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## Human Rights Council

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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.

[23 August 2012]

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

## Evaluating progress in Somalia\*\*

International Educational Development, Inc. and the Association of Humanitarian Lawyers have worked on the situation in Somalia for a number of years.<sup>1</sup> Despite impediments in the nation-building process, we remain hopeful that stability can be achieved in Somalia.

As we set out in our written statement to the 20<sup>th</sup> session of the Council, 2012 is a watershed year for Somalia.<sup>2</sup> Many achievements have been made, including a new Constitution and government. However, as the political processes are winding down, it is becoming apparent that both the new constitution and government fail to properly engage Somali citizens and to reflect the realities faced by the Somali people.

The National Constituent Assembly adopted the Provisional Constitution for Somalia on 1 August 2012.<sup>3</sup> This step should be applauded because it provides the foundation for the legal rights of the citizens and for the legal rights and duties of the government. However, some of the Constitution is largely aspirational (*lex ferenda*) and does not reflect current realities. Nor does it provide any structure for how the aspirational goals can be achieved. For example, Article 15(4) states that the circumcision of girls (also known as Female Genital Mutilation/Cutting) is prohibited. However, in reality, over 97% of women in Somalia undergo circumcision.<sup>4</sup> As stated by activist Fatima Jibrell, the provision will be meaningless without “education, awareness-raising and strong legal provisions”.<sup>5</sup> Another example of the Constitution’s good intentioned but unrealistic provisions is Article 28(2), which provides that mother and child care is a legal duty of the state. Somalia has one of the highest rates of maternal mortality and mortality of children under 5.<sup>6</sup> In addition to identifying mother and child care as a legal duty of the state, supporting legal provisions and government funding will have to go towards fulfilling this duty. Finally, Article 30(2) states that every citizen shall have the right to free education up to secondary school. This provision and others regarding the rights of children, including restrictions on child labor and the prohibition of children soldiers, do not take into account current realities. Overall, however the Constitution must be recognized for what it is: a positive step and a goal needing to be accomplished. While it does not achieve much for people who are presently suffering and living without fulfillment of their rights, it can lead to specific laws based upon it so that it can be eventually implemented and have real meaning to citizens. In our view, this will be a gradual process, but there needs to be some tangible results soon or the people will ignore the process.

The current political process also reflects the positive momentum in Somalia, but which ultimately failed to deliver any concrete change for the Somali people. At the time of

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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 Diya Malani assisted in the preparation of this document.

<sup>2</sup> A/HRC/20/NGO/41.

<sup>3</sup> The text of the provisional constitution is available at:  
[http://www.constitution.org/cons/somalia/120708\\_ENG\\_constitution.pdf](http://www.constitution.org/cons/somalia/120708_ENG_constitution.pdf).

<sup>4</sup> 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>.

<sup>5</sup> <http://www.irinnews.org/Report/96092/SOMALIA-Activists-laud-ban-on-FGM-C-say-implementation-will-require-more>.

<sup>6</sup> Building a Future for Women and Children: The 2012 Report, Countdown to 2015, available at: <http://www.countdown2015mnch.org/documents/2012Report/2012-Complete.pdf>.

writing, most of the New Federal Parliament (NFP) has been sworn in but the elections of the President, Prime Minister, and Speaker of the Parliament have been postponed to a later time.<sup>7</sup> This process has been struck with corruption by many of those in a decision-making capacity and intimidation by those seeking political power. Additionally, the process has become increasingly frustrating as many members of the Transitional Federal Institutions have been selected as MPs or are running for positions in government. Indeed, TFG President Sharif Sheikh Ahmed, who has been accused of vast corruption, is running for re-election.<sup>8</sup> Despite all the time and money spent on this process by Donor Countries and the UN, it seems that little has changed politically.

