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Somalia Country Report on Human Rights Practices for 1997

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SOMALIA

Somalia has been without a central government since its last president, dictator Mohamed Siad Barre, fled the country in 1991. Subsequent fighting among rival faction leaders resulted in the killing, dislocation, and starvation of thousands of Somalis and led the United Nations to intervene militarily in 1992.

Serious fighting among rival clans continued in Mogadishu, in the region outside of Baidoa, and in the area around Kismayo. The violence had a minimal effect on the balance of power between the various factions. Mogadishu faction leaders Ali Mahe, Hussein Aideed, and Osman Atto signed peace accords to prevent combat between the rival factions, but disagreements remained about how to govern the capital area. Leading Somalis launched several serious efforts to advance the reconciliation process. The leaders of over two dozen groups formed the National Salvation Council (NSC) in January in an attempt to establish a national government. This group did not include Hussein Aideed. Until December, the group had failed to agree on the future governance of the country. In a conference in Cairo, Egypt in December, all parties except two signed the so-called "Cairo Declaration." The Declaration provides for a 13-person Council of Presidents, a prime minister, and a national assembly. A National Reconciliation

Conference in early 1998 in Baidoa is scheduled to negotiate further details, including appointments.

The NSC's executive committee, a five-member body that included the major faction leaders, organized a national reconciliation conference in Bosaso in November; however, it did not lead to concrete results. Various intermediaries, including the Arab League, the Organization of the Islamic conference, the United Nations, the Organization of African Unity, and the Intergovernmental Authority on Development (IGAD) sought to promote reconciliation, with little success.

In the northwest, the separatist "Republic of Somaliland" (Somaliland) established a Constitution and a Parliament and conducted democratic elections. The Somaliland authorities refused to participate in the national reconciliation conference. It continued to proclaim its independence but did not receive international recognition. The absence of a central government prompted the continued establishment of rudimentary local administrations, most of which are based on the authority of the predominant clan and faction in the area. Local authority remained contested, however, in the Kismayo area, parts of the northwest, and in Mogadishu. Judicial structures are dependent on the predominant local clans and factions for their authority.

Clan and factional militias, in some cases supplemented by local police forces established with U.N. help in the early 1990's, continued to function with varying degrees of effectiveness. Police and militias committed numerous human rights abuses.

While the country is desperately poor, the economy continued to improve in 1997. Relative peace in much of the country, leading to the rising level of commercial activity, contributed to this recovery. Livestock and fruit exports continued to revive, although exports remained disrupted by the closure of Mogadishu seaport throughout the year. Somalia remains a chronic food deficit country, however, and some of the most fertile agricultural regions suffered from drought, serious flooding, or both. In November floods caused by torren-

where Shari'a culture is particularly entrenched, harsh punishments—including amputations and stoning—are meted out for certain offenses. With the decline in Shari'a court influence, these practices diminished during the year. Armed conflicts between Islamic radicals and other citizens also caused many deaths in Gedo region. This conflict largely ended after the rebel troops were forced out of Gedo.

The right to representation by an attorney and the right of appeal do not exist in those areas applying traditional and customary judicial practices or Shari'a law. These rights are more often respected in regions that continue to apply the pre-1991 penal code and in Somaliland. However, Somali human rights organizations note that proceedings in the North Mogadishu Shari'a court often contravene the norms of Shari'a law. In one serious incident at the end of spring, the court denied basic rights, including the right to counsel and to face witnesses, to a group suspected of plundering a local marketplace. Public protest led to the postponement of the planned mass trial, but the suspects remain in custody.

There were no reports that the various factions held identifiable political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Looting and forced entry into private property continued but at levels again reduced from previous years, when large numbers of marauding militiamen first occupied many urban properties. The marauders continued to control most such properties at year's end. Control of properties that were forcibly occupied during militia campaigns in 1992-1993, notably in Mogadishu and the Lower Shabelle, remains a problem in national reconciliation efforts.

g. Use of Excessive Force and Violations of Humanitarian Law in Internal Conflicts

Warring factions continued to commit violations of humanitarian law, including the killing of civilian non-combatants. Sporadic fighting in the Mogadishu area between pro- and anti-Aideed militia led to numerous civilian deaths and hundreds of wounded. Numerous combatants also lost their lives. Both sides shelled targets located in densely populated neighborhoods or areas controlled by civilians.

