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THE 1979 SOMALI CONSTITUTION: THE SOCIALIST AND AFRICAN PATTERN AND THE EUROPEAN STYLE

The Emergence of the Socialist Constitution of Somalia

Many African countries share a constitutional instability which in part is caused by the existence of unwritten rules; the constitutional system itself can also be modified either by a repeal of the constitution or by an alteration of or change in text which often violates the constitutional rules regulating amendment or change. Once independence has been obtained,¹ many African countries have either instituted a new, or strengthened the existing presidential power. This is accompanied by a change in the constitution from being an instrument which limits power to an instrument which promotes the exercise of power, thereby marking the decline of the European idea of constitutionalism in Africa.² Many European observers probably consider the Somali Socialist Constitution of 21 October 1979 to be an event of mere local significance in the Horn of Africa. Its importance was at least at first glance even more reduced after the proclamation of a state of emergency in October 1980.³ However, the significance of the Somali Constitution emerges if one takes into account the influence of Italian culture upon Somalian lawyers and politicians who, at the same time, are building socialism in an African country which is tied to the Arab community. The Somali constitution can therefore be seen as an interesting example of interface between European legal influence, the Islamic faith, the socialist option and the emergence of "African constitutionalism". At the same time, the suspension of the

constitutional rules under the state of emergency does not affect the basic importance of the text: when threatened, African societies have found it necessary to concentrate power in the hands of a few. This eventuality was apparent to the drafters of the constitution, and the state of emergency was clearly defined therein. On the day of the independence a liberal democratic constitution was promulgated which strictly followed the Italian pattern, except for the elimination of the Italian bicameralism and decentralization, and for the references to Islam.⁴ The 1969 military intervention suppressed the 1960 constitution and the constitutional actors. In 1971 the Supreme Revolutionary Council (SRC), which then held all power in the country, officially proclaimed a socialist option for Somalia.⁵ In July 1976, with the foundation of the Somali Revolutionary Socialist Party (SRSP), it was decided to adopt a new socialist constitution.⁶ A referendum was held in August 1979 which resulted in the acceptance of the draft constitution of 114 articles.⁷

The Socialist Option

When we are dealing with the subject of socialism in African countries, we must consider a wide variety of patterns which range from a type of humanitarian socialism to a ritual adherence to orthodox Marxism-Leninism. Moreover, there have been disputes about the possibility of applying the Marxist notion of class to the African situation (see Lloyd 1967). The choices made by most African countries regarding socialism amounts to a double refusal: on the one hand, the denial of capitalism which is identified with colonialism and imperialism, and on the other hand, the de-

nial of 'scientific socialism' as practiced in eastern European countries. Examples of this double denial can be seen in the cases of Algeria, Lybia, and Tanzania. By way of contrast, the Somali choice has been one along the lines of the orthodox tenets of Marx and Engels; this can be seen for example in the party program: "there are no different types of socialism; scientific socialisms (literally) 'wealth sharing based on wisdom' is the only one". Above all, the Somali constitution is an expression of the socialist option. Yet this choice has not exhausted all the options for the future since, although Somalia has chosen the socialist road, there is no evidence that one can speak of the achievement of socialism in Somalia.

The Nation and the Constitution

African nationalism is not only a struggle against exploitation. In a continent where the state and the nation usually do not coincide and where the usual model is a polyethnic one, there has been a tendency in the post-colonial period to soften racial and ethnic differences; despite this, the individual of course remains tied to his original ethnic group. African countries are attempting to overcome tribalism and to establish a new kind of nationalism, different from that which previously existed. It is no longer simply a matter of taking power away from the colonial ruler, but it is now also necessary to use the state as an aggregating or unifying instrument (see Tizzano 1974). This is the reason why African lawmakers have shown an aversion to tribalism, and why the governmental administration is a centralized one, and why political parties are willing to attempt to solve tribal differences.

When an African country chooses socialism, the accent has been more on national values than on internationalism. In Somalia, the drafters of the constitution were faced with a national identity problem unique in Africa: Somalia is a state with a strong national tendency,⁸ and except for a few ethnic minorities,⁹ the country's inhabitants speak the Somali language.¹⁰ One of the aims of the Democratic Republic of Somalia is to reunite all of the Somali speaking territories. Language is, together with religion, the unifying cultural element for all Somali peoples.¹¹ The constitution proclaims that the Somalis have only one language which is wholly representative. However, the Arabic language is also recognized as being official. The element of the Arabic language is also reinforced by the fact that Islam is the religion of the country. In addition, there are also economic and political considerations which appear to have resulted in a pan-Arab cultural friendship. This is an additional element explaining the Arabian-Somali tie as seen in the constitution.

