

democrats accept any form of consociation, they ought to determine how damaging these criticisms are. My sense is that the criticisms will not, in the Somali case, discredit the ideas presented herein. But a full hearing should indeed be encouraged. Furthermore, there may be other sorts of institutional arrangements that develop out of the collective discussion of the "pastoral democrats" themselves. Perhaps these arrangements might be alternatives within the spirit of consociation? Proposals from Somalis both within and outside of the consociational tradition also deserve hearings. What I wished to use this space for was to press all those interested in Somalia's future to think more constructively about how their ideals might be best realized. For any Somali group to suggest today that it would be more democratic than the previous regime because its members *really believe in democracy* and in overcoming tribal domination, I can only point out that in October, 1969, few doubted the sincerity that General Siyaad put to this very task. The design of political systems, theorists of consociation argue, can direct the ambitions of men and women toward the preservation of democracy rather than towards its destruction. Constitutional construction, consociationists further argue, requires expertise about political institutions as much as declarations of commitment by patriots who deeply believe they can do better.

## NOTES

<sup>1</sup>Lijphart's writings on consociation are voluminous. Most useful for those interested in the Somali case is his *Democracy in Plural Societies: A Comparative Exploration* (New Haven: Yale, 1977).

<sup>2</sup>David Laitin "South Africa: Violence, Myths, and Democratic Reform" in *World Politics* 39, 2 (January, 1987).

<sup>3</sup>(London: Allen and Unwin, 1965)

## SOMALIA: HUMAN RIGHTS AND THE LAW

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For a few days in mid-July, Mogadishu, the capital of Somalia was wracked by unprecedented waves of anger and protest against the government of Mohamed Siyaad Barre. The immediate cause of the clashes between armed soldiers and demonstrators was the arrest on the previous day of prominent religious leaders and other civilian critics of the regime. The underlying causes are grievances that transcend these particular issues.

The savage attack against demonstrators on July 14 is a grim reminder, if one were needed after twenty years, that any expression of independent thought and any effort at political organization will provoke the most brutal reaction from the government. Armed detachments of the military police surrounded all the major mosques in anticipation of unrest following the arrest of religious leaders. These detachments were fully armed with automatic weapons and were transported by commando vehicles. They were accompanied by members of the police force who were armed with sticks and canes. They sought to disperse the congregations with physical and verbal intimidation as they filed out of the mosques at the completion of prayers. As the number of people streaming out of the mosques increased, people began to shout "Allahu Akhbar" ("God is Great"). The soldiers then fired live ammunition and the crowds began to reach for rocks and stones. The clashes were followed by mass arrests and at least one massacre, when 46 men were executed on July 16 on Jezira beach, just outside Mogadishu. At a minimum, the number of people who have died are estimated at 450; over 1000 have been wounded and 2000 arrested during the house-to-house searches that followed the clashes. The families of the injured have not been able to seek medical assistance for their relatives for fear that the military and security personnel stationed at the hospitals would arrest them instead.

The killing of hundreds of people as they filed out of mosques because the authorities anticipated demonstrations is a clear sign of the government's nervous reaction to any signs of political opposition. In spite of two decades of trying to ensure domination by military means, psychological terror, manipulation of Somalia's delicate clan structure and using the economy as a political instrument, legitimacy continues to elude Siyaad Barre. The recent events are a vivid illustration of the extent to which the government has lost every shred of legitimacy, due both to widespread internal opposition and international criticism of its human rights policies.

After twenty years in power, Barre's legacy is a system of government characterized by the suppression of all forms of dissent and political debate, the deliberate exploitation of clan and regional differences for political ends,

torture, detentions, economic mismanagement, nepotism and corruption on a massive scale. The instability generated by this situation erupted in civil war in May 1988 in northern Somalia and now threatens to tear the whole country apart.

This is a sharp contrast to the enthusiasm that greeted the military coup of October 1969 which brought Siyaad Barre and a 25 member Supreme Revolutionary Council (SRC) to power. Between independence in 1960 and the coup of 1969, the political climate in Somalia was characterized by respect for the democratic principles and institutions that the nation inherited at independence. Governments elected in a democratic fashion succeeded each other; there were numerous opposition parties; there was freedom of the press and there were no political prisoners or exiles and no reports of human rights abuses, either from national or international groups.

