

**Human Rights Council****Seventeenth session**

Agenda item 4

Human rights situation that require the Council's attention**Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya****Summary*

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 Libya. 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. 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.

* Late submission.

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 persons (individually or in groups) 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.

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Acronyms and abbreviations

Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts
ESA	External Security Agency
ICRC	International Committee of the Red Cross
ISA	Internal Security Agency
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
NTC	National Transitional Council
OHCHR	Office of the United Nations High Commissioner for Human Rights
Rome Statute	Rome Statute of the International Criminal Court
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

I. Introduction

A. Mandate and methods of work

1. On 25 February 2011, the fifteenth special session of the Human Rights Council adopted resolution S-15/1 entitled “Situation of Human Rights in the Libyan Arab Jamahiriya” which inter alia, decided to dispatch an independent, international commission of inquiry.

2. Accordingly, on 15 March 2011, the President of the Human Rights Council established the International Commission of Inquiry and appointed its three members, M. Cherif Bassiouni (Egypt); Asma Khader (Jordan) and Philippe Kirsch (Canada). The President also designated M. Cherif Bassiouni as the Chairperson of the Commission. As requested by the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Commission.

3. Paragraph 11 of resolution S-15/1 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”.

4. Accordingly, the Commission determined that it was required to consider actions by all parties that might have constituted human rights violations throughout the territory of Libya. The Commission was also asked to consider the “facts and circumstances of such violations and of the crimes perpetrated”. Given the Security Council’s referral of events in Libya to the International Criminal Court, the Commission has also considered events in light of international criminal law.¹ The Commission’s temporal mandate is not limited and therefore includes violations before, during and after the demonstrations witnessed in a number of cities in Libya in February 2011. With an armed conflict having developed in late February in Libya and continuing 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* which applies during armed conflict.²

5. In view of the time frame within which it had to complete its work, the Commission necessarily had to be selective in the choice of issues and incidents for investigation. The report does not purport to be exhaustive in documenting the very high number of relevant incidents that occurred in the period covered by the Commission’s mandate. Nevertheless, the Commission considers that the report is illustrative of the main patterns of violations.

6. The Commission agreed at the outset that it would treat information it obtained on a confidential basis. In order to protect their safety and privacy, the names of the victims, witnesses and other sensitive sources are generally not explicitly referred to in the report unless explicitly agreed by the source and deemed appropriate by the Commission or the case has been otherwise well-publicized. It also decided to limit its contacts with the media

¹ The Commission has used as its basis articles 6–8 of the Rome Statute of the International Criminal Court.

² See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 178, para. 106.

to providing factual information about its visits. On 9 April 2011, the Chairperson of the Commission, together with the two other members held a press conference in Geneva about its mandate and the planned visit to Libya. On 3 May 2011, the Commission issued a press statement informing about its field missions.

7. The Commission endeavoured to establish direct contact with the Government of the Libyan Arab Jamahiriya and the National Transitional Council (NTC) as well as representatives of civil society and individuals throughout the country. The Commission gathered first-hand information with regard to the situation in Libya by conducting interviews with victims, community representatives, local authorities, members of non-governmental organizations (NGOs) and experts, Government officials and United Nations officials during its meetings in Geneva, Libya, Egypt and Tunisia. In Libya, the Commission and/or members of the Secretariat visited Benghazi, Al-Bayda, Tobruk, Tripoli and Az-Zawiyah; in Egypt, Cairo, Marsa Matruh and As-Sallum; and, in Tunisia, Tunis, Djerba, Ras Adjir, Sfax, Sousse, Tataouine and Zarzis. Details of its programme can be found in annex I. The Commission is grateful for all the assistance provided in connection with its work, in particular by the Office for the Coordination of Humanitarian Affairs, United Nations Children's Fund (UNICEF), United Nations Development Programme, United Nations Department of Safety and Security, Office of the United Nations High Commissioner for Refugees (UNHCR), World Food Programme, and OHCHR staff for facilitation of the Commission's field missions.

8. The Commission adopted an inclusive approach to receiving information and views on matters within its mandate during both its field missions and other investigations. Particular information-gathering methods have included:

(a) Interviews with victims, witnesses and other persons having relevant information. The Commission met with over 350 persons during its field missions. The interviews were conducted in person by members of the Commission and/or members of the Secretariat. In one case, the Commission was unable to conduct the meeting in person, but an interview took place by telephone.³ These included meetings with:

(i) 113 persons (doctors and other medical staff, patients and members of their families) in 10 hospitals (three in Cairo, one in Alexandria, two in Benghazi, one in Tataouine, two in Sfax and one in Sousse);

(ii) 30 persons detained at two locations in Libya (Tripoli and Benghazi);

(iii) 148 persons (individually or in groups) displaced either within Libya or in transit points or refugee camps outside Libya (one in Benghazi, one at Ramada, three at Ras Ajdir and one in As-Sallum);

(b) Meetings with a number of Government officials of Libya, Egypt and Tunisia, as well as representatives of NTC and officials of the United Nations including the Special Envoy of the Secretary-General for Libya, Abdelilah al-Khatib;

(c) Site visits to specific locations where incidents had occurred. In this respect, the Commission was able to visit some sites in Benghazi and Tripoli, though its access was limited due to the ongoing armed conflict;

(d) Analysis of video and photographic images gathered by the Commission throughout the reporting period;

³ This case was that of Iman al-Obeidi whose account of being raped has been widely publicized. A Commission member also met with members of her family. During its visit to Tripoli, the Commission raised concerns about Ms. Al-Obeidi and requested she be given permission to leave the country. Ms. Al-Obeidi subsequently was able to leave Libya in early May 2011.

