



General Assembly

Distr.: General
11 June 2012

English only

Human Rights Council

Twentieth session

Agenda item 10

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.

[4 June 2012]

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

Ending the transition 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 This year, we hope for and anticipate progress in Somalia.

2012 is a watershed year: the Roadmap for Ending the Transition (the Roadmap) reaffirms 20 August 2012 as the deadline for Somalia's Transitional Federal Institutions.² The Roadmap states that Traditional Leaders (Duubab) will select the delegates to the National Constituent Assembly (NCA) by 20 June, and that the NCA will convene on 2 July to adopt the new provisional constitution by 10 July 10. By 15 July, Members of Parliament will be selected by the Traditional Leaders, who will be assisted in this task by a Technical Selection Committee (TSC). The TSC will be broad enough to ensure representation of Somalia's various clans and international observers.³ Ultimately, the Roadmap should be applauded for putting a serious timeline in place and for including a broad representation of the population. However, there are serious concerns that if left unaddressed could result in an undesirable outcome for the government-building process.

One major concern is that the Somali population will not be sufficiently engaged. On the surface, the selection of Traditional Leaders to select NCA delegates and the Members of Parliament seems appropriate in engaging a broad representation of the population. However, the Roadmap does not make clear who selected the "recognized Somali Traditional Leaders."⁴ British Ambassador to Somalia Matt Baugh suggested that

- "a critical part of getting the political process right is for the Roadmap signatories to explain to the Somali people how it will work: how clan elders were chosen to appoint the National Constituent Assembly (NCA), how the members of the NCA will be chosen, how differences over the Constitution will be resolved, and what the timetable is."⁵

The information given is incomplete and has led to suggestion that the Traditional Leaders have been selected by politicians who will then presumably be selected by the Traditional Leaders to serve as Members of Parliament.⁶ There is a similar concern with the Technical Selection Committee—though it may be broad enough in terms of clan representation, it is unclear how the members of the TSC will be selected. The Roadmap states that the Somali members of the TSC will be selected by the Somali signatories, but does not explain on what criteria the selections will be made, leaving the opportunity for the selections to be

** 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.

² The Roadmap is the result of a consultative meeting with Somali leaders hosted by the African Union and facilitated by the Office of the UN Special Representative for Somalia. It was held in Addis Ababa, Ethiopia from 21-23 May 2012. Available at: <http://unpos.unmissions.org/LinkClick.aspx?fileticket=c5df15pV7q8%3d&tabid=9705&mid=12667&language=en-US>.

³ According to the Roadmap, the TSC will be made up of 27 Somali members, 2 members from UNPOS and 7 International Observers.

⁴ *Supra* n. 2 at 1.

⁵ Matt Baugh, *The Roadmap: Focus on the Destination*, available at: <http://blogs.fco.gov.uk/mattbaugh/2012/05/21/the-roadmapfocus-on-the-destination/>.

⁶ See, e.g., Ahmed Ali M Khayre, *Roadmap for Ending Somalia Transition: An obvious fool's errand* (24 May 2012), available at: <http://www.pambazuka.org/en/category/features/82403>.

made completely arbitrarily. It is entirely possible that though both the Traditional Leaders and the TSC reflect a broad representation of the population, the Somali people as a whole will not be happy: if this process is rejected or seen as corrupt, a stable government will likely be unachievable.

We urge the UN Political Office for Somalia (UNPOS) to address this. UNPOS, including the Special Representative of the Secretary-General for Somalia (SRSG), has been involved with all the critical stages in ending the transition, including the Kampala Accord and Garowe II Principles.⁷ UNPOS has successfully engaged civil society done through, for example, the Civil Society Conference in Mogadishu⁸ and the Human Rights Audit Workshop.⁹ However, UNPOS has also taken steps that effectively dissuade civil society from engagement. UNPOS, AMISOM, and the Intergovernmental Authority on Development (IGAD) issued a warning on 1 May 2012 to all potential “spoilers” from jeopardizing the Roadmap, accompanied with threats of sanctions and restrictions.¹⁰ This statement is entirely correct in threatening those who seek to incite violence or seek to corrupt the peace process for personal gain. However, this very serious statement has also curbed civil society from speaking out: constructive criticism must be sought and encouraged with no threat of reprisals.¹¹

In addition, UNPOS needs to act with the dual goals of more transparency and more inclusion. In a statement made to the UN Security Council, the SRSG emphasized the need to “intensify” public and civic education on the upcoming political process and stated that UNPOS is producing television, radio, printing and online material targeting civil society groups.¹² We welcome this, and also suggest that UNPOS consider the use of communication via cell phones or local meetings, and an interactive website with updates on the progress of the Roadmap process and space for discussion, similar to the online consultation forum created by Special Representative of the Secretary General on Human Rights and Transnational Corporations, John Ruggie, for his “Guiding Principles for the Implementation of the UN ‘Protect, Respect and Remedy’ Framework.”¹³ We also recommend that the Independent Expert on Somalia remain alert to this concern and comment during the Council’s 21st session on how transparent and inclusive this process has been and what recommends he may have of additional measures.