There was, however, such a proliferation of political parties that out of a population of five million people, 60 political parties contested a highly politicized and emotionally charged election in March 1969. This fragmentation facilitated an extraordinary degree of political manipulation by the civilian leadership at the time. In the wake of this bitter and divisive election, where accusations of fraud and election-rigging were rife, the political atmosphere became even more tense with the assassination of the president in October. The assassination was not politically motivated but led to further chaos and created a political vacuum. As a result, the coup that brought Mohamed Siyaad Barre to power was widely regarded as the only chance for the country to escape the political paralysis that gripped the nation and to achieve order and discipline.

In the Second Charter of the Revolution, issued in April 1970, the regime declared "scientific socialism" as its ideology and set about transforming Somalia, traditionally a conservative Islamic country, into a radical socialist state based on Marxist-Leninist principles. Its first step was to ensure control of the political process. The constitution inherited at independence was abolished. The leading civilian politicians were arrested and many were to be detained for several years. Political parties were abolished and membership in opposition groups, or any organization that was not sponsored by the government was declared an offense punishable by death. Civic organizations outside the control of the government were prohibited. Printing presses were nationalized and the media would henceforth be owned and operated by the government and subject to strict censorship.

The government's immediate priority was the establishment of a strong intelligence gathering network, the implementation of sweeping legal reforms to institutionalize the denial of basic human rights and the creation of a judicial system that would ensure the subordination of justice to politics. Added to the absence of any opportunity for political debate, these reforms le-

galized measures of unprecedented scope and severity, in the hope of crushing any possibility of dissent and opposition. Endowed with unlimited powers to harass innocent people, security agencies, a system of laws and procedures designed to maintain a climate of fear and a subservient judiciary have created an atmosphere of intimidation that is both current and cumulative. The law both on its face and as applied violates the most basic norms of justice and constitutes a perversion of the rule of law.

The National Security Service (NSS) is the country's principal intelligence agency. For most of the 1970s, the head of the NSS was Ahmed Suleiman Abdalla, a son-in-law of the president. The Establishment of the National Security Service Law of February 15, 1970 allows the NSS to detain people indefinitely for "investigations" if they are suspected of having committed offenses against "national security." National security is defined as behavior "which may be considered prejudicial to the maintenance of peace, order and good government" according to Law No. 1 of January 1970. Decree Law NO. 14 of February 15, 1970 gave the NSS the right "to search any person, property or house and to confiscate any property belonging to a person suspected of anti-revolutionary activities." This has been widely used to punish the entire family. In 1984 in Hargeisa, a group of secondary school students, all under twenty, were arrested on suspicion of being involved with an anti-government organization. Some of their friends escaped. The father of one of those who escaped, Mohamed Hashi, was arrested and threatened with death unless he produced his son. When he failed to identify his son's whereabouts, he was sentenced to 20 years in prison in October 1984 to punish him for his son's alleged involvement with this group. A wealthy man, all his property and cars were confiscated.

The powers of the NSS are reinforced by Article 5 of Law No. 8 of January 26, 1970 which amended the code of criminal procedure so that offenses concerning national security would not be subject to specific time limits and rules of procedure, such as the prohibition of using confessions as evidence against a defendant. Habeas corpus, the legal recourse in the case of illegal detentions and potentially one of the most effective judicial weapons against human rights abuses, was abolished in national security cases by Decree Law NO. 64 of October 10, 1970. Once arrested on suspicion of having committed an offense related to national security, a suspect does not have the right to a lawyer upon arrest. According to Law No. 17 of April 7, 1970, a suspect could consult a lawyer only "once all investigations had been terminated." In practice, detainees have been allowed to see their lawyer only shortly before the trial begins. There is no right to talk to a lawyer privately. There is always a representative of the Attorney General of the National Security Court (NSC) present.

National Security is an open-ended concept that means whatever the authorities want it to mean. This broad and vague concept has included in its scope acts which constitute the peaceful exercise of the rights of freedom of expression, association and worship. It has been used to detain indefinitely anyone whose activities and opinions the government does not like.

