deed, we have been criticised for being far too quiet about this issue so far. We, like all the other Somaliland civil and human rights organisations believe that the extra-judicial functions of these Security Committee are contrary to our current Constitution and to the norms of human rights law, to which Somaliland is legally bound to abide by. We set out here the legal case for our position, but above all, we also underline the moral and political case for the immediate cessation of the extra-judicial work of these Committees. A people who have suffered the ravages of both extra-judicial and judicially sanctioned torture, imprisonment, and death during the dark days of Barre dictatorship deserves nothing less than justice meted out by properly constituted independent courts of law. We make a number of urgent recommendations, and, if necessary, we are determined to embark on a public campaign to rid us of these Committees. For the sake of the freedom of our citizens and the reputation of Somaliland, let us act quickly and get rid of these Committees – NOW.

The 1963 Law and the 1961 Somalian Constitution

3. We understand that the existence of these Security Committees goes back to the the Public Order Law (Law No: 21 of 26 August 1963). This law established the powers of the police and other authorities in the protection of the public and security. The law set out that in emergency situations where the public order and security was at stake, Security Committees, can, in these circumstances, take temporary measures, subject, of course, to the provisions of the 1961 Somali Republic Constitution. Article 17 of the 1961 Constitution guaranteed personal liberty, but allowed, in limited emergency situations, for a “competent administrative authority” to adopt provisional measures which must be communicated without delay to the relevant judicial authority which may confirm the measures, and if not, the measures became null and void. Thus whatever urgent security measures were taken by the administrative bodies had to be

reported immediately to the court of law, which decided whether or not they should be confirmed.

The Barre Security Committees

4. During the Siyad Barre dictatorship (1969 –1991), the 1961 Constitution was immediately abrogated. The huge security machinery built by the regime under its draconian security legislation, which included the National Security Court (Maxkammadda Badbaadadda) and the Mobile Military Court (Maxkamadda Wareegta) was also buttressed by the Regional Security Committees (Gudida Nabadgelyada). With the strict constitutional judicial oversight of the pre-1969 security committees gone, the Barre Security Committees often consisted of the Regional Governor, the military commander, the director of the National Security Service (NSS), a military officer, the police commander, the head of the Socialist Party, the Commander of the Victory Pioneers (Guulwadayaasha), and the commander of the custodial corps. The Committees ended up with draconian powers of arrest and sentencing including long-term prison and death. They also operated at district level and at the national level.
5. These Security Committees were particularly active in the territory of Somaliland during the Barre dictatorship and it is only natural that Somalilanders have an understandable visceral loathing of these Committees and other security apparatus. After the long war and the successful reassertion of the Somaliland sovereignty and democracy, no one can countenance the continued existence of even a shadow of the committees or special tribunals with extrajudicial powers, which existed before 1991.

The Somaliland Security Committees

6. We are not suggesting that the Regional Security Committees in Somaliland have acted like the ones during the Siyad Barre dictatorship. It is, however, widely known, and accepted by the Government, that these Committees still exist, at least in every region, and have sentenced people, often in groups, to prison terms. It has also been reported that when Security Committees decide to act, often in situations involving demonstrations, they order the immediate arrest and detention of individuals and then sentence them to prison terms within the same day, without reference to courts of law. There are no appeals against such sentences and the only way such persons can be released is by presidential pardon. It is particularly abhorrent that these sentences were often aimed at young people or others, who, for whatever reason, thought they were exercising their constitutional rights of freedom of expression and freedom of assembly. The latest reported incident was the imprisonment for 6 months of 150 youths by the Hargeisa Security Committee on 18 May 2004 following disturbances and demonstrations. Indeed, even before this incident, we were appalled to learn that of 392 sentenced prisoners at Hargeisa Central Jail, 246 only were sentenced by a court of law and the remaining 146 (37%) have been sentenced by the Security Committees.

The Somaliland Constitution

7. The Somaliland Constitution is based on the principle of separation of powers as between the legislative, the executive and the judiciary (see the preamble). The

independence of the judiciary is based on the idea that the state organs are attributed with specific and exclusive competences. This entails that non-judicial bodies do not exercise power in the area of adjudication, and particularly, in criminal matters where the liberties of individuals are at stake. Article 21 of the Constitution re-emphasises that all the branches of the state (the legislative, executive, as well the judiciary) and the local government of the regions and the districts of the Republic of Somaliland, of all levels, shall be bound by the provisions of the Constitution (Part III) which set out the fundamental rights and freedoms of individuals.