(e) Review of hospital and medical reports about injuries to victims and other relevant information such as death certificates and forensic reports;

(f) Meetings with a variety of interlocutors, including members of the diplomatic community, representatives of the parties concerned, NGOs, professional associations; military analysts, medical doctors and legal experts during its field mission and its other investigations;

(g) The review of reports of international organizations, including the United Nations; reports and other documentation produced by non-governmental and civil society organizations; media reports; and writings of academics and analysts on the conflict;⁴

(h) Invitations, through notes verbales to Member States of the United Nations⁵ and United Nations agencies, departments and bodies and to regional organizations to provide information relating to the Commission's investigations;

(i) The wide circulation of a public call for written submissions from NGOs and other organizations and individuals interested in bringing information to the attention of the Commission.

9. 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 motion or provided by others, amounting to more than 5,000 pages of documents, over 580 videos and over 2,200 photographs. The Commission's records, including records of interviews, have been maintained and will be handed over to OHCHR at the end of its functioning, in accordance with established rules and procedures.

10. In establishing its findings, the Commission sought to rely primarily and whenever possible on information it gathered first-hand.

B. Challenges faced by the Commission

11. The Commission faced significant challenges in carrying out its mandate in the short period preceding this report:

(a) The Commission was given a broad mandate with a very tight deadline requiring it and the Secretariat to work intensively and under great time pressure. The President of the Human Rights Council appointed the three members of the Commission on 15 March 2011 with a mandate to report back at the seventeenth session of the Council and to submit the report by 30 May 2011, allowing for a period of investigation of approximately two months;

(b) The Commission faced significant security considerations and logistical and administrative hurdles in arranging at very short notice visits to Benghazi and Tripoli;

(c) The Commission was not able to visit sites where the conflict was ongoing, such as Misrata and Ajdabiya, and other locations where incidents were reported. Security considerations limited the Commission's ability to enjoy access to persons and places;

(d) The ongoing armed conflict and the particularly repressive conditions in certain areas significantly contributed to an atmosphere in which many victims and

⁴ A list of Member States and organizations that submitted information to the Commission is contained in annex III.

⁵ Eight Member States submitted information to the Commission of Inquiry in response to its note verbale dated 3 May 2011.

prospective witnesses feared or may have feared speaking of their experiences given the ongoing risk to them or to their families. The Commission was also mindful of the need to avoid taking any actions which would endanger victims and witnesses. Furthermore, damage to systems of communication meant that it was difficult for the Commission to engage in extensive verification or follow-up of some of the information received;

(e) Given the ongoing nature of the conflict, violations have continued to be reported during the Commission's operation leading to a massive increase in potential violations to be investigated.

12. Given all these circumstances, the Commission is of the view that more time is necessary to carry out further investigation within Libya for a comprehensive inquiry, followed by appropriate time for analysis and the writing of additional reports.

13. Notwithstanding these constraints, the Commission considers that it has been able to gather a substantial body of material with respect to violations of international human rights, humanitarian and criminal law that have occurred. Further investigation is critical in relation to fulfilling the mandate with respect to fully exploring the scope of the violations, identifying those with responsibility for the violations and crimes and making appropriate recommendations.

C. Cooperation with Governments and other institutions

14. Through letters dated 21 March and 1, 9, 17 and 21 April, the Commission sought the cooperation of the Government of the Libyan Arab Jamahiriya, requesting a visit to Tripoli and Az-Zawiyah. Furthermore, through letters dated 26 April, 5 May and 19 May, the Commission also requested the Government of the Libyan Arab Jamahiriya to provide specific information and calling for the release of 18 detained journalists and a number of detainees with whom it met while in Tripoli. The Commission received a response from the Government of the Libyan Arab Jamahiriya on 25 May which contained details with respect to two of the journalists, but regrets that the Government of the Libyan Arab Jamahiriya did not respond with information on the whereabouts of the other individuals concerned. It notes nevertheless that of those 18 journalists, 4 have since been released. The Commission also regrets that the Government of the Libyan Arab Jamahiriya failed to inform it that one of the journalist included in the list was already dead at the time the Commission was inquiring about his fate.

15. By letter dated 9 April 2011, the Commission sought the cooperation of NTC, with respect to a visit to Benghazi, Al-Bayda and Tobruk. In a letter dated 18 May, it also asked further information on specific issues related to its mandate. The Commission is grateful for the responses received with respect to both letters.

16. The Commission also sought and obtained the cooperation of the Egyptian and Tunisian authorities in arranging field visits in their countries.