The NSS soon acquired a reputation for terror. Significant resources were allocated to the NSS which was given its own interrogation centers and a special court system. A formidable network of informers at the workplace, in mosques, in neighborhood centers and all other public fora. Spying on one's family, friends, neighbors, classmates and colleagues was encouraged as a "civic duty" and became a rapid means towards promotions and economic and political power. The fear and suspicion unleashed by the NSS created an extraordinary level of psychological terror. Detention and imprisonment sanctioned by law and the president as political instruments to be used against innocent civilians was a new and terrifying experience. Arrest and imprisonment were associated with a conviction for a criminal offence. The arrest and detention and the deliberate infliction of physical torture and psychological torment of ordinary citizens who had not committed a crime was unprecedented in the history of Somalia.

The NSS was not the only security agency to look after the government's political interests. The Victory Pioneers (*Guulwadayaal*), are a uniformed militia that act as the government's watch-dog at the neighborhood level, modeled after Cuba's Defense of the Revolution committees. The Victory Pioneers report neither to the Ministry of the Interior which has overall responsibility for police matters nor to the Ministry of Defense; they report directly to the president. They exist in every town and village to ensure that people toe the correct political line. They became notorious for intimidating people into attending the local "orientation center" for political indoctrination lessons. They were particularly active in the 1970s when the government's political program was at its most radical phase in terms of political rhetoric, attendance at orientation centers and the need to show wholehearted enthusiasm for the government's plans to revolutionize Somalia's traditional social and political structure. They too elevated spying into a national duty; being that much closer to individual neighborhoods, they even encouraged husbands and wives to spy on each other and children on their parents. Although the legal basis of their powers of arrest and detention is not clear, in practice they have been responsible for the arrested detention is not clear, in practice they have been responsible for the arrested detention of countless people for their "counter-revolutionary" attitudes which may be nothing more significant than failure to attend orientation centers on a regular basis.

Several other independent agencies also have unlimited powers of arrest. Among the most important are the military police known as the

"Backbreakers" (*Dhabar Jabinta*) who are responsible for the arrest and interrogation of politically prominent individuals and are also used in politically sensitive situations. Their purpose is to "break the back" of anyone who shows any political resistance. They are even more feared than the NSS.

The National Committee for the Eradication of Corrupt Practices in the Public, chaired by the president of the National Security Court, is an auditing agency which controls government finances. The penalty for stealing or misappropriating government funds depends on the sum of the money involved. Anyone found guilty of stealing over 100,000 Somali shillings (about US \$120 at the current exchange rate) is liable to be shot as stated in Article 13 of Law, No.54. Long prison terms are mandatory for smaller amounts of money. During the 1970s when the regime was establishing its authority, this law was widely abused for political ends. Those in a position of power used it to enrich themselves. Relatives of the president and Party officials used it to cripple business competitors and to punish senior officials in the civil service who they found to be an impediment to their economic or political advancement. The law has not been repealed; however, it is no longer necessary to implement it. The only ones in a position to embezzle public funds are those who wield power and their relatives and cronies.

All of these agencies have committed gross violation of human rights on a systematic basis. Shielded from an independent scrutiny and protected by total impunity, they have arrested thousands of people at will, without search warrants, without any explanation and without reference to any central authority and held them incommunicado for long periods of time, in many cases for years. Ismail Ali Abokor, a former vice-president, Omer Arteh Ghaleb, a former foreign minister, and several other prominent political detainees were arrested in 1982 and held without charges until shortly before their trial in February 1988. Neither the NSS nor the militias nor any other security agency is obliged to record or to publish the names of detainees. Families of people arrested have no way of tracing the whereabouts of detained relatives; bribing the officials concerned is the only means to obtain information.

The single most sweeping law was Law No. 54 of September 10, 1970, entitled "Law for safeguarding National Security." It provides the death penalty for exercising a wide range of internationally recognized rights such as freedom of expression, association and worship. Unable to accept any criticism as constructive or as an inherent legal right, the government spelled out in 26 articles the harsh consequences that would follow any attempt to claim political rights and any hint of political opposition. The expression of any dissatisfaction with the policies or the leadership of the government is strictly prohibited.

