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February 10, 2003

OPEN LETTER

TO: Mr. Bethwel Kiplagat/Chairman
Somali Reconciliation Conference
Inter-Governmental Authority on Development

Secretariat
Intergovernmental Authority on Development
P.O. Box 2653,
Djibouti
Republic of Djibouti

Dear Mr. Kiplagat,

We would like to take this opportunity to express our views and our concerns regarding the important efforts currently underway on the Somali National Reconciliation Conference in Eldoret (Kenya). We refer to conference procedural matters, individual rights versus clan rights, the disastrous state of human rights in the country, constitutional rights, judicial review, war crimes tribunal, the land question, and the need for affirmative action.

1. Procedural Matters

We are aware that the Somali crisis is entering a new stage in its development as a result of the efforts of the regional and international powers to bring an end to this tragedy. It is reasonable to assume that there are plans to assist the Somali people set up a transitional government in Eldoret and formulate a new constitutional, political, economic, social and cultural order for a future Somalia. These are very important steps which take us back to 1950, for reflection, when the United Nations Trusteeship Council assumed responsibility for preparing Southern Somalia for independence under a ten year United Nations Trusteeship Administration. The work that was done, then, was extremely remarkable, in terms of the constitutional rights that were guaranteed to every Somali citizen.

Despite this rich constitutional background, past reconciliation talks on Somalia were fatally flawed from the beginning, because a high proportion of the participants to the talks were drawn from the club of armed militias. Clans represented by armed militias were accommodated and received favorable quotas in matters of representation and power sharing, at the expense of the vast majority of peaceful communities in the Benadir and in the inter-riverine region. We continue to believe that those who raise national

reconciliation issues in an attempt to shut off any effort to resolve clan quota in matters of representation evenhandedly err because they do not take into account the background of injustice in the country and the aspirations of the millions of peaceful Somalis for equal rights and equal opportunity. Further, there has been total disregard for transparency and fair play in procedural matters in representation and power sharing, which we believe are no less important than substantive issues.

The basis of our philosophy is that Somalia in its entirety belongs to all who live in it, and that no government, can have authority and enjoy legitimacy, unless it is based on the will of all the Somali people, and that conference participation, as much as clan representation, are central arguments to the resolution of the Somali crisis.

2. Individual Rights versus Clan Rights

Modern societies protect individual rights above all else on the understanding that all other rights are subordinated to individual rights and freedoms because only the individual is sacred and has dignity, not the group, nor the clan, however defined. Clan rights, backed by a false majority, under conditions that basically blackmail the success of the peace talks, unless certain set asides are not guaranteed, remain the obstacle to the resolution of the Somali crisis. We have seen the dark nights of the military dictatorship in Somalia (1969-90) and the anarchy and devastation that followed (1990-present) and we understand that the group rights model, if not followed to the letter, under an atmosphere of equality, would result in the preservation of the nightmare of clan hegemony, injustice, and institutional violence. In fact, the United Nations Trusteeship Administration in 1950, and the Somali Constitution of 1960, did not even address this type of model. It is fair to expect, in the interest of the whole nation, that due attention be paid to the more legitimate voices of the vast majority of peaceful Somalis who derive hope and inspiration from the ideals of democracy, freedom, and equal rights.

As points of departure, for the resolution of the question of individual rights versus clan rights, we recommend the adoption of the annex of constitutional rights adopted by the Trusteeship Administration for Southern Somalia in 1950, in conjunction with the Somali Constitution of 1960. These two documents, even though the Somali Constitution of 1960 needs further improvement due to the absence of a bill of rights and judicial review of acts of parliament, have nonetheless produced concrete positive results during the administration of the First Republic (1960-69).

A written constitution underpinned by a bill of rights, both of which are protected by judicial review, is the best known way to prevent dictators, warlords, and clan oligarchies from hijacking a nation.

