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Who Do you Want to Dispense Justice – Committees or Courts of Law?

On 13 March 2010, the House of Representatives' Judiciary, Justice and Human Rights Committee submitted to the House a report¹ about Somaliland prisons which brought to the attention of the public again the number of persons currently imprisoned on the orders of the Somaliland security committees. The report stated:

- Of the 765 prisoners held at the Mandhera prison in February 2010, 373 were sentenced by courts of law, whilst 300 were in prison on the orders of the Somaliland security committees. The security committees' prisoners included one person held since 2006 and two persons held since 2005.
- At the smaller Berbera prison, there were 7 security committees prisoners and the prison governor confirmed that there are usually more.
- At Gabiley prison, of the 132 prisoners, 32 were held on the orders of the security committees. Of these, one was sentenced by a committee to 18 months imprisonment and another was held for a year.

The House Committee reminded the Minister of Interior (who is in charge of the security committees) that the Constitution and the laws of the land do not allow anyone outside the judiciary exercising judicial powers and that the question is not so much why these persons were in prison, but why they have not been brought to a court of law.

The response from the government came, surprisingly, from the Justice Minister². The Minister who has, in the past, being reticent about the extra-judicial activities of the security committees argued that, as far as the government is concerned, the actions of the security committees were legal and were based on the Public Order Law. If it is the 1963 Public Order Law that the Minister is referring to, then none of its 78 articles set up a security committee or allow any detention³ except in situations when a state emergency has been declared by the President and the Parliament, and even then any such detentions are time limited and are subject to confirmation and review by the ordinary courts of law. No such national state of emergency has been declared under the strict provisions of Article 92 of the Somaliland Constitution. It has been our view that the way the security committees work owes more to the dictatorship's security decrees and practices than to the 1963 law.

The Somaliland government has so far disregarded the unanimous condemnation of the extra-judicial activities of the security committees by:

- many Somalilanders, at home and abroad, and including members of the House of Representatives⁴;
- the Somaliland opposition parties and civil groups

- the international human rights organisations (for example [Human Rights Watch](#) and [Amnesty International](#) in 2009 alone);
- the US State Department (in its yearly human rights reviews – [latest 2009](#)); and
- the UN Independent Expert on the Situation of Human Rights in Somalia/Somaliland – [2008 report](#), for example.

The detention and imprisonment of persons without due process is contrary to the Somaliland Constitution and the rule of law. The activities of these committees have also done untold damage to the reputation of a country which is aspiring to become one of the few in the region where democracy and respect for the rule of law and human rights are taking root. Human Rights Watch (2009)⁵ has summarised the government’s use of the security committees as follows:

“By using bodies that have no viable legal foundation, make no effort to conform to the rights enshrined in the Somaliland constitution, and which elicit no rebuke from the courts, the executive has appropriated much of the power of the judiciary for itself. In the process it has stripped away most of the fundamental rights that are guaranteed to everyone brought before the courts.”

Somalilandlaw.com and others have repeatedly called for the immediate end of the extra judicial activities of the security committees and for the latter to concentrate on their role of helping in the maintenance of security and peace and to leave law enforcement and dispensing justice to the police, the prosecution service and the courts. **We repeat that call again and urge all civil groups to make similar calls.**

We appreciate that many of the provisions of the Public Order Law 1963 that have nothing to do with security committees, although dated and not fully in line with modern human rights law, can be used, in the interim, after the government publishes them clearly, until a new modern law can be passed by the parliament. The government has failed over the last 7 years to submit a modern bill to the parliament, and it is no wonder then that its misuse and abuse of the 1963 Public Order Law has led to calls for the total rejection of this old law.

We are disheartened by the fact that the continued intransigence of the government on this issue has made the constitutional/supreme court and the lower courts wary of challenging these unlawful detentions. Now that the Justice Minister pronounced that these detentions are made under the Public Order Law 1963, then even if we assume that such detentions were made under a declared state of emergency, surely the courts can then exercise their powers under Article 72 of the Law which states:

“Article 72 – Confirmation of Restrictive Measures

1. All measures concerning arrest or search of persons or premises taken during a state of emergency under the an ordinance referred to Article 71, paragraph 1(b) [*relating to persons suspected of a crime or activities contrary to public order and security*] shall be promptly notified to the competent court for confirmation within 30 days from such notification.
2. Except in cases of criminal proceedings, the arrest of persons suspected of such activities contrary to the public order and security may be confirmed for

such period as is necessary to prevent the danger of disorders; provided that such period shall not exceed 90 days. The Regional Court within whose territorial jurisdiction the arrest was made shall have exclusive jurisdiction in the matter.

3. An appeal against the confirmation referred to in the preceding paragraph shall lie to the Supreme Court and shall be filed in the manner prescribed by law.”

Courts therefore have jurisdiction to review these detentions even when made under a state of emergency. But as there was no declared national state of emergency, the detentions are not lawful, even under this exceptional provision of the Public Order Law 1963, and therefore the Supreme Court or the Court of Appeal can use their Habeas Corpus under Article 66 of the Criminal Procedure Code to order the release of the detainees. Habeas Corpus was the first power of the courts that the military dictatorship suspended in 1970, and it is sad that nearly 20 years after its reinstatement in Somaliland and the adoption of a Charter/Constitution which guarantees the right to liberty (specially under Articles 25 to 28), the Somaliland courts have not so far offered justice to these detainees. We hope the Supreme Court will show leadership in defending both the independent constitutional role of the judiciary, as well as the rights and freedoms of individuals.

Finally, we are coming this year (again) to numerous elections at national and local levels. Public order issues are always heightened during election times, and it is fitting, therefore, that every candidate must be asked a simple question: *Do you want committees (of public officials) who hold no hearings or courts of law (with the police, prosecutors and judges) to dispense justice in Somaliland?* It is a stark and simple choice – justice, sometimes, is that simple!

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¹ www.somaliland.org 14/03/2010

² Wargeyka Ogaaal 14/03/2010, accessed at <http://www.gabiley.net/>

³ Jama I H (2004) *Public Order Law in Somaliland: Learning the Lessons of Democracy*

⁴ For details of some of the submissions and declarations made by various civil groups, see the Somalilandlaw.com webpage for the [abolition of the extra-judicial activities of the security committees](#).

⁵ Human Rights Watch (2009) *“Hostages to Peace” Threats to Human Rights and Democracy in Somaliland*.