8. The extra-judicial work of the Security Committees affects some these constitutional rights, such as Article 25, which guarantees that no one person shall be deprived of his liberty except in accordance with the law, nor arrested, searched, or detained, except in the case of *flagrante delicto*, or on the issue of a reasoned arrest warrant by a competent judge. Examples of other relevant constitutional rights are Article 26(3) – everyone is innocent, until proven guilty; Article 28(2) - every one has the right to defend himself in a court; and Article 27 giving rights to detailed persons who should be brought to a court of law within 48 hours of their arrest.
9. Although Article 25(4) of the Constitution states that laws protecting the national interest, the security of the country or the rights of other individuals may sometimes, override individual rights, the extent of this derogation is limited by international law. For example, Article 4 of the International Covenant on Civil and Political Rights makes any derogation from the rights conditional upon the existence of a “public emergency which threatens the life of the nation and the existence of which is officially proclaimed”, and that states may only take measures “to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law”. No such circumstances have existed in Somaliland, for a while, and in any case, there is a clear constitutional framework for declarations of emergencies, which are set out in Article 92 of the Constitution. It is no accident that the Somaliland Constitution contains such strict control of presidential law-making through emergency powers. Somalilanders have learnt the lessons of a dictator ruling by decree and have opted for this clear oversight and control of any powers the President may wish to assume even in times of dire emergency. No such emergency legislation relating to Security Committees has ever been promulgated by the Somaliland government and has been reviewed and endorsed by the Houses of parliament in line with Article 92. Instead, as discussed below, successive governments have simply dusted down the pre-1991 security legislation which increased the powers of the Security Committees way beyond what was acceptable under 1961 Somali Republic Constitution and continues to apply them

International Norms

10. The Somaliland Constitution is very clear in linking the rights and freedoms guaranteed under it to international norms and standards. The extra-judicial powers of the Security Committees is contrary to a considerable number of international conventions and norms, which we have listed in the appendix. In

particular, everyone has the right to a fair trial, and - according to the international human rights mechanisms - this right can be violated in a variety of ways, including criminal charges against individuals being heard before administrative bodies which are not independent and impartial courts.

The Status of Pre-1991 Laws

11. Like most Constitutions, the Somaliland Constitution declares that it is “the supreme law of the land, and any law which does not conform to it shall be null and void.” (Article 128(2)). To avoid a legal vacuum, Article 130(5) of the Constitution allows the continuation of pre-1991 Somalian laws which do not conflict with the Islamic Sharia, individual rights and fundamental freedoms, until they are replaced. We are convinced that that the extra-judicial powers of the Security Committees as set out initially by the public Order Law 1963 and the later decrees of Siyad Barre, run counter to the fundamental rights of freedoms of individuals who are arrested and sentenced arbitrarily by a committee and not of court of law and are given no proper mechanisms for defending themselves, nor a right of appeal. Therefore, the provisions on which these Committees purport to operate under are unconstitutional, and hence, according to Article 128(2), null and void.

The 1999 House Resolution on Security Committees

12. The House of Representatives has already expressed its views about the Security Committees when, by a resolution dated 1 August 1999 (ref: GW/KF-81/99) it rejected the law under which the security Committees operated. Despite this unambiguous decision, the government continues to allow the Security Committees to function. In a recent highly unusual intervention, the Speaker of the House of Representatives asserted that as the 2001 articles of impeachment of the late President Egal (which included an allegation relating to the unconstitutional way in which the Security Committees still operated despite the House’s 1999 resolution) were rejected narrowly by the House, this, some how meant that that the operation of the Security Committees was legal and was unaffected by the 1999 resolution of the House to reject the Public Order Law 1963 (as amended). This, with respect, is plainly wrong. The defeat in the House of the articles of impeachment had no effect, what so ever, on the 1999 specific House resolution relating to the Security Committees.