17. The Commission also wrote to the North Atlantic Treaty Organization (NATO) on 18 May asking for information relating to its operations in Libya. To date, no response has been received from NATO.

18. The Commission has consulted with the Office of the Prosecutor of the International Criminal Court, whose office has been investigating alleged international crimes committed in Libya since 15 February 2011. Throughout this liaison, the Commission and the International Criminal Court have been committed to respecting appropriate confidentiality and independence requirements of each body.

D. Acknowledgments

19. The Commission is grateful to the numerous Libyans and other foreign nationals, especially victims and witnesses of violations, who have shared with it their stories and views. The Commission is also grateful to all the Member States, United Nations agencies, domestic and international NGOs that have supported its mandate and provided a vast amount of relevant and well-documented information. The Commission is appreciative of the dedicated work of the Secretariat to support its work. The Commission wishes to formally thank the Government of the Libyan Arab Jamahiriya and representatives of NTC for their cooperation and readiness to accept the request for a visit. It also wishes to thank both the Egyptian and Tunisian authorities for facilitating the conduct of its programme at short notice.

II. The Commission's findings of violations of international human rights law and international humanitarian law

A. Introduction

20. In order to understand the current situation in Libya, it is important to place developments within the broader human rights context there. This includes the economic disparities and manner of governance and serious human rights issues. The Commission notes that a range of human rights concerns about Libya have been raised in international forums, in particular by United Nations human rights treaty bodies and special procedures mechanisms. The large number of documented enforced disappearances and cases of extrajudicial, summary or arbitrary executions has been noted by the Human Rights Committee in its concluding observations (CCPR/C/LBY/CO/4, para. 14), along with concerns expressed about the lack of information concerning effective investigation and redress. Unresolved cases of disappearance include those of Libyan opposition members Jaballa Hamed Matar and Izzat al-Megaryef (disappeared in 1990), and former Libyan Minister of Foreign Affairs and Ambassador to the United Nations and later opposition figure Mansour Rashid El-Kikhia (disappeared in 1993). In 1978, Lebanese cleric Imam Musa Al-Sadr was also disappeared in Libya with two companions.⁶ The Human Rights Committee, in its concluding observations, also raised concerns regarding arbitrary arrest, the absence of judicial review of detention and the length of pretrial detention (para. 19) and the systematic use of torture and cruel, inhuman or degrading treatment or punishment (para. 15). Although torture is considered a crime under the Libyan Penal Code, the Committee against Torture, in its concluding observations, has been critical of the absence of prompt and impartial investigations into incidents of torture (A/54/44, paras. 176–189).

21. Freedom of speech and freedom to engage in public affairs have been significantly curtailed in law and in practice. Law No. 71/1972 prohibited the establishment of political parties and made associations undertaking “political activities” illegal. “Political activity” for this purpose is defined broadly to include any activity based on a political ideology

⁶ The Working Group on Enforced or Involuntary Disappearances has transmitted 14 cases to the Government of the Libyan Arab Jamahiriya; of those, five cases have been clarified on the basis of information provided by sources, and nine remain outstanding (see A/HRC/13/31, para. 333). During its investigation, the Commission was also given information on the disappearances of many persons in the past, in particular from the Nafusa mountain region.

contrary to the principles of the Al-Fateh Revolution of 1 September 1969.⁷ As the Human Rights Committee has noted as a matter of concern in its concluding observations (CCPR/C/LBY/CO/4, para. 24), by virtue of this and article 206 of the Penal Code, the death penalty can still be imposed for the establishment of prohibited groups. Law No. 20/1991 on enhancing freedom further significantly limits free speech by providing that “each citizen has the right to express his opinions and ideas openly in People’s Congresses and in all mass media, no citizen is questioned on the exercise of this right unless this has been abused in a way that prejudices the People’s Authority or is used for personal interest”. The Committee has also expressed concerns about laws which prevent the exercise of the right to freedom of association and peaceful assembly (CCPR/C/LBY/CO/4, para. 25).

22. In relation to economic, social and cultural rights, the Committee on Economic, Social and Cultural rights noted with satisfaction in its concluding observations that Libya had the highest literacy and educational enrolment rates in North Africa and high rates of female students in schooling (E/C.12/LYB/CO/2, para. 6). The Committee on the Rights of the Child has also acknowledged in its concluding observations that education is free of charge, primary school attendance is nearly universal and health services are free for all children (CRC/C/15/Add.84, para. 4). The Committee in later concluding observations added, however, that many measures “reflect a predominantly welfare- rather than rights-based approach” (CRC/C/15/Add.209, para. 7). The Committee on Economic, Social and Cultural Rights has also highlighted that, despite the country’s economic wealth, 28 per cent of the population did not have sustainable access to an improved water source (E/C.12/LYB/CO/2, para. 18). Several treaty bodies have raised concerns about the difficult situation of the Amazigh population, who are not recognized as a minority and are impeded from preserving and expressing their cultural and linguistic identity.⁸

23. In relation to women’s human rights, while there have been particular improvements (e.g. changes to nationality laws), Libyan society remains male-dominated, with gender-based discrimination widespread. In addition to entrenched discriminatory norms within Libyan culture and stereotypes on women’s role in family and society (see concluding observations of the Committee on the Elimination of All Forms of Discrimination against Women, Libyan Arab Jamahiriya, CEDAW/C/LBY/CO/5, para. 21), the enforcement of laws itself displays discrimination. The Committee on the Elimination of All Forms of Discrimination against Women regretted that legal provisions relating to personal status, in particular concerning marriage (including polygamy), divorce and inheritance, do not provide for equal rights for women and men (*ibid.*, para. 17).

