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Technical assistance and capacity-building

Written statement* submitted by International Educational Development, Inc., a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Judicial reform in Somalia*

International Educational Development, Inc. and the Association of Humanitarian Lawyers have worked on the situation in Somalia for a number of years.¹ We welcome the progress that has been made since our most recent statement and look forward to continued positive developments in Somalia.

Observations and some concerns

The election of Hasan Shiekh Muhamud as President on September 10, 2012 and the seating of the Parliament is a hugely important step for Somalia.² The consequent interactions between the President and other Somali officials and a wide array of international actors have served to legitimize the Federal Government of Somalia (FGS), especially and most importantly in the eyes of the Somali people.³ Because of the progress in the political arena, attention can and has now shifted towards understanding and working to permanently improve the human rights situation in Somalia as violations continue to be numerous and challenging. However, with the leadership of the FGS, we are hopeful that important steps will be taken in this regard.

One significant issue for our organizations is the violation of due process and fair trial rights. For example, in February 2013, a woman alleging she was raped by government soldiers and the journalist who interviewed her regarding this situation were convicted of falsely accusing a government body of a crime that damages state security.⁴ Both of these convictions were eventually overturned, but the impact of the original convictions remains.⁵ It has been widely documented that the journalist was originally detained without being charged and was not allowed to produce witnesses at trial.⁶ Both defendants were also interrogated without legal counsel.⁷ Moreover, the presumption of innocence was undermined as a result of senior government officials stating the guilt of the defendants prior to the conclusion of the trial.⁸ For Somalia to advance in the field of human rights, Somalia must have a far better functioning judicial system that both protects due process and fair trial rights, and provides remedies when these rights are violated.

Judicial reform is also necessary to address another serious problem in Somalia --the protection of women's rights and especially the prevention and punishment of sexual

* The Association of Humanitarian Lawyers, an NGO without consultative status, also shares the views expressed in this statement.

¹ Association of Humanitarian Lawyers researcher Diya Malani assisted in the preparation of this document. Please see our prior statements A/HRC/15/NGO/73, A/NRC/16/NGO/41, A/HRC/17/NGO/15, A/HRC/19/NGO/36, A/HRC/20/NGO/36, A/HRC/21/NGO/56 and A/HRC/22/NGO/61.

² See <http://www.un.org/apps/news/story.asp?NewsID=42900#UgqSHxYuots> & <http://www.un.org/apps/news/story.asp?NewsID=42711#UgqSQhYuots>.

³ Interactions include meeting with United States President Barak Obama, other international heads of state, and attendance at events such as the London Conference on Somalia. See <https://www.gov.uk/government/topical-events/somalia-conference-2013>.

⁴ See <http://www.un.org/apps/news/story.asp?NewsID=44077&Cr=rape&Cr1#UgqS-xYuots>

⁵ See http://zeenews.india.com/news/world/somalia-apex-court-frees-jailed-journalist_836101.html

⁶ See <http://www.bbc.co.uk/news/world-africa-21647203> & <http://m.aljazeera.com/story/2013226564886175>

⁷ See <http://www.theguardian.com/world/2013/feb/05/woman-charged-somali-state-rape>

⁸ See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12969&LangID=E>

violence against women. Sexual assault and rape by Somali government forces as well as by members of the Al-Shabaab group is widespread and victims are currently without adequate recourse. The Special Rapporteur for violence against women has noted the absence of accountability mechanisms and specialized services for victims.⁹ In her report, A/HRC/20/16/Add.3, she makes a number of recommendations, many of which have not been implemented. Compounding that are court decisions such as the one discussed above that act as a serious deterrent for rape victims to come forward and report crimes which have taken place. A related issue impacting women's rights is the widespread practice of female genital mutilation (FGM), which over 97% of women in Somalia undergo.¹⁰ Though FGM is technically banned under the new constitution,¹¹ there must be more focus on practical ways to implement this ban and punish those who force FGM on unwilling participants. Ultimately, there is a great need to instill an environment in which women are not fearful to come forward and report crimes which have taken place against them. A huge step for protecting women's rights would be obtained by a stronger judiciary willing to punish individuals for sexual violence against women instead of penalizing the victims. In all areas of protections against women, what the Special Rapporteur on violence against women refers to as the "fragmentation of international assistance" continues to play a negative role.