Partitocracy

Although one party rule seems to be the dominant trend in Africa, the continent also has cases of pluralistic party systems. During the colonization period, political parties greatly increased in number, and this fragmentation can be explained by the ethnic heterogeneity, by conflicts among various groups seeking power, and by the influence of the European democratic pattern. However, once independence was obtained, a pluralistic party system has generally proved to be unsuitable since it is always a threat to the power held by the leaders of the independence movement. Other factors have also tended to work against the pluralistic

model: the pressure of a dominant political party, the isolation of the armed forces, and the spontaneous concentration of smaller political parties (see Mahiou 1969). Moreover, the choice of socialism has given an ideological structure to the single party system since one can read socialism as denying the existence of a class struggle and presenting a single party system as "the party of all the people" - the party of the nation. Frequently, a single party system has been created by a military regime,¹² the party then can provide shelter for these leaders from other possibly hostile groups or sectors within the armed forces. In Somalia, political, economic and social leadership is vested in the Socialist Revolutionary Party (section 7). This is the only party within the Somali Republic, and other political associations are strictly forbidden. The party's Central Committee nominates the candidate for the presidency of the Republic, appoints the chairman of the Supreme Court and the Attorney General, and is also empowered to dissolve the Assembly. Every legislative bill concerning a point of the party strategy or the aims of the revolution must be approved by the Central Committee.

Islam and the Constitution

Colonial domination has often resulted in the introduction of the Christian religion which itself frequently ends up side by side with original African faiths. The resulting variety of religious faiths has only strengthened the inherent ethnic opposition, and the results thereof can often be real religious wars (e.g. Chad, Nigeria, the Sudan). The situation however is different in Moslem Africa, where Islam, as a religion common to the majority of the citizens,¹³ is often a unifying factor. Many Moslem countries have chosen

the socialist option, and uniformly the governments have declared that Islam and socialism share the same goals: equality and social justice.

Following the abolition of the 1960 Somali Constitution, the position of Islam was maintained and at times strengthened. However, on the other hand the new socialist government has employed non-Islamic law in fields which were previously reserved exclusively for the Sharia. The purpose behind this move was to purify any customs which might be contrary to the revolution, and some examples are the 1973 statute on Waqf and the 1975 statute regulating marriage and inheritance. Religion is not regulated in any way by the constitution; the latter only affirms Islam as the state religion and the freedom of religious choice. The constitution is however defined as the only supreme source of law.

The Citizen

The principles of the Universal Declaration of Human Rights are affirmed in the Somali constitution as they were in the previous one. The members of the drafting commission have said that they consider the declaration to be a model for part II of the text which concerns the rights, freedom and duties of the citizen. But this cannot sufficiently explain the influence of the socialist option upon the subject of human rights. In defining the rights of the individual, the Somali lawmaker has not made them subject to the goals of socialism. Nevertheless, the constitution does establish some limits to individual rights. On the one hand, the freedom of religious belief, domicile and correspondence are mentioned without any restrictions; on the other hand, the freedom of thought, press, and assembly must conform "to

the constitution, law and ethics, and to state security" (section 24). The right of citizens to participate in and to organize meetings is also limited by specific rules regarding the party. The right to strike and the right to associate in trade unions (contained in the 1960 Constitution, and suspended in 1970 by the SRC) are not mentioned in the 1979 text. Section 26 establishes restrictions on personal freedom only in cases of a flagrant crime or a provisional judgement, but at the same time it also states that a person arrested for "security reasons" has to appear in court "according to the terms established by law".

The President of the Republic

Under the 1960 Constitution, a compromise was chosen between the parliamentary and presidential system. The new text, on the contrary, has reinforced the presidential model. However, this choice appears to be influenced neither by the socialist system nor by the western pattern. The model is totally African; not only is the president chief of the government, but he also has extraordinary powers in any emergency where the constitution can be suspended. This particular tendency, which is not uncommon in Africa, can be seen in its most pronounced version in military regimes. Presidential power could be possibly balanced by the presence of a leading political party. However, there is an overlap between the upper echelons of the state apparatus and that of the party, under the following two possibilities: the president of the party is ex lege the chief of the state (Angola, Burundi, the Congo, and Zaire), or the party nominates the presidential candidate (Algeria, the Sudan). Sometimes, this situation can be explained by the personal aura attached to such a singular head of state, which derived from the