24. The Commission heard repeatedly during its investigation that some particular human rights violations in the past have had a deep psychosocial impact on the community. The first case relates to the extrajudicial killing of prisoners in Abu Salim prison in June 1996. Events began with a riot by prisoners calling for better conditions including access to health care, family visits and the right to have their cases heard before the courts. Libyan security officials headed by Abdullah al-Senusi and Nasr al-Mabrouk reached an agreement with representatives of the prisoners. The Commission was told by relatives of prisoners

⁷ See CCPR/C/LBY/CO/4, paras. 13 and 23. Amnesty International reported that in 2002, 86 persons were prosecuted for their membership of the Muslim Brotherhood. In that case, 2 of the leaders were sentenced to death, 73 others to life imprisonment and 11 to 10 years’ imprisonment, Amnesty International, *Libyan Arab Jamahiriya, Briefing to the Human Rights Committee*, June 2007, p. 17. Available from www2.ohchr.org/english/bodies/hrc/docs/ngos/AI_LibyaAJ.pdf.

⁸ See, for example, concluding observations of the Committee on the Elimination of Racial Discrimination, Libyan Arab Jamahiriya, CERD/C/64/CO/4, para. 15; E/C.12/LYB/CO/2, paras. 22–24.

that, under the direction of Abdullah al-Senusi, some 1,272 persons were killed by machinegun fire by prison guards. Only many years later were family members informed of the deaths. One witness who spoke to the Commission indicated being notified only 10 years after the events. In the intervening years, families of many victims had come on a weekly basis to the prison to bring food and clothing. The guards would accept the provisions, leaving relatives with the belief that their relatives were alive. In 2007, after receiving information from the Government of the Libyan Arab Jamahiriya that a commission was inquiring into the events at Abu Salim, the Human Rights Committee in its concluding observations expressed concern “that some eleven years after the event, the State party was unable to provide information on the status of the work of the Commission responsible for the inquiry into the events at Abu Salim prison in 1996” (CCPR/C/LBY/CO/4, para. 14). The second case reported to the Commission as having particular resonance related to the public hanging of university students accused of directly or indirectly opposing the regime at the university, with other students forced to watch. The Commission was told that one such hanging took place in Tripoli at the Faculty of Agriculture, Al-Fateh University, and another in Benghazi at the Faculty of Law, Ghar Yunis University, in 1985.

25. It is against this background of repression of rights that one has to assess the pent-up demand for democracy and the rule of law in early 2011.

B. The events from February 2011

26. The events which prompted the convening of the fifteenth special session of the Human Rights Council and the subsequent establishment of the Commission began with mass demonstrations in Libya in February 2011, in which participants called for democratic reform and the toppling of the Qadhafi regime. Such uprisings seem to have been inspired in part by similar popular uprisings in neighbouring countries which had culminated in Tunisia with the resignation of President Zine El Abidine Ben Ali and in Egypt with the resignation of President Hosni Mubarak. The protestors claim that these demonstrations were peaceful. The Government of the Libyan Arab Jamahiriya has disputed this claim, a matter further examined by the Commission in chapter III, section A. The Government response to these demonstrations was to use significant force. This caused an escalation of the use of force until, by late February, a situation of civil war had developed in Libya. For present purposes, the major developments can be summarized as follows: Phase 1 (demonstration phase) and Phase 2 (armed conflict).

1. Phase 1

27. Libyan authorities appear to have been keen to prevent mass demonstrations in Libya, taking steps such as arresting persons who called for such action.⁹ The arrest on 15 February of Fathi Terbil, a well-known lawyer and human rights defender (who was representing many of the families of inmates killed in the Abu Salim prison)¹⁰ by Libyan internal security forces (*Jihaz al-Amn al-Dakhili*) sparked a mass protest in Benghazi. On 16 February, protests spread to Al-Bayda, Al-Quba, Darnah and Tobruk. Authorities sought to scatter the protestors, utilizing various methods, including teargas and batons. Significant casualties were reported. Protests intensified on 17 February, the “Day of Rage”, commemorating the five-year anniversary since a Government crackdown on an Abu

⁹ In addition to the arrest of Mr. Terbil, the Commission also notes some other high-profile arrests such as of Jamal al Haji on 1 February 2011, and Farag, Al-Mahdi, Sadiq and Ali Hmeid in Tripoli on 16 February 2011, all of whom had called for public demonstrations.

¹⁰ As to the Abu Salim incident, see paragraph 24 of the present report.

Salim-related demonstration outside the Italian Embassy (these demonstrations were organized largely through social networks). The largest protest took place in Benghazi where thousands gathered in front of the courthouse, though protests were also held in a number of other towns including Al-Bayda, Tobruk, Tajurah, Tripoli, Misrata and Darnah. Security forces opened fire with live ammunition in several locations.

