



# General Assembly

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## Human Rights Council

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Agenda item 4

Human rights situations that require the Council's attention

### **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.

[13 February 2012]

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

## The situation in Libya\*\*

International Educational Development, Inc. (IED) and the Association of Humanitarian Lawyers (AHL) have closely followed events in Libya since the beginning of the uprising.<sup>1</sup> We commend the Commission of Inquiry (Commission) on its investigation into the state of human rights in Libya. Reports to the Human Rights Council (Council) have thus far been detailed, factual and comprehensive. We were particularly concerned with the allegations of arbitrary detention, torture and killings by National Transitional Council (NTC) forces or affiliates which the Commission first discussed in its initial report to the 17<sup>th</sup> Session of the Council on June 1, 2011 (A/HRC/17/44) and later in its oral report to the 18<sup>th</sup> session of the Council on September 19, 2011.

In its reports the Commission discussed allegations of unlawful detention of migrant workers, especially those of sub Saharan origin, by opposition forces and groups of unaffiliated civilians. The reports further discussed incidents of torture and even murder alleged to have taken place in the makeshift prisons around Misrata, Tripoli, and other locations. In recent weeks it has become apparent that these allegations are true.<sup>2</sup>

IED and AHL maintain that there are two significant explanations for these arbitrary detentions. The first is the lack of control that the NTC has over its various brigades and affiliate militias, as the High Commissioner reported to the Security Council on January 25<sup>th</sup> 2012.<sup>3</sup> The High Commissioner also stated that NTC forces have participated in a large number of extralegal arrests. This problem of illegitimate action by armed militias is not an issue that the Council can easily solve as it is up to the NTC to rein in them and its own forces. The second explanation has less to do with the action of detention and more to do with its continuance: because there is no functioning court system in place in Libya to deal with detainees, many are detained indefinitely. At time of writing, estimates put the number of detainees at 8,000 or 9,000. We agree with the High Commissioner that the lack of a judicial authority on the local level is of serious impairment to the realization of human rights in the country. IED and AHL attest that this issue is not restricted to criminal proceedings but that it extends to civil matters as well. The citizens of Libya cannot seek recourse for damages done to property during the civil war, much less under the Gaddafi regime because the court system meant to deal with such matters is in disarray -- in fact there is no clear central jurisprudence governing the courts. For example, though many reports indicate that the recent conflict in the city of Bani Walid was spurred on by loyalists of the old regime, the conflict was caused by groups of angry persons who had been unsuccessfully seeking recourse for the damages done to property during the conflict in the city.<sup>4</sup> We think that as the problems are clearly established, attention should be focused on concrete action to address them.

Over the past month the NTC has been attempting to seize control of the various improvised prisons located throughout Libya. The Ministry of Justice is additionally

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

<sup>1</sup> Association of Humanitarian Lawyers researcher Reilly Hurley assisted in the preparation of this statement. Please also see our written statement "Minorities in Transitional Governments" that addresses, inter alia, the situation of minorities under the National Transitional Government.

<sup>2</sup> "Libya: Justice Ministry to take over prisons after aid groups complain of inmate torture." Washington Post, January 29, 2012.

<sup>3</sup> Statement to the Security Council by N. Pillay, High Commissioner for Human Rights [Libya], January 25, 2012, New York.

<sup>4</sup> Maxwell, James. "Libya: The NTC's Crisis of Legitimacy." Think Africa Press, January 30, 2012.

attempting to create a screening process for detainees. All of this is aimed at releasing wrongly accused detainees and bringing to trial those imprisoned legitimately.<sup>5</sup> Less is happening regarding a provisional (and later permanent) judiciary. In this regard, the Council can urge the NTC and the Libyan Ministry of Justice to request the UN to establish a team of legal advisors and legal experts.