3. Universal Suffrage

Vast sections of the Somali people are illegitimately stigmatized as minorities, despite the fact that there has never been any census in the country to establish who is a minority and who is a majority. The same groups who continue to invoke the majority/minority clause

have always been in power in the country since independence in 1960, and we know that they have always blocked any attempts to carry out a census in the country, the latest being the deliberately frustrated UNDP Somalia Population Census Project of 1975. As far as we are concerned, we understand that the roots of this alienating plot goes back to the formation of the First Legislative Assembly in Somalia in 1952, when the Italian Administering Authority in collaboration with certain groups, worked to label certain groups, such as the Benadiris, as minorities. This was in response to the leading role that, in the early years of the colonial administration, the Benadiri people played in the formation of the three important national liberation movements in the country, namely the Somali Youth League, the Benadir Youth Union, and the Hizbia Dastur Mustaqbil Somalia.

We believe that there can be no substitute to universal national suffrage as the only means by which any future Somali government can claim legitimacy. Any plan which rejects universal suffrage and which approves of a power sharing mechanism based on franchise rights only within clan groups, living within their group area, is undoing the work of a century of urbanization, economic development, and national integration. Such constitutional provisions, if ever adopted, would exclude millions of alienated groups who do not belong to any of the armed militias, either as voters or as candidates for electoral office.

Because the Benadiri people bear the scars of alienation for over fifty years, because we learnt the hard way that a government which claims to represent the people of the country is different from a government which consists of true representative members of the people, we believe that the institution of free and fair elections is a key to giving the alienated groups the opportunity to defend their basic human rights. Those who claim and thus reserve themselves the role of majority status and hegemony will only have to show the numbers and abide by the internationally recognized democratic principle of one man, one vote.

In this regard, a United Nations supervised national election, like the one carried out in Liberia in July 1997, in the presence of prestigious non-profit organizations, such as the Carter Center, would help remove the unrelenting confusion and mystification that is continuously raised over the distribution of political representation in the country.

4. Human Rights (Ref, Amnesty International letter to the Eldoret Conference of November 7, 2002)

It is documented that the most ferocious wars, destruction, and pillage in Somalia, have taken place in the Benadir. Marauding armed militia, belonging to various groups repeatedly raided the defenseless population of the Benadir, systematically looted their property and raped Benadiri women, even inside the mosques. Extortions, kidnapping, and blackmail are, up to now, the order of the day, as the men and women remain helpless at the mercy of lawless bandits.

For over ten years, the Benadir remains under the occupation of armed militias from other regions of the country. The native population are continuously harassed, are denied the right to life, freedom of speech and movement, while huge properties belonging to the Benadiri people of Mogadishu, Merca, Brawa, and Kisimayo are still in the hands of thugs. The Benadiri population, inside the country, and those in the Diaspora, suffer immense psychological trauma, deriving from the atrocities committed against their beloved ones, and the ethnic cleansing against which they have no protection.

We do not believe, as some would like to suggest, that raising the question of human rights violations would disrupt the current initiatives for the formation of a stable political regime in the country. In the course of the past decade, we have witnessed a persistent desire on the part of various international organizations to tolerate and maintain a dialogue with warlords on the basis that they hold authority over segments of the population, even if such partnership did not lead to the fulfillment of UN objectives to reach, assist, and educate the masses. We have seen insensitivity to the cries from the victims that by attributing a leading role to the warlords, the international organizations were essentially giving them political legitimacy and undue credit in the eyes of the victims. More than often, as has been the case in Somalia, such benevolent initiatives to work with warlords, were deliberately frustrated, and ended up to reward and strengthen the economic base of the perpetrators of injustice with international economic assistance. No question that this state of affairs has inevitably contributed to the stalemate, confusion, and dismay, in the political system in Somalia. It has had a demoralizing effect on the people and created uncertainty in the search for an alternative.

5. War Crimes Tribunal

In our view, the formation of a war crimes tribunal for Somalia is a key to turning around the perpetuated violations of human rights in the country. It is very important, for the victims and for the stability of the whole region, to send a clear and sounding message, especially to non-state violators of human rights in Somalia that nobody can be above or beyond the reach of international law. Genuine reconciliation efforts, oriented to build a stable political regime in the country, ought to address first and foremost, the question of human rights abuses and war crimes in the country.