28. As news of these events spread, protests snowballed. Incidents of protestors being injured by Government forces were reported in Benghazi (in front of Al-Fadhil bin Omar *Katiba*), Ajdabiya and Al-Bayda (at the Al-Abraq airport) on 18 February, and Misrata on 19 February amongst other locations. By this point, some demonstrators were taking more “offensive” action, including taking over the *Katiba* premises¹¹ and the airport in Benghazi. Large-scale protests emerged in Tripoli on 20 February, leading to both Government use of significant force and protestors attacking Government buildings. In the following days, clashes intensified in Tripoli (for instance in the Green Square area). Media reported that security forces used fighter jets and live ammunition against protestors in the capital. The authorities disputed these reports, explaining that ammunition had been dumped in remote areas away from residential areas. Active fighting was also occurring in Az-Zawiyah,¹² Sabha and Sabratah. By 24 February, media reports indicated that protestors were in control of Tobruk, Benghazi, Misrata and Zuwarah.¹³

29. In the Government’s response to the Commission, the Government stated its position that the use of force had been necessary to counter attacks by the crowds. There appeared to be implicit threats in the language used, for instance, in the address by Saif al-Islam Qadhafi (son of Colonel Qadhafi) on Libyan National Television on 21 February that “we will fight to the last man and woman and bullet”.¹⁴ Colonel Qadhafi on Libyan National Television on 22 February announced that he would lead “millions to purge Libya inch by inch, house by house, household by household, alley by alley, and individual by individual until I purify this land”. He blamed foreigners for the problems and called the protestors “rats” who needed to be executed.

2. Phase 2

30. By late February, an armed conflict had developed between armed opposition forces and Government forces.¹⁵ The armed conflict is continuing. Not all areas of the country have experienced the direct fighting. Battles have been focused on specific cities.¹⁶ In early March, Al-Brega and Ajdabiya were the particular focus of battles, with reports of aerial

¹¹ Al-Fadhil bin Omar *Katiba*. This is the major *Katiba* premises in Benghazi.

¹² On 24 February 2011, there were reports of an attack by Government forces against a mosque in Az-Zawiyah where protestors were holding a sit-in.

¹³ See for instance, BBC News, “Libya protests: Gaddafi embattled by opposition gains”, 24 February 2011. Available from www.bbc.co.uk/news/world-africa-12564104. Al-Jazeera, “Gaddafi loses more Libyan cities”, 24 February 2011. Available from <http://english.aljazeera.net/news/africa/2011/02/2011223125256699145.html>. Paul Schemm, “Libyan City Celebrates Freedom From Gadhafi”, 24 February 2011, Associated Press. Available from <http://abcnews.go.com/International/wireStory?id=12983621>.

¹⁴ See Saif al-Islam speech on Libyan State Television, where he said that “we will fight until the last men, until the last women, the last bullet” translated by Commissions’ staff. Speech record available from www.youtube.com/watch?v=Pp6DFM9_NuU&feature=related (minute 36:40). The Government also sought to allay unrest by proposing the release of 110 members of the Libyan Fighter Islamic Group.

¹⁵ The legal significance of the development of an armed conflict is discussed in chapter II, section D, of the present report.

¹⁶ Cities particularly affected include Ajdabiya, Al-Brega, Benghazi, Bin Jawad, Misrata, Ras Lanuf, Uqaylah and Az-Zawiyah.

bombing and Libyan forces sought to regain control of territory with fighting also continuing in Misrata.

31. On 2 March in Benghazi, NTC, led by Mustafa Abdul Jalil (the former Minister of Justice) was established by virtue of the Council issuing its first decree forming the Council and declaring itself to be the “sole representative of all Libya”. It has subsequently been recognized by France, Gambia, Italy, Jordan, Kuwait, Maldives and Qatar.

32. On 17 March, the United Nations Security Council adopted resolution 1973 (2011), establishing a no-fly zone over Libya and the taking of “all necessary measures” to protect civilians against Government forces. Airstrikes began on 19 March under initial leadership of the France, the United Kingdom of Great Britain and Northern Ireland and the United States of America. NATO took control of the military operations on 31 March.

33. The conflict has already caused significant internal displacement and movement of persons into neighbouring countries. As of 20 May, some 814,022 persons were reported to have left Libya.¹⁷ Amongst this group, 322,262¹⁸ are estimated to be Libyan. A majority of those who have crossed borders are migrant workers.

34. **International statements and actions:** There has been a strong response from the international community in relation to the alleged violations of human rights occurring in Libya, with a particular focus on the protection of civilians. The Human Rights Council held a special session of the Human Rights Council on 25 February. On 26 February, the Security Council passed resolution 1970 (2011), imposing sanctions on the Qadhafi regime and referring the situation in Libyan Arab Jamahiriya to the International Criminal Court before deciding on 17 March upon the imposition of the no-fly zone in resolution 1973 (2011). The Libyan Arab Jamahiriya was suspended from the Human Rights Council on 1 March by General Assembly resolution 65/265.

