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Human rights situations that require the Council's attention

**Report of the international commission of inquiry to
investigate all alleged violations of international law in the
Libyan Arab Jamahiriya**

Summary

Mandate and methods of work of the international commission of inquiry

Pursuant to Human Rights Council resolution S-15/1 of 25 February 2011, entitled “Situation of human rights in the Libyan Arab Jamahiriya”, the President of the Human Rights Council established the international commission of inquiry, and appointed M. Cherif Bassiouni as the Chairperson of the commission, and Asma Khader and Philippe Kirsch as the two other members.

In paragraph 11 of resolution S-15/1, the Human Rights Council requested the commission to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, to establish the facts and circumstances of such violations and of the crimes perpetrated and, where possible, to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable.

The commission decided to consider actions by all parties that might have constituted human rights violations throughout the Libyan Arab Jamahiriya. It also considered violations committed before, during and after the demonstrations witnessed in a number of cities in the country in February 2011. In the light of the armed conflict that developed in late February 2011 in the Libyan Arab Jamahiriya and continued during the commission’s operations, the commission looked into both violations of international human rights law and relevant provisions of international humanitarian law, the *lex specialis* that applies during armed conflict.¹ Furthermore, following the referral of the events in the Libyan Arab Jamahiriya by the Security Council to the International Criminal Court, the commission also considered events in the light of international criminal law.²

The commission established direct contact with the Government of the Libyan Arab Jamahiriya and the National Transitional Council, as well as with representatives of civil society and individuals throughout the country. It met with over 350 people during its field missions, including meetings with 113 people (doctors and other medical staff, patients and members of their families) in 10 hospitals, meeting with 30 people detained in two locations in the country (Tripoli and Benghazi) and meetings with 148 people³ displaced either within the Libyan Arab Jamahiriya or in transit points or refugee camps outside it.

The commission reviewed all allegations raised in connection with issues arising under its mandate. It studied a large number of reports, submissions and other documentation either researched of its own initiative or provided by others, amounting to more than 5,000 pages of documents, more than 580 videos and over 2,200 photographs.

The quality of the evidence and the information obtained by the commission varied in its accuracy and reliability. The commission opted for a cautious approach in the present report by consistently referring to the information obtained as being distinguishable from evidence that could be used in criminal proceedings, whether national or international. It was also careful to make a distinction between information and reports received and testimony it heard first-hand, as well as facts that it observed first-hand. This cautionary

¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 178, para. 106.

² The commission used as its basis articles 6 to 8 of the Rome Statute of the International Criminal Court.

³ The number includes people interviewed individually or in groups.

approach should not, however, be read as an indication that the allegations of international human rights law and international humanitarian law violations contained in the report are not credible or sufficient in quality and quantity to warrant the concern of the international community.

It should be noted that the reports received by non-governmental organizations were useful and, apparently, reliable. The reports received from Government sources and those of the National Transitional Council did not, however, reflect the same evidentiary qualitative standard. Government reports contained mainly either general denials or specific allegations not supported by evidence. Both sides supplied the commission with broad statements based on unconfirmed reports, allegations or public rumours. The commission informed all sides of its evidentiary standards and met with officials and non-governmental organizations on both sides, informing them on these standards and advising them on reporting requirements. Nevertheless, all such information, notwithstanding their qualitative differences, were taken into account.

Since the beginning of the situation in February 2011, the media, including the international media, have been active in providing reports on events, including videotaped materials. Similarly, a large number of videos and still pictures were given to the commission by individuals, non-governmental organizations, the Government and the National Transitional Council. While the commission took these visual documentary sources into account, their authenticity will have to be ascertained once the sources, such as the details with respect to time and place, can be obtained. In time and with resources, one could reconstitute a visual/photographic record of certain events by establishing a database project linking the visual imagery with written reports. Nevertheless, the large number of videos and pictures, as well as of similar pictures obtained from different sources, tends to give credibility to the accuracy and genuine nature of these images, which in many cases amount to clear indications of violation of international human rights law, humanitarian law and criminal law.