In March interclan fighting in Galgudud region resulted in the deaths of 10 persons; an additional 18 were wounded. In Mogadishu in April, 17 persons were killed. From August through December, at least 2 dozen persons died as a result of fighting within the Abgal clan, the dominant group in North Mogadishu and Lower Shabelle.

Intermittent combat in North Mogadishu between militia loyal to faction leader Ali Madhi and militia of his rival Sheikh Ali Dherre, leader of the Shari'a court, was responsible for at least one dozen deaths during the year.

Fighting in the south between Islamic radicals and their clan and factional opponents led to many additional deaths. Repeated incursions into Somalia by forces in pursuit of the radicals and bandit gangs contributed to the high toll of lives. In Kismayo clashes between the Majerteen and Marehan clans also caused numerous deaths. Between March and year's end, more than 150 people, including noncombatants were killed as a result of these incidents. Interclan fighting in Burao and Erigavo, two towns in the northwest, claimed at least six lives during the summer. These areas became calm after the intervention and mediation of clan elders from both sides of the conflict.

Section 2 Respect for Civil Liberties, Including:

There were no reports of the use of torture by warring militiamen against each other or against civilians. Many incidents involving torture are probably unreported.

In North Mogadishu, parts of South Mogadishu, the Middle Shabelle, and parts of the Gedo and Hiran regions, Shari'a courts regularly sentenced convicted thieves to public lashings and, far less frequently, to the amputation of their hands (see Section i.e.). The North Mogadishu Shari'a (Islamic) court was effectively inoperative by year's end.

Prison conditions varied by region but were life threatening in some facilities. Conditions at the North Mogadishu prison of the Shari'a court system grew so harsh that prison officials released all but a handful of the inmates. In Bosasso, 10 prisoners died after spending a night in an overcrowded, overheated cell; 20 others were hospitalized. In many areas, prisoners are able to receive food from family members or from relief agencies.

The International Committee of the Red Cross (ICRC) delegates were permitted to visit prisoners in some parts of the country, as were Western diplomats.

d. Arbitrary Arrest, Detention, or Exile

In the absence of constitutional or other legal protections, Somali factions and armed bandits continued to engage in arbitrary detention. Most incidents were the result of disputes among and within clans, political disagreements, and the requirements of military security. Among the most serious incidents were the February 16-19 occupation of an NGO's hospital in Bosasso and the brief detention in early July of World Food Program staff in Mogadishu. In August the Al'Itihad faction arrested several U.N. officials in Gedo. Each incident was resolved peacefully, generally after the intervention of local clan elders.

None of the factions used forced exile.

e. Denial of Fair Public Trial

There is no national judicial system.

Some regions have established local courts that depend on the predominant local clan and associated faction for their authority.

The judiciary in most regions relies on some combination of traditional and customary justice, Shari'a law, and the pre-1991 penal code. Shari'a courts continued to operate in several regions, partially filling the vacuum created by the absence of normal government authority. Shari'a courts traditionally ruled in cases of civil and family law, but their jurisdiction was extended to criminal proceedings in some regions beginning in 1994. In Bosasso and Afmedow, for example, authorities surrender criminals to the families of their victims, who exact blood compensation in keeping with Somali tradition. In November the U.N. in Kismayo reportedly turned over to victims' clans a group of guards accused of indiscriminate firing into a crowd. The guards were given a choice of execution or paying compensation to the families. The case was unresolved at year's end.

In the northwest, the Republic of Somaliland adopted a new constitution based on democratic principles. Some district and regional courts, as well as a "supreme court" in Hargeisa, are functioning. In Bardera, courts apply a combination of Islamic Shari'a law and the pre-1991 penal code.

In North Mogadishu, a segment of South Mogadishu, the Middle Shabelle, and parts of the Gedo and Hiran regions, court decisions are based solely on Shari'a law. In those areas and parts of Gedo and Hiran regions,

a.