35. On 6 March, former Jordanian Foreign Minister Abdelilah al-Khatib was appointed Special Envoy of the Secretary-General for Libya. Statements of concern on various aspects of human rights and humanitarian law violations have been issued by a number of United Nations senior officials and mandate holders, including the Secretary-General,¹⁹ the United Nations High Commissioner for Human Rights,²⁰ the Chair of the Working Group on the Use of Mercenaries (speaking on behalf of all special procedure mandate holders at the fifteenth special session of the Human Rights Council),²¹ the Special Representative of the Secretary-General for Children and Armed Conflict,²² the Working Group on Enforced or

¹⁷ Of these 402,981 persons have crossed into Tunisia, 286,515 into Egypt, 66,337 into Niger, 24,663 into Chad, 18,674 into Algeria and 2800 into Sudan. See OCHA, “Situation Report No. 38: Libyan Arab Jamahiriya, Crisis”, 20 May 2011. Available from <http://northafrica.humanitarianresponse.info/Reports/SituationReports.aspx>. Italy has also received significant numbers of persons fleeing from Libya. According to a communication received from the Italian Interior Ministry, dated 28 May 2011, 14,642 had arrived to Italy since the beginning of the Libyan crisis, mainly to the island of Lampedusa.

¹⁸ See International Organization for Migration, “Response to the Libyan Crisis”, External Situation Report, 23 May 2011. Available from www.migration-crisis.com/libya/page/index/2.

¹⁹ Statement of the Secretary-General dated 16 May 2011, SG/SM/13572.

²⁰ In addition to her statement during the Council’s debate on 25 February 2011, the High Commissioner for Human Rights, Navanethem Pillay, issued statements concerning Libya on 10 March 2011 (“Pillay condemns Libyan Security Forces violence against journalists”), and on 20 April 2011 (“Libya’s indiscriminate attacks on civilians in Misrata may be international crimes”).

²¹ See statement of José-Luis Gomez del Prado to the special session of the Human Rights Council, 25 February 2011.

²² Statements of Radhika Coomaraswamy on protection of children in Libya on 9 March 2011 and statement on the situation of children in Misrata on 19 April 2011.

Involuntary Disappearances,²³ the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families,²⁴ the Committee on the Elimination of all Forms of Racial Discrimination²⁵ and the Secretary-General's Special Representative on Sexual Violence in Conflict.²⁶ The Prosecutor of the International Criminal Court on 16 May applied to the Pre-Trial Chamber of the International Criminal Court for arrest warrants for three named individuals, namely Colonel Qadhafi, Saif al-Islam Qadhafi and Abdullah al-Senusi, for crimes against humanity in relation to events in February in Libya.²⁷

C. Categories of security groups participating in the events

1. Government forces

36. The security arrangements in Libya are complex with multiple entities empowered to use force, command structures difficult to ascertain and apparently little or no lateral command communication between the different security agencies. In short, the Commission has seen a number of different structures operating in different capacities at different times and at different places. The description below of the Government security forces is based on the Commission's examination of the situation on the ground, secondary sources and a number of interviews carried out with reliable sources during the Commission's visits to Egypt, Libya and Tunisia.

37. **Government Armed Forces:**²⁸ The Libyan Armed Forces are comprised of the Army, the Air Force and the Navy. The Armed Forces are believed to be formally responsible for 61,500 active personnel.²⁹ In recent years, it has reportedly been marginalized and not involved in internal security operations. Whilst there is a hierarchy within the army, other factors such as tribal membership and known loyalty to the Revolution are said to play an important role in the level of responsibility accorded to individuals within the Armed Forces.³⁰

38. **The *Kata'eb*** play a much larger role in relation to internal security. Each *Katiba* has a name which has a political significance such as the name of its commander, for example, the *Khamis Katiba* is named after one of Colonel Qadhafi's sons. Individual *Katiba* are said to number some 3,000 persons and be armed with heavy weaponry. Another named brigade is The Deterrence *Katiba (Liwa al-Redah)* (stationed outside Tripoli). Membership in the *Kata'eb* is based on loyalty and family or tribal ties, with a division of personnel instituted so as to ensure loyalty by means of implicit threats to members of the family or tribe of any

²³ Statement entitled "Libya: wave of enforced disappearances may amount to a crime against humanity", 24 March 2011.

²⁴ Statement on situation of migrant workers in Libya, 8 April 2011.

²⁵ Statement under the Committee's early warning and urgent action procedure, 2 March 2011.

²⁶ Statement of Margot Wallström on concern over sexual violence in Libya, 20 April 2011.

²⁷ International Criminal Court, Office of the Prosecutor, *Prosecutor's Application Pursuant to Article 58 as to Mu'ammur Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI*, 16 May 2011 (No. ICC-01/11).

²⁸ In this report, the term "Government forces" is used as an umbrella term to refer to all of the various security-related organizations listed in this segment.