Even if the Roadmap process succeeds and a capable government is established by the 20 August deadline, Somalia will be stunted in progress unless the judiciary and security sectors are bolstered. Currently, the Somali judiciary system is divided between Somali

⁷ See UNPOS Mandate, available at:

<http://unpos.unmissions.org/Default.aspx?tabid=9706&language=en-US>.

⁸ Civil Society Consultative Meeting, held in Mogadishu from November 26-28, 2011. See

<http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/PressReleases%20Eng/020%20-%2011128%20Civil%20Society%20backs%20Roadmap%20for%20Somalia.pdf>.

⁹ Human Rights Audit Workshop, held in Mogadishu from November 30-December 1, 2011. See

<http://www.ohchr.org/EN/NewsEvents/Pages/ApeopledrivenconstitutionSomalia.aspx>.

¹⁰ Joint Statement by UNPOS, AMISOM, and IGAD, available at:

http://unpos.unmissions.org/LinkClick.aspx?fileticket=j1ec_QUqE4A%3D&tabid=9744&mid=12667&language=en-US.

¹¹ See, e.g., Abdi Ismail Samatar, UN Threatens the Somali Democratic Movement (May 17, 2012), available at: <http://www.pambazuka.org/en/category/features/82236>.

¹² Statement by Dr. Augustine P. Mahiga, Special Representative of the Secretary-General for Somalia, to the United Nations Security Council on May 15, 2012. Available at:

<http://unpos.unmissions.org/LinkClick.aspx?fileticket=S0PqM2bS1f4%3D&tabid=9744&mid=12667&language=en-US>.

¹³ <http://www.srsconsultation.org/> (not available); See

<http://blogs.law.harvard.edu/corpgov/2010/12/02/guiding-principles-on-business-and-human-rights/>.

customary law (Xeer), Sharia law, and civil law. Moreover, members of the judiciary often have poor training and face constant threats.¹⁴ The security sector is similarly uncoordinated and officers often lack training. Prison conditions are extremely poor and include overcrowding, lack of healthcare, and inadequate food, ventilation, and lighting.¹⁵ A long-term strategy including legal and security training, human rights training, development of infrastructure, increased safety for personnel, and anti-corruption measures must be developed and put in place. The unimplemented National Security and Stabilization Plan (NSSP) is a good beginning point for developing this long-term strategy.¹⁶ We agree with the Roadmap's recommendation that the President of the Transitional Federal Government issue a presidential decree which will enable the formation of the NSSP as soon as possible.¹⁷ UNPOS must increase its efforts in this regard.¹⁸ Moreover, donor countries now focusing on piracy and terrorism should consider investing in law and security initiatives, as such investing would allow Somalia to address the root causes of both. Finally, in our written statement to the 19th Session of the Human Rights Council, we recommended that the Independent Expert on Somalia focus his attention on the Somali judiciary system.¹⁹ The Independent Expert recently released a statement urging the Somali government and the international community to re-establish a legitimate justice system in Mogadishu and South Central Somalia.²⁰ We applaud the Independent Expert for making this statement and recommend that he continue his advocacy on this issue.

Somalia now has the opportunity to shift away from its "failed state" condition.²¹ In addition to the concerns we present in this statement, Somalia has many other problems including, *inter alia*, the on-going war against Al-Shabaab, the rise in deaths of journalists, piracy, and violence and discrimination against women.²² While there has been improvement in solving these problems by the Somali authorities, civil society, and the international community, significant progress can only occur if a trusted permanent government and strong judiciary are put in place in a process that is transparent and inclusive.

¹⁴ See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12103&LangID=E>.

¹⁵ U.S. Department of State, 2011 Country Report on Human Rights Practices in Somalia, available at: <http://www.state.gov/documents/organization/186453.pdf>.

¹⁶ National Security and Stabilization Plan (October 18, 2011), available at: https://www.cimicweb.org/cmo/medbasin/Documents/Horn%20of%20Africa/Somalia/20111111%20TFGOVERNMENT%20NSSP%2018%20October%202011%20including%20FOREWO_1.pdf.

¹⁷ *Supra* n. 1 at 3.

¹⁸ See "The role of the Office of the High Commissioner for Human Rights", available at: <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/SOSummary20102011.aspx>.

¹⁹ A/HRC/19/NGO/36.

²⁰ *Supra* n. 14.

²¹ Somalia has topped the Failed States Index for the past four years. See <http://www.foreignpolicy.com/failedstates>.

²² On this issue we welcome the report of the Special Rapporteur on violence against women, A/HRC/20/16/Add.3.