Freedom of Speech and Press

Most citizens obtain news from foreign news broadcasts, chiefly the British Broadcasting Corporation (BBC), which transmits a daily Somali language program. The major faction leaders in Mogadishu, as well as the authorities of the Government of Somaliland operate small radio stations. The print media consist largely of short, photocopied, dailies, published in the larger cities and often linked to one of the factions. Several of these newspapers are nominally independent and are critical of the faction leaders. Somaliland has two independent daily newspapers, one government daily, and an English language newspaper.

In late March, gunmen forcibly entered the home of the BBC correspondent in Mogadishu, stole his camera and computer equipment, and beat him senseless. Although robbery was a possible motive, the journalist had published reports critical of militant Islamic cleric Sheikh Ali Dherre. In April another BBC journalist in the capital received threats after disseminating a report critical of a former Somali diplomat and a Malaysian businessman.

Also in April, courts in Somaliland ordered the arrest of a newspaper publisher who had launched an investigative series on official corruption. Although the publisher was tried for slander, no judgment was announced. The trial was marred by a violent attack against a news photographer by a senior "minister" in the local government; he was later dismissed from his job. Authorities again detained the publisher and several of his coworkers in September and accused them of printing false customs receipts. Public criticism and findings by a regional court and the parliament that the arrests were carried out without due process and were unconstitutional led to the release of the journalists after 1 week. Some of them were rearrested shortly thereafter on the same charges and faced trial at year's end.

There is no organized higher educational system in the country.

b.

Freedom of Peaceful Assembly and Association

Many clans and factions held meetings during the year without incident, albeit usually under tight security. Although citizens are free to assemble in public, the lack of security effectively limits this right in many parts of the country. Few public rallies took place during the year without the sponsorship of an armed group.

Some professional groups and local NGO's operate as security conditions permit.

The new Constitution of Somaliland established the right of freedom of association.

c.

Freedom of Religion

Somalis are overwhelmingly Sunni Muslim. Local tradition and past law make proselytization a crime for any religion except Islam. Some local administrations have made Islam the official religion in their regions, in addition to establishing a judicial system based on Shari'a law (see Section i.e.). Non-Sunni Muslims are often viewed with suspicion by members of the Sunni majority. There is strong social pressure to respect Islamic traditions, especially in fundamentalist enclaves such as Luuq, in the Gedo region. There is a small, low-profile Christian community. Christian-based international relief organizations generally operate without interference so long as they refrain from proselytizing.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

Freedom of movement continued to be restricted in many parts of the country. Checkpoints manned by militiamen loyal to one clan or faction inhibited passage by other groups. In the absence of a recognized national government, most citizens do not have documents needed for international travel. As security conditions improved in many parts of the country, refugees and internally displaced persons continued to return to their homes, particularly in the northwest.

Ethiopia still holds at least 250,000 Somali refugees, mostly from the northwest. The UNHCR carried out a pilot repatriation of 1,000 persons in May, and was in the process of carrying out a repatriation of 20,000 at year's end.

Djibouti hosted approximately 20,000 Somali refugees in camps at year's end, and about 2,000 in its capital city.

The number of Somali refugees in Kenya dropped to approximately 125,000 as of year's end, down from more than 400,000 at the height of the humanitarian crisis in 1992. The serious floods late in the year halted repatriation.

As Somalia has no functioning government, there is no policy of first asylum, although a small number of Ethiopian refugees remained in Somalia, mostly in the northeast near Bosasso. The authorities in northwest Somalia have cooperated with the U. N. High Commissioner for Refugees and other humanitarian assistance organizations in assisting refugees. There were no reports of forced expulsion of those having a valid claim to refugee status.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

In the absence of a widely supported, effective national government, recognized domestically or internationally, citizens could not exercise this right. In most regions, local councils of clan leaders function as rulers. Although many such groups derive their authority from the traditional deference given clan elders, most face opposition of varying strength from political factions and radical Islamic groups.

Although several women are important behind-the-scenes figures in the various factions, women as a group remain outside the political process. No women hold prominent public positions.