We do not believe, as suggested by some, that Somalia is currently at a stage where we can talk about Truth Commissions because that would imply that the current situation in the country is set to look into the future, has guaranteed the basic rights to representation, has recognized and is committed to carry out the restitution of seized property and land, and that a fair and effective judiciary is in place to protect the innocent and punish the violators of human rights. Unfortunately, none of these essential coordinates of the equation are in place in Somalia today.

We feel a pressing demand for the adoption of an organic act in the country. Such an act would define the rights and duties of the citizen, set forth the rights of persons under suspicion of a crime or under arrest, the right to bail, and to a speedy and public trial. The offices of human rights of the UN and NGOs might be able to provide valuable assistance

in setting up the human rights standards, while the future Somali government should endorse, sign, and abide by all international laws on the protection of life and all human rights. The future Somali state should become a signatory to the upcoming International Criminal Court as an essential means with which to deal with the numerous perpetual non-state violators of human rights.

6. Emergency Powers

For the most part, close to one whole century, Somalia has been ruled with emergency powers, from the advent of Italian colonialism (1900) to the end of the military dictatorship (1990). Because it is more than likely that any future regime, which comes to office, will be tempted to use emergency powers, it would be wise to make restrictive constitutional provisions and thus condition the introduction of a state of emergency on legislative approval. The conditions under which emergency action can be exercised must include a) a requirement that any declaration of a state of emergency lapse unless it is specifically approved by the legislature within a short period, b) prohibition of invasion of rights except pursuant to statutory authorization, c) legislative approval of the use of emergency powers must be by super-majority vote, such as a two-third majority, d) any declaration of state of emergency must lapse after a limited period of time subject to renewal by the executive and re-approval by the legislature.

Non-derogable rights under any state of emergency, as specified clearly in the International Covenant on Civil and Political Rights, include: the right to life, the right to be free of torture or cruel, inhuman, or degrading treatment, the right not to be enslaved, the right not to be imprisoned for failure to fulfill a contractual obligation, the right to recognition as a person before the law, and the right to freedom of thought, conscience, and religion. The future Somali Constitution must forbid any discrimination on the ground of race, color, sex, language, religion, or social origin. To preserve the integrity of the system, and build consensus over national issues, it is of fundamental importance to protect the right to due process, and the right to see counsel and family.

There is no reason why the Somali people who have suffered so much, for one whole century under colonialism, military dictatorship, and anarchy, should not have the right to enjoy first generation civil and political rights, as well as second generation economic, social and cultural rights, and third generation environmental rights. They have paid the price over and beyond.

7. The Land Question

Land, especially agricultural land, is at the heart of the Somali crisis. On the eve of independence in 1960, the Italian colonial plantation concessionaires owned 73,000 hectares of gravity irrigable land, seized from poor peasants, along both banks of the Shebelle and Juba rivers. The military dictatorship seized an additional 35,000 hectares, belonging to very vulnerable peasants along the banks of the two rivers. In the course of the last decade, southern peasants were harassed, robbed, their land occupied forcibly and their property devastated by marauding armed militias, in an attempt to forcibly expel

them from their land. As we know, the colonial administration, civil governments (1960-69), and the military dictatorship (1969-90) seized the land with the use of fraudulent land legislation, which favored and encouraged the colonial agricultural policy based on the cultivation of banana, under a protected quota system. As more and more peasants were pushed to rain-fed agriculture, and consequent urbanization, the nation's food supply became irreversibly jeopardized.

We are not looking forward to a reconciliation conference which is silent on the question of land grabbing from the vulnerable native farmers. We look forward to a constructive peace conference which will redress the historical injustices of land grabbing, dating as far back as the colonial era, all the way to the present, which left the vast majority of native farmers, not only landless, but cheap labor at the mercy of illegitimate banana plantations and other cash crops. Any future constitution that fails to address this fundamental problem of Somali agriculture will never endure.

Further, legitimate equity arguments and national food supply considerations call for a land reform policy based on the restitution of the land and all forms of property back to their original owners. A recourse to the past and recent history of Southern Somalia, namely in the Benadir and the inter-riverine region, provides ample information on the land question.