In addition to the corruption, intimidation, and return of many TFG politicians, the political process has been especially disappointing because it lacked political engagement with the population. Without the population's ownership over the selection process it becomes meaningless. If citizens feel excluded from the process they will not actively support the government at a time when it needs just that. The Somali people will continue operating as independently as possible, because for them the "TFG" and the "NFG" are essentially the same thing. We recommend that the Council's members heavily invested in Somalia, such as the United Kingdom, the United States and Turkey, recognize this shortcoming and work with the Somali Mission and UNPOS to address this through various initiatives and media outreach. Somalis have a right to political participation, and there is still time to engage the public so that they will support the new government.

Unlike the disconnected but positive steps made by the new constitution and government, there has been more direct progress made by Somali citizens themselves. This includes the opening of various shops, markets, restaurants and even think tanks such as the Centre for Research and Dialogue. This has been due in large part to the work of the AMISOM troops in securing cities such as Mogadishu and Afgoye from Al-Shabaab. There has been an increase in private sector development and public projects undertaken by Somali citizens because of the growing sense of security. This demonstrates that, given safety and security from bomb blasts and shootings, the Somali people themselves will create concrete change where an inactive constitution and corrupt politicians fail to do so. As such, we recommend that more resources should be directed towards AMISOM. In addition to military campaigns, we recommend that more focus be put on an ideological attack against extremism and Al-Shabaab, though Al-Shabaab members honestly willing to defect should be re-integrated into society. Furthermore, once an area has been secured it must be filled with the government presence in order to ward off the militias and warlords who thrive in political vacuums. With greater security, the Somalis themselves will be better able to tackle the food crisis and refugee and IDP issues.

Ultimately, Somalia will be stunted in progress unless the judiciary is also bolstered. Currently, the Somali judiciary system is divided between Somali customary law (Xeer), Sharia law, and civil law. Moreover, members of the judiciary often have poor training and face constant threats.<sup>9</sup> In our written statements to the 19<sup>th</sup> and 20<sup>th</sup> Sessions of the Council, we recommended that the Independent Expert on Somalia focus his attention on the Somali

<sup>7</sup> 215 members of the 275-member parliament were sworn in on 20 August 2012. Regarding the postponement of election, see <http://www.latimes.com/news/nationworld/world/la-fg-somalia-government-20120821,0,5624677.story>.

<sup>8</sup> Report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 1916 (2010), available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2011/433](http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/433). A World Bank report from May 2012 found \$131-million unaccounted for in TFG revenues in 2009-2010, but the UN report suggested a further \$40-million in 2011 could be missing.

<sup>9</sup> See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12103&LangID=E>.

judiciary system.<sup>10</sup> We applaud the Independent Expert for taking steps in this regard and recommend that he continue his advocacy on this issue.<sup>11</sup> A solid, independent, transparent and respected judiciary will give the Somali people a compelling reason to become engaged in rebuilding their country. We also welcome the signing of the presidential decree on the National Security and Stabilization Plan (NSSP) on 8 August 2012.<sup>12</sup>

Ultimately, while there has been progress made in Somalia, the nation-building process to date in 2012 has fallen short of expectations: the enormous effort put into documents and institutions which have not as yet had any real impact on the lives of the Somali people is both frustrating and disappointing. We recommend that the greater focus now should be placed on continued improvement in the security situation in Somalia, and that the Council, the Office of the High Commissioner and the Independent Expert continue efforts in a holistic fashion and not focus unduly on the political situation. We see the best way to engage the Somali people more in nation-building starts where they best can to that—at the grass roots level. This is not to say the efforts in the political sphere should be abandoned, but to note that ultimately the people of Somalia must direct the political process, and they must feel they have a stake to be willing to do that.

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<sup>10</sup> A/HRC/19/NGO/36; A/HRC/20/NGO/41.

<sup>11</sup> See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12103&LangID=E>.

<sup>12</sup> 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](https://www.cimicweb.org/cmo/medbasin/Documents/Horn%20of%20Africa/Somalia/20111111%20TFGOVERNMENT%20NSSP%2018%20October%202011%20including%20FOREWO_1.pdf).