In the "Republic of Somaliland," the existence of which was endorsed by clan elders in 1991 and 1993, a 315-person conference of clans that had begun in November 1996 led to a peace accord early in the year. It demobilized militia groups, established a Constitution and a Parliament with proportional clan representation, and held an election of a president and vice president from a slate of candidates. The Hargeisa authorities have established functioning administrative institutions in about half of the territory that they claim.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Several local human rights organizations were active during the year. ICRC delegates were permitted to visit prisons in some parts of the country, as were Western diplomats. The United Nations Special Rapporteur on Human Rights in Somalia visited the country during the spring and prepared a report for the Secretary General. International humanitarian NGO's and U.N. agencies continued to operate, but the poor security situation limited their activities in some areas. In July an Italian delegation investigating abuses committed by Italian soldiers in 1993 interviewed Somali witnesses in Addis Ababa.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

Discrimination against women and widespread abuse of children continued to be serious problems.

Women

Women suffered heavily disproportionate levels of violence in the civil war and in the strife that followed. During the year, however, there were again no reports of systematic attacks on women in connection with the continuing civil strife.

Women are systematically subordinated in the country's overwhelmingly patriarchal culture. Polygyny is lawful; polyandry is not. Under laws issued by the former government, female children could inherit property, but only half the amount to which their brothers were entitled. Similarly, according to the tradition of blood compensation, those found guilty in the death of a woman must pay only half as much to the aggrieved family as they would if the victim were a man.

Children

Children remain among the chief victims of the continuing violence. Boys as young as 14 or 15 years of age have participated in militia attacks, and many youths are members of the marauding gangs known as "Moor-yann (parasites of maggots)." Even in areas with relative security, lack of resources has limited the opportunity for children to attend school.

Female genital mutilation (FGM), which is widely condemned by international health experts as damaging to both physical and psychological health, is a nearly universal practice. An independent expert in the field estimates that 98 percent of females have been subjected to FGM. The practice was illegal in 1991, when the Siad Barre government collapsed; it remains technically illegal, but the law is not enforced. While U.N. agencies and NGO's have made intensive efforts to educate people about the danger of FGM, no reliable statistics are available on their success.

People with Disabilities

Before the collapse of the state in 1991, there were no laws mandating accessibility to public buildings, transportation, or government services for the disabled. In the absence of a functioning government, there are no authorities to address these problems or assist the disabled. Several local NGO's are attempting to provide limited social and medical services to the disabled.

National/Racial/Ethnic Minorities

More than 80 percent of the people share a common ethnic heritage, religion, and nomadic culture. The largest minority group, Bantu Somalis are descended from slaves brought to the country about 300 years ago. In virtually all areas, members of groups other than the predominant clan in that area are excluded from effective participation in governing institutions and are subject to discrimination in employment, judicial proceedings, and access to public services.

Members of minority groups are subjected to harassment, intimidation, and abuse by armed gunmen of all affiliations.

Section 6 Worker Rights

a.

The Right of Association

The 1990 Constitution provided workers with the right to form unions, but the civil war and factional fighting negated this provision and shattered the single labor confederation, the then government-controlled General Federation of Somali Trade Unions. Given the extent of the political and economic breakdown and the lack of legal enforcement mechanisms, trade unions can not function freely.

The new constitution of Somaliland established the right of freedom of association, but no unions or employer associations have yet come into existence.

b. *The Right to Organize and Bargain Collectively*

Wages and work requirements in traditional Somali culture are largely established by barter based on supply, demand, and the influence of the clan from which the worker originates. As during past years, labor disputes sometimes led to the use of force or kidnaping.

There are no export processing zones.

c. *Prohibition of Forced or Compulsory Labor*

Local partners of multinational fruit export firms reportedly used forced labor, including forced labor by children in some areas of the Lower Shabelle.

d. *Status of Child Labor Practices and Minimum Age for Employment*

Formal employment of children was rare, but youths commonly participate in herding, agriculture, and household labor from an early age. The lack of educational opportunities and severely depressed economic conditions make such employment a necessity.

e. *Acceptable Conditions of Work*

There was no organized effort by any of the factions or de facto regional administrations to monitor acceptable conditions of work during the year.

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