Findings of the commission with regard to violations of international human rights law, humanitarian law and criminal law

The commission notes that a range of serious human rights concerns about violations of human rights in the Libyan Arab Jamahiriya in previous years had been raised in international forums, in particular by the United Nations human rights system, such as the treaty bodies and special procedures mechanisms. The *jamahiriya* system of government instituted by the Qadhafi regime is a very particular one involving one-man rule using fear, intimidation and incentives based on loyalty. By its very nature, it has not been susceptible to governance based on the rule of law and the protection of human rights. For example, such fundamental rights as the right to freedom of association and the right to freedom of expression and association have been criminalized and are subject to penalties, including the death penalty and life imprisonment. Moreover, the absence of an effective rule of law system and the existence of a judiciary that is not independent, and the dominance of a number of paramilitary and security apparatuses, have also led to the consolidation of a climate of fear and oppression. It is against this background of repression of rights that one has to assess the repressed demand for democracy and the rule of law in early 2011.

The events prompting the convening of a special session of the Human Rights Council and the subsequent establishment of the commission began with mass demonstrations in the Libyan Arab Jamahiriya in February 2011. What started as a series of peaceful demonstrations aiming at achieving reforms in governance and more particularly seeking to see the regime evolve into a democratic form of government subject to the rule

of law and upholding human rights was met with the opposition of the Government and of those supporting it. Within a relatively short period of time, this initial phase escalated into a civil war in which opposing forces fought battles in cities and for the control of territory. In mid-March, international intervention was authorized by the Security Council pursuant to its resolution 1973 (2011). The cumulative number of people killed or injured to date is not certain; Government officials, the National Transitional Council and non-governmental organizations have provided estimates that range from 10,000 to 15,000 killed.

The commission evaluated the events in the Libyan Arab Jamahiriya in accordance with legal regimes applicable to the stages of events occurring in that country. The first demonstrations and Government reaction (from 15 February) took place during a time of peace, requiring analysis on the basis of international human rights law.⁴ Subsequently, on the basis of the information available, the commission concluded that a non-international armed conflict had commenced by or around 24 February 2011, bringing into play both international humanitarian law⁵ alongside international human rights law. A separate coexisting international armed conflict commenced with external military action pursuant to Security Council resolution 1973 (2011) for which the norms of international humanitarian law relating to international armed conflicts are applicable.⁶

In assessing the information available, the commission reached conclusions with regard to a number of serious violations of international human rights law and humanitarian law. The major conclusions are summarized in the paragraphs below.

There is sufficient evidence to suggest that Government forces used excessive force against demonstrators, at least in the early days of the protests, leading to significant deaths and injuries. Such actions represented a serious breach of a range of rights under international human rights law, including the right to life, the right to security of person, the right to freedom of assembly and the right to freedom of expression. With regard to the latter days of protests as the situation escalated, more investigation would be required to assess the use of force by security forces, and in particular more detail concerning the actions taken by demonstrators in order that the response of Government authorities.

Government forces have arbitrarily detained a significant number of people in many cities and towns across the country. In addition to not affording individuals proper legal protections, it would appear that arrests and detentions were carried out in a “blanket”

⁴ The Libyan Arab Jamahiriya is a party to many international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Child, the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families and the Convention on the Prevention and Punishment of the Crime of Genocide. It has also ratified a number of related optional protocols, including the one most relevant to the current context, the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict. The Libyan Arab Jamahiriya is also bound by relevant norms of customary international law.

⁵ Of particular relevance in this field is common article 3 to the four Geneva Conventions and Protocol Additional II to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts, to which the Libyan Arab Jamahiriya is a party, as well as customary international humanitarian law.

⁶ This includes all the provisions of the four Geneva Conventions, together with Protocol Additional II to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (to which the Libyan Arab Jamahiriya and most of the international coalition States are a party), as well as relevant customary international humanitarian law.

fashion, targeting suspected opposition supporters or regions viewed as being opposed to the regime, rather than being related to the commission of criminal acts or other security-related reasons associated with the armed conflict.

The Government of the Libyan Arab Jamahiriya has engaged in a pattern of enforced disappearances of persons in violation of its obligations under international human rights law and international humanitarian law. The commission received very little information on violations committed by the armed opposition in relation to arbitrary arrest or other form of deprivation of liberty or disappearances.

Torture and other forms of cruel, inhuman or degrading treatment were committed by both the Government and the opposition forces in violation of obligations under international human rights law and humanitarian law. Violations were most common with regard to persons held in detention, including incommunicado detention, and to those perceived to be supporters of “the other side” to the conflict. The Government-related cases were reported both in peacetime (against persons detained in relation to the demonstrations) and subsequently, during the armed conflict.