²⁹ Hanspeter Mattes, "Challenges to Security Sector Governance in the Middle East: the Libyan Case", conference paper presented at the Workshop on "Challenges of Security Sector Governance in the Middle East", held in Geneva on 12-13 July 2004, (Geneva Centre for the Democratic Control of Armed Forces – DCAF, 2004), p. 3. Available from http://se2.dcaf.ch/serviceengine/Files/DCAF/23853/ieventattachment_file/7b8d5f97-23c5-43a4-ae81-bb5b0843634c/en/ev_geneva_04071113_Mattes.pdf.

³⁰ *Ibid.*, p. 9.

person who may be suspected of disloyalty. In general, it is difficult to ascertain how and why a given *Katiba* is organized and dissolved and under whose command it is at any given time. The Commission was informed by one witness that, before the February events, each *Katiba* was assigned to a particular area and given a specific responsibility.³¹

39. **The Revolutionary Committees** were set up in 1977 with a view to “safeguarding the Revolution”.³² Their members wear civilian clothes and are armed with small weapons (handguns and AK47’s). Sources to whom the Commission spoke estimated that the Revolutionary Committees have tens of thousands of members, possibly between 60,000 and 100,000 members. According to information collected by the Commission, the Revolutionary Committees are tasked with police functions including the arrest of counter-revolutionaries and the management of numerous detention centres in most cities and towns across the country. The Revolutionary Committees have been described as the “most important security organisations” and “remain[ing] the closest to Colonel Qadhafi himself.”³³

40. **The Jamahiriya Security Organization** includes the Internal Security Agency (ISA) and the External (or Foreign) Security Agency (ESA). According to information provided to the Commission, ISA, under the leadership of Colonel Abdullah al-Senusi is tasked with monitoring anti-Qadhafi organizations, such as lawyers and doctors’ unions and individuals to evaluate the extent of any threat to the regime.³⁴ The Internal Security Agency reports directly to Colonel Qadhafi. ESA was formerly commanded by Musa Kusa (who defected from the regime in February).³⁵ This agency reportedly planned, coordinated and provided support to military operations and terrorist activities abroad. External security dealt also with military intelligence and intelligence assessment overseas but was not usually directly involved in internal security affairs. While regular prisons fall under the authority of the General People’s Committee for Justice of the Ministry of Justice, it is ISA that has jurisdiction over the Abu Salim and Ain Zarah prisons.³⁶ Members of both ISA and ESA wear civilian clothes and their vehicles are not marked with distinctive signs.

41. **Riot police force:** The Commission received reports concerning the involvement of a riot police force (*Quwat al-Da’m al-Markazi*) in suppressing demonstrations. Its command structure is unknown. Little is known either about the Public Security Agency (*Al-Amn Al-Am*).

42. **The Revolutionary Guard** is a structured political and paramilitary apparatus within the Armed Forces tasked with ensuring loyalty to the regime. Its members are believed to be the Revolutionary Committee members within the Armed Forces.³⁷ According to information provided to the Commission, the Revolutionary Guard (*Al-Haras*

³¹ The Commission was able to compile a list of *Kata’eb* with their geographic location and main commanding officers.

³² Hanspeter Mattes, “Challenges to Security Sector Governance in the Middle East: the Libyan Case” (2004), p. 13.

³³ *Ibid.*, p. 17.

³⁴ According to information received by the Commission, the ISA commander for the eastern region at the time of the events in February was Senusi al-Wizri; and the commander for Tripoli, Brigadier General Tuhani Khaled.

³⁵ According to information received by the Commission, other officials as of February included the head of the Special Operations Unit, Abu Zayd Dorda.

³⁶ These two prisons are known for holding political prisoners in detention for years without trial. Human Rights Watch, “Truth and Justice Can’t Wait”, 12 December 2009. Available from www.hrw.org/en/node/87096/section/8.

³⁷ Hanspeter Mattes, “Challenges to Security Sector Governance in the Middle East: the Libyan Case”, pp. 15–16.

al-Thawri) includes six brigades (the Special Forces Brigade, the Infantry Brigade, the Artillery Brigade and three tank brigades, all stationed on the outskirts of Tripoli). It is thought to be approximately 40,000 strong³⁸ and “the real frontier protection force”.³⁹ The force has access to battle tanks, armoured personnel carriers, helicopters and possibly anti-aircraft artillery and guided weapons. A unit from the Guards, composed solely of female soldiers and known as the “Green Nuns” or “Revolutionary Nuns” serves as the Colonel’s bodyguards. Members of the Revolutionary Guard are uniformed.

2. An amorphous system

43. The structure, mandate and reporting lines of the country’s various security agencies described above, including the *Kata’eb* and the Revolutionary Committees remain unclear to outside observers. Transparency and accountability mechanisms are limited to an extreme. This amorphous system, in the Commission’s view, reflects a purposeful policy to obfuscate responsibility and minimize any threat to the central control of Colonel Qadhafi himself. The most important characteristic of these security organizations is that they are subject to neither institutional political control nor control by the public, but have been controlled exclusively by the Revolutionary Leadership led by Colonel Qadhafi.

44. All the information which the Commission received indicated that the agencies described above operate pursuant to direct orders of the Colonel. Lines of communication between the various security organizations are vertical and ultimately meet in the office of Colonel Qadhafi. Orders appear to be given by Colonel Qadhafi through satellite phone calls to commanders. It is also likely that some orders may have been issued by text message, but it is mostly personal communication based on voice recognition. This makes more difficult the task of tracing orders and commands.

