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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.

[24 August 2012]

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

Moving forward in Libya**

International Educational Development, Inc. and the Association of Humanitarian Lawyers have been monitoring the situation of human rights in Libya since the beginning of the popular uprising.¹ It has been a period of great turmoil for the people of Libya and those from and in surrounding countries.

We were very pleased that on 8 August 2012 the first peaceful transfer of power in Libya's modern history occurred when the National Transitional Council (NTC) handed over control of the government to a democratically-elected General National Congress (GNC), voted into office in the first national democratic elections in the nation's history. The election went off with minor problems but can mainly be considered a great triumph for a nation that, only months prior, was mired in a civil war. While many organizations were indispensable in ensuring this success, especially the United Nations Support Mission in Libya (UNSMIL), nonetheless it was a great victory for Libyans and the Libyan state. Now, the newly empowered GNC can proceed with creating a Constitution and develop the structures of Libya's government and court system.

In spite of great progress many problems remain and there are many serious challenges ahead for the country. In our view, a major challenge will be to address the militias and the citizens, foreigners and detainees under their control. There are estimates that up to 100,000 Libyans participate in militias. Many of these militias claim autonomy in certain areas of the country, and constantly violating the laws put in place by the NTC.

The militias also infringe on the human rights of the citizens, foreigners and detainees under their control.² For example, an estimated 7-8,000 Libyans and foreigners are in detention center under extrajudicial militia control. Many of these detainees have not been brought before a judge. Persons are held indefinitely and their right to due process cannot be realized.³ While obviously violations of the rights of detained persons this is also clear indication of the anemic state of the provisional judicial system.⁴

In our views, dismantling the militias will be neither easy nor peaceful. Efforts to date made by the NTC and currently being made by the GNC focus on integrating them into civil society by hiring them into the State security forces.⁵ This, however, has its own problem, especially as there is no sure way to determine whether their loyalty may still remain with their former militia commanders. This can lead to a culture of impunity in Libya's armed forces and perhaps corruption as well. Accordingly, we urge great caution in the dissolution of the militias by incorporating their members into State security forces.

At present, a perhaps safer strategy for the GNC may be to pursue a disarmament strategy and a gradual take-over of the detention centers by national authorities as the judiciary

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

¹ Association of Humanitarian Lawyers researcher Reilly Hurley assisted in the preparation of this document.

² Chivvis, Christopher. "A year after the fall of Tripoli, Libya still fragile." CNN. <http://globalpublicsquare.blogs.cnn.com/2012/08/23/a-year-after-the-fall-of-tripoli-libya-still-fragile/>.

³ "Libyan picture improving despite rough edges." *The Washington Post*, July 24, 2012. http://www.heraldextra.com/news/opinion/editorial/around-the-nation/libyan-picture-improving-despite-rough-edges/article_4d9ea35c-67db-517b-82a8-dd7b0e216daa.html.

⁴ Daragahi, Borzou. "Concern of Libyan Justice System." *Financial Times*, July 31, 2012. <http://www.ft.com/intl/cms/s/0/80a455d4-cf3a-11e1-bfd9-00144feabdc0.html#axzz23sApfajR>.

⁵ Idem.

grows in capacity. A fast time line for the creation of the new Constitution will help in this regard as Libyans together to grapple with forming the structure of their governance. It will be important that the citizenry is made a partner in this, and that all feel a strong stake in both the process and the outcomes. Hopefully, this will engage the militias and turn them away from seeking autonomy as some, both pro-Gaddafi and anti-Gaddafi ones, have done.⁶ Because Libya has many ethnic groups and tribes, the issue of minority and cultural rights is likely to loom large in this process: leaving the groups and tribes out of the process may well preclude a stable, unified Libya.

The issue of institutionalized impunity may also haunt the development of Libya's judiciary. We have addressed concerns about the urgent need for the establishment of an impartial, transparent, well-trained judiciary.⁷ Libya has managed some progress, albeit halting, in setting up a provisional judiciary. This task has been and continues to be extremely difficult because legitimate Libyan authorities have never had full control of the country. As a result, not only are people detained by the militias with no recourse to justice, but many of thousands of others held by the Libyan justice system have not been brought before a judge.⁸ While this can be attributed to the very weak condition of the existing Libyan infrastructure and the lack of legal personnel currently employed in the system, it could also point to a more subtle trend of inheriting the culture of impunity prevalent during the Gaddafi years. It is important that Libya build a judicial system that is capable of providing a fair trial for suspected mercenaries and former Gaddafi regime members, not to mention Gaddafi family members.

Thus far the UN has played an important role in the successes enjoyed by Libya's fledgling government. UNSMIL played an important role in educating voters and insuring that the recent national elections went as smoothly as possible. Now UNSMIL can turn its attention to the rest of its mandate, including assisting in the drafting of the Constitution, in support for developing a working judiciary and in promoting transitional justice. Progress especially in the area of transitional justice, will be a key factor in preventing disenchantment of the people in the GNC. We note that past support missions have successfully worked with emerging governments to incorporate both traditional laws and structures into a modern judiciary and we expect that UNSMIL will enjoy the same success.

We conclude with a call for increased participation by the Human Rights Council and its mandate holders. In this light, we urge the High Commissioner to establish an office in Libya, both for technical assistance and to assist in country visits that mandate holders may make. We particularly urge that the Special Rapporteur on the Independence of Judges and Lawyers consider a country visit to Libya.

⁶ Bhattacharyya, Shona. "East Libyan leaders declare autonomy from Tripoli." France 24. <http://www.france24.com/en/20120306-libya-bengazi-cyrenaica-autonomy-federalism>. See also Chivvis, C., *op.cit.*

⁷ A/HRC/20/NGO/40 and A/HRC/19/NGO/104.

⁸ Daragahi, B., *op.cit.*