A range of actions taken by Government forces had the effect of impeding or preventing altogether access to medical care, whether by refusing assistance in the immediate aftermath of demonstrations or by later obstructing access to hospitals, taking action against medical personnel or allegedly abducting people from hospitals. In such actions, there have been clear violations of the right to an adequate standard of health, as well as other serious violations involved in the particular actions taken against medical personnel or patients.

Serious attacks on journalists and other media professionals, designed primarily to stifle coverage of the Government response to the demonstrations and the ongoing armed conflict, and/or to retaliate against perceived or feared criticism of the regime, were reported. Media professionals have been subject to arbitrary arrest, torture, ill-treatment, harassment, intimidation, enforced disappearances and, in some cases, have been the subject of targeted attacks. Authorities took specific action to impede the flow of information (inside as well as outside the country), including by cutting landline telephone communications, Internet access and other means of communication. Such actions represent violations of the country’s obligations under international human rights law and international humanitarian law.

With regard to the conduct of hostilities, the commission concluded that there had been serious violations of international humanitarian law, with further investigation required in other areas in order to assess reports fully. The commission received sufficient consistent information concerning the degree of injuries and the type of victims to suggest that there have been at least indiscriminate attacks against civilians by Government forces and a failure to take sufficient precautionary steps to protect civilians. Further investigation would be necessary to determine whether there was any intentional targeting of civilians. Protected objects, such as mosques and cultural objects, have certainly been damaged during the conflict. At this point in time, the commission is unable to determine whether attacks on such objects were intentional. The commission is, however, able to establish that there have been instances of deliberate destruction of objects indispensable to the civilian population. It considers that there have been attacks on medical transports and facilities in situations that appear to have been targeted attacks, with other instances requiring further investigation. It also considers that the Libyan authorities have failed to facilitate access for humanitarian agencies to address the needs of civilian populations in the country. It considers that there have been attacks on humanitarian units, though without further information it is not able to establish whether they were intentional. The commission concludes that there has been a failure to take precautionary steps to minimize damage to civilian and protected objects. It is also satisfied that there has been a misuse of the

distinctive emblems of the Geneva Conventions by Government forces during the conflict. The commission did not receive any first-hand information concerning violations by the armed opposition force and is therefore not in a position to determine whether any relevant violations occurred.

With regard to allegations concerning the use of mercenaries, the commission established that foreign nationals had taken part in the conflict, including perpetrating human rights violations, particularly on the side of Government forces. Further investigation would, however, be required to determine whether those armed individuals fell into the category of “mercenaries” within the provisions of the international law; in particular, more information is needed on the residential status of foreign nationals involved with the security forces and the means and purposes for which they were recruited.

Migrant workers, particularly those from sub-Saharan Africa, were subject to mistreatment in violation of international human rights law and international humanitarian law. Mistreatment of migrant workers has taken many forms, including having their houses subject to arbitrary search, being beaten and subject to other cruel and inhuman treatment. The most serious attacks on migrant workers appear to have been linked to a suspicion that such persons were “mercenaries” on the basis of their national origin or skin colour. Attacks were most frequently made by persons associated with the opposition forces. There were also cases of Government forces subjecting migrant workers to human rights violations, including arbitrary arrest, physical attacks and other ill-treatment, which require further investigation. In many locations, there were reports of attacks by unaffiliated armed civilians. The failure of authorities to protect migrant workers from such attacks raises separate issues of responsibility. Further investigation is required on the reports of extrajudicial killings received by the commission.

With regard to the use of weaponry, the commission is concerned that the Libyan authorities have not been making appropriate and precautionary assessments which would, in the commission’s view, militate against the use of weapons such as mortars in densely-populated urban areas. The commission is also concerned about reports of the use of weapons such as expanding bullets, cluster munitions and phosphorous weapons in highly populated areas. Further investigation, however, including forensic analysis, would be needed to confirm the use of these ammunitions.

The commission received, but was unable to verify, individual accounts of rape. It notes, however, that sufficient information was received to justify further investigation to ascertain the extent of sexual violence, including whether cases were linked to incitement by the command of either side. It is evident that reports of rape have had a major psychological and social impact and have spread fear among the population. Given the allegations that rape was committed as part of a policy to spread such fear, further investigation would be warranted.

The ongoing conflict is having a significant negative impact on the rights of children. With regard to the use and recruitment of child soldiers, the commission considers that more investigation and research is required, in close cooperation with relevant United Nations agencies, notably the United Nations Children’s Fund and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, as well as other non-governmental organizations.