Legal advisory missions have been successful in the past. An example of such a mission is the Administration of Justice Support Unit, established in 2007 by UNMIT -- the United Nations Integrated Mission to Timor-Leste. AJSU's program could be used as a guide for the establishment of the rule of law in Libya. The AJSU's priorities are:

- To facilitate independent comprehensive needs assessment of the justice sector;
- To assist the Ministry of Justice (MoJ) in developing a strategic plan for the justice sector, including corrections;
- To enhance police-prosecution cooperation;
- To assist in the development of a legal framework and provide technical support on key legislation;
- To provide input and assistance to the legal framework to link customary law/traditional justice with the formal system being developed; and
- To assist in the establishment of effective accountability mechanisms to enhance integrity of the judiciary, including Superior Councils.<sup>6</sup>

The AJSU has been very successful. As it recently reported:

There has been much progress in the judicial sector - including the recent adoption of the governmental Justice Sector Strategic Plan (2011-2020) and increasing responsibility by national actors in the Timorese justice system with remaining challenges, in particular with respect to the lack of human resources, specialized training, adequate infrastructure, public awareness of the formal justice system and a significant language barrier. The establishment of rule of law remains a priority for the government and UNMIT. Consequently, combating impunity and strengthening accountability must remain the focus of attention.<sup>7</sup>

Priorities 5 and 6 are of particular interest as it indicates AJSU already has expertise in integrating reforms into existing, traditional legal justice. This will be of particular importance as the Libyan Ministry of Justice has indicated that it will incorporate Sharia law in Libya's judicial system.<sup>8</sup> However, although Libyan lawyers and judges may have knowledge of Islamic jurisprudence, they cannot have had practical experience with Sharia as the Gaddafi government did not implement Sharia in Libya. It is clear that the future government of Libya will need significant aid building a permanent legal system within the framework of Sharia. AJSU's work could provide a highly valuable template for both long and short term efforts in Libya in this process.

IED welcomes the Security Council's mission (UNSMIL -- United Nations Support Mission in Libya, established by Security Council resolution S/RES/2009 of 16 September 2011). We recommend continuing action by the High Commissioner, the Council as a

<sup>5</sup> "Libya: Justice Ministry to take over prisons after aid groups complain of inmate torture." Washington Post, January 29, 2012.

<sup>6</sup> Report of OIOS-Internal Audit Division-Audit Report-1 march-2010-assignment-No. AP2009/682/03

<sup>7</sup> UNMIT. "Administration of Justice Support." <http://unmit.unmissions.org>

<sup>8</sup> Umar Oseni, Sharia in Libya: Implications for Human Rights and the Rule of Law, JURIST - Forum, Nov. 6, 2011, <http://jurist.org/forum/2011/11/umar-oseni-libya-sharia.php>.

whole and its mandate holders to ensure a rights-based approach in all activities of UNSMIL. In its resolution 2022 of 2 December 2012, the Security Council extended the mandate of UNSMIL only to March 16, 2012. Unless the mandate is further extended, there is insufficient time for UNSMIL to have much effect assisting the Libyan authorities in matters relating to the judiciary. As the Special Advisor to the Secretary-General stressed in his statement to the Security Council on January 25, 2012, the NTC faces significant challenges in this regard, and the NTC has still not be able to transfer the detainees from the control of the brigades to that of the Ministry. Special Advisor Martin also pressed upon the need for a national framework for transitional justice. While there have been several conferences in this regard, there is still no framework. We would like to have an administration of justice support unit established under UNSMIL, but the present short mandate does not allow this.

In conclusion, IED urges the Council to ask the Security Council to extend the mandate of UNSMIL for a sufficient length of time to allow it to address the pressing issues facing the Libyan people and the NTC. In addition, the Council should ask that an administration of justice support unit be established under UNSMIL. We also urge the Council to extend the mandate of the Commission of Inquiry for another year. We believe this is the best way to monitor the situation of human rights in Libya at this time. While some of the Council's mandate holders could provide some information on events in Libya, it will necessarily be piecemeal as the scale and scope of the issues and the fact that the authorities are a transitional government, requires attention to a wide range of human rights issues. This is especially true if the mandate of UNSMIL is not extended. We also think maintaining the Commission rather than change to a country rapporteur can provide continuity and trained expertise to the provisional authorities as they move towards.

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