national struggle against colonialism and the historical tradition of the precolonial monocratic power (Mazrui 1969). The president of the Somali Democratic Republic embodies the unity of the party and of the state. He is elected by the People's Assembly at the proposal of the SRSP, appoints and dismisses the ministers and presides over the government. When it is impossible to hold elections under normal conditions, the president can extend the mandate of the assembly for one year after consultation with the party Central Committee. It is necessary to obtain an opinion of the president in order to dissolve the People's Assembly. Under the 1960 Constitution, possible abuses of presidential power were dealt with on the basis of the Italian pattern; now, the People's Assembly has the right to dismiss the president under the same procedure which governs his election.¹⁴

Extraordinary Powers

In an emergency or a state of war, the extensive powers of the president are further increased. In the constitutions of many African states, such extraordinary powers are regulated; in the Sudan, for example, the president may declare a state of emergency and suspend rights under the constitution, but this must be ratified within fifteen days by the People's Assembly. With some minor differences, the same pattern is followed under the constitutions of Algeria, Cameroun, the Congo, Mali, Madagascar and Senegal. In Somalia, the constitution states only that a state of emergency can be declared by the National Defense Committee; however, the chairman of the committee is the president of the Republic who, in turn, appoints all the committee members. Once an emergency has been declared, the president can "do anything

he considers to be appropriate throughout the country until there is no longer any threat to national security" (section 83.I).

The People's Assembly

The majority of African constitutions proclaims the sovereignty of the people, and the Islamic African countries have abandoned the concept of a theocratic state. Only in a few cases is the concept of sovereignty entwined with the definition of "the working people".¹⁵

However, a representative democracy is not a native African tradition and political representation has been unknown in the Islamic culture. This situation allows for the intervention of a political party (or parties) and ethnic and tribal influences upon the choice of candidates; frequently, for African people, the vote is simply an expression of an ethnic group.¹⁶ The powers of the People's Assembly in Somalia are defined by section 67: amendment of the constitution, initiation of legislation, election and dismissal of the president of the Republic, ratification of international treaties, approval of Five-Year-Plans for development, audit of state accounts. However, this list does not point out the effective power of the assembly, as decisions of the party and of the president limit the activities of the parliament.

The Judicial System

The idea of holding a trial as a means to settle disputes is alien to Somali tradition. According to customary rules, agreements were restored through arbitration and negotiation. On the contrary, the trial system is well known in Islamic

law.

After independence and unification, the Somali lawmaker introduced order to a system where Islamic courts had overcome tribal justice; colonial judges worked side by side with Islamic judges, although the northern courts had different rules from those of the south. The choice of the socialist pattern has given the judge a new mandate, parallel and sometimes superior to the institutional one (see Guadagní 1980): a judge passes sentences according to the law but he also awakens the socialist conscience of the people and participates in the economic development of the country (section 96). New principles of judicial organization, originally formulated in the Statute on Court Organization of 22 September 1974, are now included in the constitution.¹⁷ Unlike other socialist countries, a Supreme Judicial Council has been created which is presided over by the chief of the state. Justice is administered on a daily basis by the Supreme, Appeal, District, and Regional Courts. As under the 1974 statute, people's assessors are permitted under the constitution to participate in every type of trial. The socialist pattern and the Somali tradition converge in their support of conciliation councils to deal with matters of trade and inheritance. Apart from this, there are also special courts "whose functions and composition are established by law".

The Armed Forces and Security

In line with the general African tendency (see Martin 1975), the Somali Armed Forces have had a leading role in the revolution and in the road to socialism. Their functions are well defined in section 108, concerning "Republic Defense and Security". The state of emergency, which was declared

one year after the promulgation of the constitution, confirmed the leading role of the military forces. Civilians are allowed to occupy positions of power, but the Armed Forces reserve the right to take over if necessary.

The Economic System

The socialist African countries, despite the heterogeneity of their economic systems, have all made the same fundamental choices. The nationalization of the main resources has not excluded the existence of private property and small holdings.¹⁸ National plans of development do exist, but unlike the plans of socialist eastern European countries, they are not binding. The choice of the socialist path has reinforced the Somali lawmaker's preoccupation with the economy, a preoccupation which dates from the 1960s. State intervention has increased at varying rates in the field of agriculture, industry, and services.¹⁹ Section 41 is both a synthesis of the choices made to date and a program for the future. It divides the economy into four areas and schematically describes Somali economic policy:

- the public sector²⁰ is considered to be the leading sector in the economic development of the country;
- the cooperative sector is bound up with the state through planning and financial aid;
- the private sector is based on non-exploitative private ownership;
- the mixed ownership sector is based on joint ownership between the state and the private sector.²¹

In addition, the system is open to investments of foreign capital and technology.

