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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Maat for Peace, Development and Human Rights Association, a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 June 2019]

* Issued as received, in the language(s) of submission only.

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Independence of the judiciary and lawyers in Somalia

Preamble

Maat for Peace, Development, and Human Rights submits this written intervention on the situation of the judiciary system in Somalia. The judiciary system is suffering as well as the other rights systems in the country. The deterioration of the whole judiciary system is due to several factors including corruption, which is spread in all State institutions, non-separation of powers in a way that enables the judiciary system from performing its role independently and the weakness of federal and regional courts, in addition to their subordination to custom control over constitutional laws, and their lack to the logistical support that qualify them to perform their role effectively.

Maat tracks the situation of the judiciary system, in this written intervention, with some recommendations to the stakeholders as follows

Firstly: Monitoring the situation of the judiciary in Somalia

1. Corruption in judiciary

The judicial institution is subject to political interference and suffer from high levels of corruption, rendering it ineffective. Civil courts in Somalia are practically nonfunctional; a combination of traditional and customary, sharia and formal law guide the institution. Court orders are not respected by the Somalian authorities.¹

2. The overlapping between the judiciary and the other powers

President Mohamed Abdullahi Farmajo has dismissed the President of the Supreme Court and some members of the Judicial Service Commission, which contravenes the Provisional Constitution.² Also, former President Hassan Sheikh Mahmoud dismissed the President of the Supreme Court in May 2016, which is a constitutional contravention in the both cases according to the principle of the separation of powers provided for in the Constitution, whereas only the Supreme Council of Parliament is authorized to take such action by the judicial Service Commission which is empowered to dismiss judges. Furthermore, the Parliament which is responsible for approving the Presidents of the Courts appointed by the President as provided for in Article 27 of the Constitution.³

In Addition, there is an overlapping between legislature and judiciary, whereas some of Parliament members intervene in court cases, resulting in the obstruction of their work. For instance, Awais Sheikh Abdullah, President of the Provincial Court of Banaadir, has accused some of Parliament members of intervening in judicial affairs for tribal reasons.⁴

3. Courts are poor and limited

The country does not have a unified judicial structure, whereas each province or a local circle has its own primitive judicial system which does not meet the needs of its population, also its judges rely on, according to their wishes, some provisions of the Shari'a and the laws of the previous systems and the internal regulations of the tribes. In the capital Mogadishu, has only

¹ "Somalia Corruption Report", at GAN Business Anti-corruption Portal, on this link: <https://bit.ly/2HCPLQm>

² نور جيدي، " الرئيس الصومالي يقيل رئيس المحكمة العليا"، منشور على موقع الأناضول، بتاريخ 2018/5/27، وللمزيد من التفاصيل على الرابط التالي: <https://bit.ly/2HDnwBj>

³ صدى الاسبوع: قراءة حول إقالة رئيس المحكمة العليا"، منشور على موقع مركز مقديشيو للأبحاث، بتاريخ 16 مايو، 2016، " <https://bit.ly/2CzMiy9> وللمزيد من التفاصيل على الرابط التالي

⁴ اتهام بعض نواب مجلس الشعب بالتدخل في شئون القضاء"، منشور على موقع الصومال الجديد، بتاريخ 2018/5/3، وللمزيد من " <https://bit.ly/2TuQUeg> التفاصيل على الرابط التالي

three courts: the Supreme Court, the Provincial Court of Banaadir, which hears all civil and criminal cases, and the Military Court.⁵

Military courts are currently prosecuting only terrorism-related cases, considering the main enemy of stability in the country is al-Shabab movement. Military trials duration is short, only 7 days according to the military law, opposite to civil trials. In Somalia, there are two military courts. The federal government uses military courts for combating terrorism and military-related crimes.⁶

In addition, there are no institutional association between regional and federal courts. In some regional states, the courts of appeal were the highest courts, while in other courts they were supreme courts and a court of appeal, resulting in a defect in the Somali justice system and the deprivation of justice in some parts of the country. In addition, there is no a constitutional court in Somalia to resolve disputes between the federal and regional states.⁷

4. Lack of confidence in the government judiciary

A report submitted to the Security Council about the situation in Somalia in the areas of politics, security, economy and justice has referred to that people are now seeking courts in areas belonging to al-Shabaab. Also, it has explained that the Somali government does not have a mechanism to verify the judgments issued by its courts and that most people go to the judiciary of al-Shabaab movement instead of the government judiciary.⁸

5. Lack of logistic structure

The judicial institution in Somalia is in need of several necessary reforms including: the training of judicial personnel and restoring the infrastructure of judicial facilities, such as court buildings, which have been destroyed by war, whereas the judiciary lacks the basic requirements to conduct its work Hassan Hussein Haj said, Minister of Justice of the Federal Government.⁹

As well as the outcomes of London Somalia Conference have not been implemented yet. It called for many amendments in the Judiciary system.¹⁰

Secondly: Recommendations

Maat for Peace, Development, and Human Rights recommends as follows:

- 1 To combat corruption in the judiciary and activating the role of constitutional laws in parallel with customary laws, and to form a national committee that is law-abiding and acceptable to society to consider controversial legal matters in which the law conflicts with custom.
- 2 To implement complete separation of legislative, executive and judicial powers, and to maintain their independence, rendering them function effectively.
- 3 To reform courts, and to concern with the relationship between federal courts and state courts.

⁵ وحدة البحوث والدراسات، "القضاء في الصومال ... رؤية الإصلاح والتطوير (خطة عملية)"، منشور على موقع مركز مقديشيو للأبحاث، على الرابط التالي: <https://bit.ly/2UY3nZP>.

⁶ Report of the Independent Expert on the situation of human rights in Somalia, Human Rights Council, Thirty-sixth session, 11-29 September 2017.

⁷ Ibid.

⁸ Security Council, 8352ND Meeting (PM), "The situation in Somalia Report", page 3, 13 September 2018, on this link: <https://bit.ly/2U10H0d>.

⁹ الحكومة الصومالية تطلب المساعدة في إصلاح هيئة القضاء، موقع الصومال الجديد، بتاريخ 2018/01/15، على الرابط التالي " <https://bit.ly/2UTEwWH>.

¹⁰ London Somalia Conference 2017: communique, United Kingdom Government, Published 11 May 2017, <https://bit.ly/2TUIhyE>.

4 To carry out propaganda and information campaigns on the judiciary, aiming at restoring citizens' confidence in it, while practically activating the role of the judiciary through fair and brief trials.

5 To implement the London Conference Declaration which calls for reforms in the justice sector in Somalia.

6 To implement logistic reforms, and to provide funding for the reconstruction of the country's judicial facilities.