8. Affirmative Action

There is need to bridge the gap between the great wealth accumulated by the few under the non-state regime of warlordism, military dictatorship, and colonialism and the grinding poverty of the toiling masses for whom life is a constant struggle for mere existence. Failure to narrow this gap would leave the vast majority of disinherited masses hostage to the illegally acquired wealth of certain groups. An affirmative action plan would do well to correct the economic aspects of this problem.

The laws of the country should grant groups which have been discriminated against and alienated, namely those disadvantaged natives, residing in the Benadir and in the inter-riverine region, the necessary improvements to which they have been denied for over a century. These two regions bear the trauma of half a century of direct colonial rule, part of which was painfully consumed under the Italian Fascist Regime, three decades of clan rule, and a decade of destruction and havoc.

Those with sufficient economic power should be prevented from utilizing the equality or non-discriminatory provisions in the Bill of Rights, to obstruct corrective action. The Bill of Rights will have to take account of the political, social, and economic imbalances that exist in the country today.

9. Unitary State versus Federalism

We share the underlying concerns that lead vast sections of the Somali people to dismiss the unitary state because of fear of abuse of power by the central authority. So much pain

and suffering have been caused to innocent civilians in the countryside and in the cities by the military dictatorship that ordinary citizens legitimately question the validity of a central authority which cannot deliver and protect its own citizens. This is the background against which we inevitably must see the debate between a unitary state versus federalism and it is driven by the inspiration of the vast majority of defenseless citizens to escape the oppression of a despotic unitary state.

Despite this revolting reality, there are serious doubts about the economic feasibility of four or five separate city-states, under the present backward state of the economy. Further, the same tenets of set asides, clan privileges, power concentration, abuse of power, and mismanagement, that brought down the unitary state are inherent in the existing breakaway city-states, where power is concentrated in the hands of one or to two clan families. The matter is further complicated by the ambitions of certain militia leaders to preserve their personal and clan leadership at any cost, be it at the national level or at the city-state level, and is based on fear of losing power and of majority rule rather than a rational judgment of the real interests or needs of the people of Somalia. Indeed, the dismissal of the unitary state is a prelude to the downward proliferation of clan feuds and hostilities in every corner of the country, as is already the case in the existing city-states. The problems of the Somali people, as far as the abuse of power is concerned, hence, do not go away by throwing away the baby with the dirty water.

There is nothing to prove that a democratic decentralized unitary state, of constitutional checks and balances, of separation of powers, of a multi-party state, and of a judicial bill of rights to guarantee public and private powers, with regional autonomy, based on equal rights and equal opportunity for all individuals, cannot serve the people of Somalia. The future Somali State must have the duty to promote a single national identity and loyalty, but at the same time, recognize, protect, and develop the positive aspects of cultural and linguistic pluralism.

10. Closing Remarks

The absence of a theoretical and practical alternative to the resolution of the Somali tragedy does not necessarily create a condition whereby the fundamental freedoms for all without distinction as to race, gender, language, religion, and political opinion can be traded for the formation of a government in the country. That has never been the spirit of the drafters of the Universal Declaration of human rights. These universal values, which are binding on any form of regime that is established in Somalia, cannot be postponed, nor can they be left to the discretion of any group or any administration. It is our hope, that the Inter-Governmental Authority on Development in East Africa will not seek any plans to support a political regime in Somalia, which deprives vast sections of the Somali population, their sacred rights to freedom and representation, without ever yielding to the demands for preferential treatment and set asides. The record shows that attempts to persuade the international community to bail out warlordism out of the dead end in which it finds itself, for over a decade now, did not work in the past.

We hope that the current efforts to bring peace and stability to Somalia will yield positive results for the majority of the alienated groups in the country. We hope that the international community and especially the neighboring countries of IGAD will assist the Somali people build its nation. We look forward to a Reconciliation Conference which will bring justice, freedom, peace, and stability for all the people of Somalia. May the future constitution of Somalia not become another burden.

Sincerely,

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