The constitution also lists the progress made in the decade since the revolution. Natural wealth and resources are

owned by the state (section 42). The state organizes and directs economic activities through planning (section 43). The plan takes precedence over the law, but this is still not comparable with the binding force of the Five-Year-Plan in eastern European socialist countries. Somalia is not an industrialized country, and as such does not need specific and binding plans which would apply to every enterprise.

Conclusion

The Somali Charter provides guarantees, based on European legislation, for individual rights and the independence of the judge. Contacts between the state and the Islamic religious leaders are limited, and theocracy has been completely rejected. The main feature of the constitution is the concentration of power which is vested in the leader. Such a concentration of power is usual in Eastern Europe, where the party plays the leading role in the state. In Somalia, however, the concentration of power is vested in the president: the choice of a socialist path has not weakened the African tradition.

FOOTNOTES

- ¹ On the influence of European constitutionalism on African constitutions see Lavroff 1980.
- ² African constitutions often have a pedagogic rather than a normative or obligatory sense. Thus, in times of political crisis, the constitutions, which do not correspond to traditional concepts of law, are set aside.

- ³ In March 1982 General Siyad Barre, President of the Somali Democratic Republic and Chairman of the Supreme Revolutionary Council, repealed the state of emergency, and appointed a new government.
- ⁴ The Italian text of the 1960 Constitution can be found in Florio 1961.
Many Italian scholars have studied the first Somali constitution. See Costanzo 1962; d'Antonio 1962.
- ⁵ On October 21st, 1969, the SRC signed the first "Revolutionary Charter"; on the same day, Statute no. 1 repealed all legislation contrary to the revolutionary spirit. The texts can be found in Hassan Scek Ibrahim 1978.
Decree no. 70 of the SRC formally repealed the 1960 Constitution on February 1970. The choice of "Scientific Socialism" was declared in the second Charter of 4 April, 1971.
- ⁶ The third "Revolutionary Charter" of July 1976 entrusted the SRSP with legislative power, until the promulgation of a new constitution.
- ⁷ Experts on Islam will understand why the text consists of 114 sections. 114 is the number of the sura in the Koran.
- ⁸ Various ethnic groups live in sub-saharian African states. In the northern part of the continent, on the contrary, there is a strong Arab and Moslem majority, concentrated in a number of states, together with a Berber minority and, in Egypt, a Christian Coptic one.
- ⁹ Inhabitants of Brava speak a non-Cushitic language. Other ethnic groups also live in Juba province. Some coastal groups still maintain their Arab traditions.

- I⁰ The Somali language is a Cushitic language; Arabic is a Semitic one.
- I¹ The nationalist movement has underlined the problem of finding a script for the Somali language. Some members of the "Somali Youth League" favored the adoption of the Osmaniya script; others favored the Arabic script, and still others the Roman one. With the granting of independence there was still no solution to this dispute, and it was not until 1972 that the socialist regime decided upon the Roman script.
- I² See the constitutions of the Congo (section 2), Madagascar (section 8), Mali (section 5).
- I³ Cuq affirmed in a survey conducted in 1970 that 100% of Somalis are Moslems. See Cuq 1975.
- I⁴ In this case, too, the opinion of the SRSP is obligatory.
- I⁵ Libya has rejected the representative system; Colonel Khadhafi has said that "the parliamentary system is an obsolete theory"; one of the aims of the "third universal way" is "the restoration of direct democracy".
- I⁶ See Gonidec 1978. Gonidec analyzes the relationships between political parties and tribal leaders.
- I⁷ Majallada Xeerka, a review published by the Ministry of Justice, reports on most judicial decisions.
- I⁸ Examples of coexistence between socialist principles and private ownership can be found in the South Yemen Constitution (sections 8, 15, 52), in the Angolan Constitution (sections 8 - 10), in the Algerian (section 16) and in the Sudanese ones.
- I⁹ In 1978, 89% of exports were based on agriculture.
- I²⁰ The public sector is not strictly controlled as in Eastern

Europe; in Somalia, enterprises own the means of industrial production.

- I²¹ Section 4I is reminiscent of section 32 of the Sudanese Constitution.

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