Membership in any organization which has not been created by the government itself is punishable by death. In 1981, a group of doctors, teach-

ers, and civil servants in Hargeisa founded a voluntary self-help scheme so as to improve local facilities. They collected funds to buy equipment and medicine for the local hospital. They met with local officials to explain their objectives; the government interpreted their initiative as a challenge and found their comments about the state of public facilities in Hargeisa unduly provocative. They were arrested and charged with the crime of belonging to a subversive organization. At their trial in February 1982, the state-attorney demanded the death sentences. Mindful of the possibility that this would cause large-scale riots in Hargeisa, they were given prison sentence ranging from three years to life imprisonment which under Somali law means until death. Some were released on completing their sentences and several others were released in March 1989.

In October 1984, seven secondary school students, aged under 18 at the time they were arrested, were accused of belonging to a secret organization and distributing pamphlets in Hargeisa critical of government policies. They were charged with treason and sentenced to death. After a national outcry and international pressure, the death sentences were commuted to life imprisonment.

Not even religion escaped the suspicion of being a potentially subversive activity. Article 12 of Law 54 states that "any person who uses religion to create division or to cripple or weaken the authority of the leaders will be punished with death." On April 8, 19987, the National Security Court sentenced nine religious leaders to death and about seventy of their followers to long prison terms under Article 12 for criticizing government restrictions of freedom of worship. The death sentences were eventually commuted to life imprisonment and most of the defendants were released in 1989.

The possession of "seditious" literature, which can be any material, including fictional works, which is written, typed, printed or taped is punishable by five to fifteen years of imprisonment. Spreading rumors against "the Somali Democratic Republic, the authorities of the state or state policies" was declared a crime punishable by two to ten years in prison. In March 1970, a Censorship Board was appointed manned by six people working full-time. All communications have been closely monitored. Because of the high rate of illiteracy and as an increasing number of Somalis emigrated to escape political persecution and in search of economic opportunities, conversations recorded on cassettes became the most common form of communication between Somalis at home and those abroad. Both outgoing and incoming cassettes were examined as a matter of routine by the NSS. Numerous people have been summoned to the NSS centers to explain the "subversive" opinions expressed on these cassettes. As an additional means of silencing potential critics, a law was passed against "the propagation of disruptive opinions". (*Afminshaarism* which in literal Somali means "having a mouth like a saw" and is used to deni-

grate people who "peddle" political information to gain economic or political favors.)

This unwillingness to accept criticism and any form of dissent as legitimate is one of the primary reasons why there was an exodus of professionals starting in the mid-seventies. In subsequent years critical songwriters and poets were also forced to flee as so many of their colleagues were arrested and dismissed from government jobs. Two of the country's most famous poets, Mohamed Ibrahim Hadrawi and Abdi Qeys were both detained for a number of years. In the absence of literacy, poets have always played an important cultural role as the surrogate historians of Somalia's rich oral tradition.

Offenses related to national security and murder were to be handled by a special judicial system which forms an integral part of the executive branch of government. Law No. 3 of January 10, 1970 established the National Security Court (NSC), which exists both at the regional and district level. The main seat is in Mogadishu and periodically the court travels to other regions, particularly if there is a politically sensitive trial. The aim of the court, as stated in Law No.3, is to safeguard "the aims and objectives of the revolution." The NSC tries both civilians and members of the armed forces and resembles a military tribunal more than a court of justice.

The court is presided over by military and security officers with no legal qualifications or training, appointed by the president. The president of the NSC, General Mohamed Ghelle Yusuf is an army officer without any legal training. He is a member of the People's Assembly, the Central Committee of the ruling party and is also a minister. The NSC operates under summary trial procedures, without any distinction between the functions of prosecution, investigation and judgment. There is usually no opportunity to cross-examine witnesses. Oral confessions obtained through continuous interrogation under physical abuse and conditions of mental distress, in the absence of legal counsel, are the basis of the evidence relied on by the state in most cases. Prisoners have been interrogated and tortured by someone who later turned out to be a prosecutor for the court. During the trial in February 1988 of seventeen prominent political detainees, one of the defendants stated that the colonel who was the special prosecutor had participated in his interrogation in 1987 and had threatened him with torture which was subsequently inflicted. There is no right of appeal to a higher court even from the decisions of the regional sections of the court. Those sentenced to death, however, can appeal to the president to exercise his prerogative of mercy. Once convicted, there is no hope of release except through bribes and, in politically significant cases, through the absolute discretion of the president.