With regard to allegations concerning the conduct of hostilities by the North Atlantic Treaty Organization (NATO), the commission is not in a position at this stage to assess the veracity of the information received concerning indiscriminate attacks on civilians. The commission has not, however, seen evidence to suggest that civilians or civilian objects have been intentionally targeted by NATO forces, nor that it has engaged in indiscriminate attacks.

The combination of the factors mentioned in the report has led to the impunity of those who have committed violations of international law identified in the report, and emboldened them in the continuation of their abuses against the civilian population.

In its resolution 1970 (2011), the Security Council referred the situation in the Libyan Arab Jamahiriya to the Prosecutor of the International Criminal Court pursuant to the Rome Statute. It has therefore vested primary jurisdiction with respect to the determination of criminal responsibility with the International Criminal Court. It is in this perspective that the commission has consulted with the Court, but has not to date shared information about its findings. The determination of individual criminal responsibility and command responsibility for both sides requires further investigation and corroboration of certain facts ascertained by the commission. Nonetheless, in the present report, the commission identifies a number of violations that have led it to the conclusion that international crimes, and specifically crimes against humanity and war crimes, have been committed in the Libyan Arab Jamahiriya.

The commission has found that there have been acts constituting murder, imprisonment, other forms of severe deprivation of physical liberty in violation of fundamental rules of international law, torture, persecution, enforced disappearance and sexual abuse that were committed by Government forces as part of a widespread or systematic attack against a civilian population with knowledge of the attack. Such acts fall within the meaning of “crimes against humanity”.

The commission has found that there have been many serious violations of international humanitarian law committed by Government forces amounting to “war crimes”. Under the listing of “war crimes” in the Rome Statute applicable to non-international armed conflict, the commission has identified violations involving violence to life and person, humiliating and degrading treatment, intentionally directing attacks against protected persons and targets including civilian structures, medical units and transport using the distinctive emblems of the Geneva Conventions. The commission also received considerable information concerning indiscriminate attacks on civilians and civilian objects (including protected objects, such as mosques, buildings of cultural significance and hospitals) and attacks on humanitarian-related personnel and transport; further investigation would, however, be required to determine whether those attacks on civilians and civilian objects amounted to “intentional targeting” within the meaning of the Rome Statute. Further investigation would also be required in relation to whether children under 15 years of age were conscripted into or enlisted in armed forces or groups, or used them to participate actively in hostilities, as well as into allegations of rape during the conflict.

The consistent pattern of violations identified creates an inference that they were carried out as a result of policy decisions by Colonel Qadhafi and members of his inner circle. Further investigation is required in relation to making definitive findings with regard to the identity of those responsible for the crimes committed. The commission received some information concerning individual perpetrators of crimes, but more investigation is also required on this issue.

The commission received fewer reports of facts that would amount to the commission of international crimes by forces connected with the opposition. It has established that some acts of torture and cruel treatment and some outrages upon personal dignity have been committed by opposition armed forces, in particular against persons in detention, migrant workers and those believed to be mercenaries. Under the Rome Statute, those that occurred during the period of armed conflict constitute war crimes. Further investigation would be required into alleged acts of rape and into whether children under the age of 15 years were conscripted into or enlisted in armed forces or groups, or used them to participate actively in hostilities. On the basis of the information currently available, the commission is not of the view that the violations committed by the opposition

armed forces were part of any “widespread or systematic attack” against a civilian population such as to amount to crimes against humanity.

Notwithstanding the cautionary approach taken by the commission in the present report, it should be clear that a significant number of international human rights law violations have occurred, as well as war crimes and crimes against humanity, as described above. These violations and crimes have been committed in large part by the Government in accordance with the command and control system established by Colonel Qadhafi through the different military, paramilitary, security and popular forces that he has employed in the pursuit of a systematic and widespread policy of repression against opponents to his regime and his leadership. There have also been violations by opponents to the regime, which are also described in the report. The commission expressed these concerns to both sides, urging them to cease and desist from these practices and to bring their respective conduct into conformity with the requirements of international law.

The commission is concerned about reports of ongoing violations – not only in relation to new instances of violations, but also the continuing effect of past violations, in particular with regard to those who have disappeared and whose fate remains unknown. The commission is also concerned by a lack of apparent action by the Government to address the violations that to date have been the subject of considerable attention. Although some progress has been made in relation to the release of some persons from detention, including journalists and other media professionals, the commission has not received information about the many people unaccounted for, nor has it received information to confirm that credible investigations are being conducted into violations that have occurred.