Judicial reform is also imperative to protect the right to freedom of expression, which remains a controversial and largely unprotected right in Somalia. The government clamping down on critical media does not come as a great shock, in the sense that newly formed governments trying to establish legitimacy often suppress individuals who are critical of the actions of government officials or agents. However, as is the case in Somalia, suppression of the media generally has the opposite effect and only serves to make the government look weak. Many Somali journalists are killed every year.¹² Others, such as the journalist discussed above, are arrested and detained. While the government may not be responsible for the deaths of journalists, there has been no real investigation or prosecution of those who commit these murders.¹³ In our view, the Draft Media Law as it is written only serves to compound these issues.¹⁴ If the laws are not drafted in a manner that best protects the freedom of the speech, more reliance must be placed on the judiciary to protect free speech rights. The judicial system currently cannot be relied on in this regard.

Conclusion

The overall improvement of human rights in Somalia requires substantial reform of its judicial system. A strong and independent judiciary that can be trusted by individuals to enforce the law is also a significant way for the government to more fully secure its

⁹ Violence against women: UN expert concludes visit to Somalia, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11719&LangID=E>

¹⁰ This percentage is derived from national survey data (the Demographic and Health Surveys (DHS) published by Macro, or the Multiple Cluster Indicator Surveys (MICS), published by UNICEF), available at: <http://www.who.int/reproductivehealth/topics/fgm/prevalence/en/index.html>.

¹¹ Article 15(4) of the Constitution states that the circumcision of girls (also known as Female Genital Mutilation/Cutting) is prohibited. The text of the constitution is available at: http://www.constitution.org/cons/somalia/120708_ENG_constitution.pdf.

¹² Six Somali journalists have been killed so far in 2013. See <http://www.freemedia.at/home/singleview/article/sixth-somali-journalist-killed-in-2013.html>.

¹³ See http://www.nusoj.org/wp-content/uploads/2013/05/NUSOJ_Impunity_Final.pdf

¹⁴ Concerns regarding the Draft Media Law focus on the widespread power of the National Media Council. See <http://www.nusoj.org/2013/07/31/independent-media-community-expresses-concern-over-prospect-of-somali-media-regulation/>

legitimacy. That said, a strong and independent judiciary requires financial resources and extensive training, especially in human rights.

Recommendations

We recommend that the Independent Expert on Somalia Shamsul Bari, in conjunction with the United Nations Assistance Mission in Somalia (UNSOM),¹⁵ examine the judicial system in Somalia and draft a written stand-alone plan on how to improve its strength and independence. The IE, who has a solid grasp of the realities in Somalia and has access to both government officials and the top legal minds in the country, is best able to provide a credible, rights-based plan. Additionally, we recommend that the IE, who has been working with Somali officials on the Human Rights Roadmap and the Draft National Human Rights Commission Legislation, ensure that the role of the judiciary in protecting human rights is fully incorporated into all actions. The issue of judicial reform should also be an important topic for the New Deal for Somalia Conference in Brussels, and we hope that those involved seize the opportunity to strategize and plan in this regard.¹⁶

Finally, we recommend that donor countries, especially the United Kingdom and Turkey who have been so heavily invested in Somalia's success, ensure that resources are allocated for judicial reform. We also recommend that UNSOM work to ensure that the fragmentation of international aid is a thing of the past, and with a cohesive plan the many needs of Somalia and the Somali people can be attended to properly.

¹⁵ UNSOM replaced the United Nations Political Office for Somalia (UNPOS), which completed its mandate on 3 June 2013. See Security Council Resolution 2102 (2013) at <http://www.refworld.org/docid/519e02b04.html>. Headed by Nicholas Kay, one of UNSOM's goals is to support the improvement of the judiciary and strengthen the rule of law.

¹⁶ The conference will be held on 16 September 2013. See <http://www.somalia-newdeal-conference.eu>.