Armed with such a comprehensive body of legislation, a special judicial system subservient to the executive branch and an extensive intelligence network, Mohamed Siyaad Barre ruled Somalia in the 1970s with the firm

hand of a dictator confident of absolute power. Anyone who challenged him paid the price. In May 1971 General Mohamed Ainarshe, vice-president of the SRC, and General Salad Gabayre, a senior SRC member and minister of Public Works, were accused of treason and of plotting a coup, and were executed in public. Ten religious leaders who objected to the government's plans to enact a new Family Code that would amend Islamic law were executed in public in January 1975.

Following defeat in the war with Ethiopia in 1978 and a coup attempt at the same year, Barre was faced with Moscow's decision to switch its support from Somalia to Ethiopia. Eager to counter Soviet assistance to Ethiopia by forging an alliance with the West, particularly with Washington and eager to obtain military and economic assistance, Barre sought Western approval through the trappings of legality. A new constitution was adopted in August 1979.

The constitution confirmed the prohibition of all political and professional associations. The Somali Revolutionary Socialist Party, of which Barre is the Secretary-General, was recognized as the only legal party. (The party had been set-up in 1976) The constitution established a National Assembly; only the party can present candidates and the only presidential candidate so far has been Barre. The president was also given power to dissolve the Assembly and to declare a state of emergency and rule by decree. In addition to these powers, the new constitution also declared Siyaad Barre the head of state, commander-in-chief of the armed forces and president of the Higher Judicial Council.

In spite of pretences to respect the rights guaranteed in the Universal Declaration of Human Rights and international covenants, the constitution contains a number of serious flaws. Firstly, it omits to mention a number of rights that are regarded as fundamental in the Universal Declaration and in many national constitutions such as freedom of movement. Nor is the right to form trade unions recognized; any attempt to form a trade union outside the government organized national union remains subject to the death penalty as laid down in Law No. 54. Secondly, the constitution explicitly states that all the provisions that protect civil and political rights are "subject to the laws of the country:" that is, the system of laws that deny basic human rights. It is also stated that such provisions should not contravene "general morality and public order" (Article 24). To reinforce the special judicial system that had been created to deal with national security cases, Article 26 guarantees the right to formal charges and a speedy trial but makes it clear that all political and security-related offenses are to be dealt with by the NSC which is not subject to the rules and time limitations laid down by the Code of Criminal Procedure. In addition, the provisions of the constitution are expressly subject to the right of

the various security agencies to search homes and to arrest, interrogate and detain people and to confiscate their property.

From the late 1970s when armed opposition groups were formed in exile in Ethiopia, the government found a formidable weapon in the laws and security agencies it had created. The first guerrilla movement was the Somali Salvation Democratic Front (SSDF) supported largely by the Majeertaan clan. Members from this clan were accused of trying to stage the 1978 coup attempt. The SSDF was active until about 1982. Since 1981, the Somali National Movement (SNM) which draws its support mainly from the Issaq clan in the north, has been the principal opposition group fighting the government. In both situations, the government used mainly extra-legal measures to punish the clans it blames for the existence of guerrilla groups, such as indiscriminate killings on a massive scale and a scorched-earth policy, first in the Mudug region in the south and later in the northern region. These tactics aimed at destroying the pastoral economy and the agricultural system. Water-storage tanks were demolished or taken over by the soldiers occupying the vicinity. Wells were poisoned, livestock were killed and crops destroyed in order to deprive the rebels of a civilian base of support.

Although the government relied mainly on military power to implement its counter-insurgency program, the authorities used the legal and security system to detain and to sentence to death or to long prison sentences anyone suspected of critical opinions and opposition activities.

In an attempt to counter increasing international condemnation of human rights abuses, the government has released about 300 political prisoners since January 1989. However, unless and until the government repeals the laws that have institutionalized the denial of human rights and dismantles the security agencies that have terrorized Somali citizens for two decades, there is no hope that the disastrous human rights situation in the country will improve.