The commission is aware of the challenges that lie ahead for the Libyan Arab Jamahiriya in relation to responding to the violations that have occurred. When or how the conflict will come to an end is still unknown. The prospective transition to democracy, the introduction of the rule of law, the equitable allocation of national resources, the restoration of public safety, the reconstruction of public administration, social cohesion across clans and provinces, the strengthening of civil society and the opening of the country to a new peaceful and democratic order will necessarily have to take into account the historic baggage left behind by the Qadhafi regime, including the situation described in the present report.

All of the above considerations and the present report should also be viewed in the light of future post-conflict justice and transitional justice mechanisms designed to provide justice and reconciliation among the people of the Libyan Arab Jamahiriya in order to ensure peace in that country, as well as between the country and the international community. While post-conflict justice and transitional justice are not within the scope of the commission, its fact-finding work will nevertheless be useful in connection with the goals of post-conflict justice and transitional justice.

The commission was able to accomplish its mandate in a relatively short period of time, particularly for a period of ongoing conflict. It considers that further work has to be done in order to investigate fully the numerous allegations it continues to receive at a time when the conflict is still ongoing. Future work would also permit an assessment of the veracity of the allegations received, particularly with regard to the use of mercenaries, the use of child soldiers, sexual violence and violations against migrant workers. Finally, the commission feels that, at this stage, it is not in a position to identify those responsible, as requested by the Human Rights Council in the resolution establishing its mandate.

Recommendations

1. The commission calls on the Government of the Libyan Arab Jamahiriya:
 - (a) To immediately cease acts of violence against civilians in violation of applicable international humanitarian law and international human rights law;
 - (b) To conduct exhaustive, impartial and transparent investigations into all alleged violations of international human rights law and international humanitarian law, and in particular to investigate, with a view to prosecuting, cases of extrajudicial, summary or arbitrary executions, disappearances and torture, with full respect for judicial guarantees;
 - (c) To release unconditionally and immediately all those who are being held as a result of their participation in peaceful demonstrations or otherwise being arbitrarily detained;
 - (d) To reveal the names of all those in its custody, as well as those who have died in its custody, in order to relieve the suffering of the relatives of the disappeared; in the cases of those who have died, the Government should produce evidence of their deaths together with the precise whereabouts of their burial sites;
 - (e) To grant adequate reparations to the victims or their families, and to take all appropriate measures to prevent the recurrence of violations;
 - (f) To ensure free, full and unrestricted access to all places of detention for humanitarian and human rights organizations, granting access to all facilities without prior notice and to all premises of each detention centre, the possibility for repeat visits to the same place and the possibility to interview prisoners in private without witnesses;
 - (g) To bring all laws and policies of the Libyan Arab Jamahiriya into conformity with international human rights standards.
2. The commission calls on the National Transitional Council:
 - (a) To ensure the immediate implementation of applicable international humanitarian law and international human rights law;
 - (b) To conduct exhaustive, impartial and public investigations into all alleged violations of international human rights law and international humanitarian law, and in particular to investigate, with a view to prosecuting, cases of extrajudicial, summary or arbitrary executions and torture, with full respect for judicial guarantees;
 - (c) To grant adequate reparations to the victims or their families, and to take all appropriate measures to prevent the recurrence of such violations;
 - (d) To make further efforts to ensure strict control over weapons in the possession of individuals;
 - (e) To ensure free, full and unrestricted access to all places of detention for humanitarian and human rights organizations, granting access to all facilities without prior notice and to all premises of each detention centre, the possibility for repeat visits to the same place and the possibility to interview prisoners in private without witnesses.
3. With regard to the humanitarian situation, the commission calls on the Government and the National Transitional Council to fulfil their respective

obligations under international humanitarian law, particularly those regarding the protection of civilians, including the facilitation of immediate, free and unimpeded access for humanitarian personnel to all persons in need of assistance, in accordance with applicable international law.

4. The commission, in view of the time frame within which it has had to complete its work, and considering the gravity and the complexity of the situation, recommends that the Human Rights Council remain seized of the situation by extending the mandate of the commission or by establishing a mechanism with the ability to continue the necessary investigations into both the human rights and humanitarian law situations in the Libyan Arab Jamahiriya for a period of one year.