Conclusion

13. All in all, the fact remains that the use of the Public Order Law 1963 (as amended) in so far as it related to Security Committees was rejected by the House of Representatives. That rejection was in our view correct, as the operation of this law was contrary to the Constitution. The operation of Somaliland Security Committees has more to do with Barre decrees, rather than the original 1963 law which was circumscribed by the 1961 Constitution. Rather than argue now about whether the 1963 Law (as amended) is still valid or not (a debate which can only end if the Supreme Court pronounces on this issue), we say that almost every one in Somaliland, other than the Speaker and the Government, is adamant this law is unconstitutional and against the fundamental rights and freedoms of individuals, and international conventions and norms. It takes us back to the dark days of the

dictatorship when it was perfected. There is no place (and never has been) for such a law in the modern, democratic Somaliland

Recommendations

14. We, therefore, make the following recommendations:

To the President & the Government

1. We ask the President to issue a decree abolishing the power of the Somaliland Security Committees to order arrests of individuals and their imprisonment or sentencing and making it clear that any person accused of a crime shall be dealt with under due process of law by the police, the prosecution service and the courts of law only.
2. Every person who is currently serving a term of imprisonment imposed by a Security Committee or has been in detention of over 48 hours ordered by the Security Committee must be freed immediately. Every person who has been detained by a Security Committee for less than 48 hours and is still in detention must be brought to a court of law in accordance with the Criminal Procedure Code.
3. All the members of these Security Committees are public officials and must be reminded of their responsibilities to safeguard positively the fundamental rights and freedoms of individuals and to be aware that under Article 27(9) of the Constitution and Articles 460 and 461 of the Penal Code, depriving an individual of his/her liberty unlawfully is a punishable offence.
4. We recommend that a new, modern public order law, which balances the rights and freedoms of individuals and those of the society and is in line with international law and practice be drafted and submitted to the Houses. In the mean time, the Penal Code is perfectly adequate to deal with all crimes, including those relating to public order.
5. We have no objection to the necessary administrative and co-ordination work that regional public officials undertake on all aspects including security and law and order, but we emphasise that arresting and detaining individuals for crimes is the sole prerogative of the police, the prosecution service and the courts. No other public official, including ministers, should have the power to order the arrest or detention of anyone.
6. We need to foster among our public official a culture of serving the public and utmost respect for human rights. We recommend that it is time the Government and Parliament set up a statutory independent **Somaliland Human Rights Commission** that can be appointed by Parliament and reports annually to the Parliament, and whose function shall be to foster human rights and to assist in some of the cases where there are clear human rights abuses. Many African countries have such Commissions, and an example nearby is that of Uganda. Funding for such a Commission can be obtained fairly quickly, from many sources.

The Parliament

7. The work of these Security Committees has not only trampled on the rights of individuals, but has also affected our country's just claim to be a democratic state which respects human rights. If the Government is unwilling, for whatever reason, to declare by decree the end of the extra-judicial powers of these security Committees within two months (i.e by the end of August 2004), we request that both Houses pass a short bill making these Security Committees unlawful.
8. We urge Parliament to support the setting up and the work of a statutory Somaliland Human Rights Commission.

The New President of Supreme Court

9. We would like to see a judiciary that defends the fundamental rights and freedoms of individuals, and is robust in its examination of lawfulness of detentions and arrests. The grant of the writ of *habeus corpus* under Article 66 of the criminal Procedure Code is one of the main bulwarks against arbitrary detention.
10. Until there is an overhaul of all the old Somalian legislation in use in our country, the Supreme Court must be more forthcoming in pronouncing on these laws which it considers to be null and void under Article 128 (2) of the Somaliland Constitution. Judges in the lower courts and lawyers ought to be able to know, with clarity, which of the old laws are not valid, any more.

The Somaliland public and NGOs

11. We are proud of your efforts to build a peaceful and prosperous Somaliland. Central to this, is respect for each other's rights and justice. We should all jealously safeguard law and order, but we should also guard peacefully everyone's fundamental rights and freedoms. Many Somalilanders paid the ultimate price for getting us back these freedoms. It is the responsibility of every person to learn about the rights AND duties of citizenship.

SOMALILAND FORUM

6 June 2004

APPENDIX: LIST OF SOME OF THE RELEVANT INTERNATIONAL COVENTIONS & NORMS

1. African [Banjul] Charter on Human and Peoples' Rights adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986: Specially Articles 6 and 7(1).
2. Universal Declaration of Human Rights adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948: Articles 10 and 11(1).

3. International Covenant on Civil and Political Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966: *entry into force* 23 March 1976: Specially Article 9.
4. African Charter on the Rights and Welfare of the Child: Article 17.
5. Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Article 9.
6. Basic Principles on the Independence of the Judiciary
7. Rule 15, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”)
8. Basic Principles on the Independence of the Judiciary
9. Other Regional Human Rights Conventions, such as the European CHR