45. Furthermore, according to information received by the Commission, some communications to security agencies may be given by code in public speeches. For example, before attacking Benghazi, Colonel Qadhafi said publicly: “I love you Benghazi”, which was interpreted by some who spoke to the Commission as meaning “I will come after you”. A former Libyan diplomat publicly stated on 23 February 2011, that Colonel Qadhafi’s speech of the night before (22 February) was a code for his forces to attack certain locations, including Az-Zawiyah, Sorman and Sabratah, which were subsequently attacked on 23 February.⁴⁰ It has been contended that Colonel Qadhafi established a “one-man rule” in which his officials “instantly promoted the Leader’s pronouncements to dogma”.⁴¹

3. The opposition armed forces

46. The forces on the opposition side of the armed conflict have formed recently and – at least according to information available to the Commission – do not appear to have the same level of organization as regular armed forces. Groups of supporters of the opposition came together in various cities and merged with defecting individual army soldiers and

³⁸ See Global Security, “*Al Haras Assauri: Revolutionary Guard*”. Available from www.globalsecurity.org/intell/world/libya/rg.htm.

³⁹ United States Government, Library of Congress, “Libya: Federal Research Study and Country Profile with Comprehensive Information, History, and Analysis - Politics, Economy, Military - Mu’ammal al Qadhafi”, (2011, Progressive Management).

⁴⁰ *The Telegraph*, “Gaddafi’s speech was ‘code to start genocide against Libyans’”, 23 February 2011. Available from www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8342349/Gaddafi-speech-was-code-to-begin-genocide-against-Libyans.html.

⁴¹ Dirk Vandewalle, *A History of Modern Libya* (Cambridge, Cambridge University Press, 2006), p. 177.

military units to form what is now variably known as the Free Libyan Army, the National Libyan Army or the rebels.⁴² Subsequently, volunteers from different cities, towns and villages in Libya joined the opposition forces. During its visit to eastern Libya, the Commission was able to observe young volunteers holding identity cards with barcodes. It was explained that the identity cards were distributed when the individuals were issued with a weapon.

47. Few details are available on the strength and organization of the opposition armed forces. Reports suggest the forces include “thousands of men” who are attending ad hoc training camps in 10 different locations in eastern Libya. Subsequent to this training, people are ready to be deployed in units of four or five to the frontline. Reports also suggest that a number of western countries are providing training to the troops. It has been reported that command structures within the armed opposition forces have been unclear. General Abdul Fatah Yunis, former Commander of an army special force and most recently Minister of Interior defected on 22 February 2011 and became the top field commander of the opposition forces, with General Khalifa Hufter becoming his deputy. A military council under NTC established on 5 March was set up to coordinate security matters, headed by Omar Hariri. International media has reported the creation of at least two brigades of opposition forces, the Omar al-Mukhtar Brigade in Ajdabiya and the Ali Hassan al-Jaber Brigade, named after the Al-Jazeera cameraman killed in March by forces loyal to Colonel Qadhafi.

48. According to information received by the Commission, the weapons and vehicles available to the opposition forces initially comprised equipment captured during battles with Government forces or taken from military posts and warehouses upon gaining control of such facilities, together with equipment belonging to the defecting military units. The opposition armed forces are also believed to be receiving equipment from foreign countries including uniforms and communication means.

4. International forces

49. Following Security Council resolution 1973 (2011) authorising Member States and regional organisations to, enforce a no-fly zone and take “all necessary measures” to protect civilians in Libya, an initial coalition of States led by the France, the United Kingdom of Great Britain and Northern Ireland and the United States of America resorted to employ military means with a view to enforcing the resolution. According to NATO, as at 31 May, the coalition included the following countries: Belgium, Bulgaria, Canada, Denmark, France, Greece, Italy, Jordan, Netherlands, Norway, Qatar, Romania, Spain, Sweden, Turkey, United Arab Emirates, United Kingdom and United States. On 31 March, NATO assumed full command of military operations against Libya.

D. International legal framework for the Commission’s analyses

1. Legal classification of the situation

50. The escalation of the situation in Libya has particular consequences in terms of the application of international law. In legal terms, the periods in this escalation can be demarked as: (a) peacetime; (b) non-international armed conflict; and (c) coexisting international armed conflict. For the purposes of the application of relevant legal standards, it is necessary to define more closely the relevant time periods involved.

⁴² The term “rebels” is used by both NTC and its military commander, General Abdul Fatah Yunis to refer to the totality of the opposition forces. It has also been used by some Government officials.

51. **Peacetime Libya:** Before the demonstrations began in mid-February, Libya could be classified as being in a normal state of peace.

52. **Non-international armed conflict:** The precise date for determining when this change from peace to non-international armed conflict occurred is somewhat difficult in the current circumstances. The Commission notes that other organizations that have been examining this question such as the Prosecutor of the International Criminal Court and the International Committee of the Red Cross (ICRC) have not put forward a particular date.⁴³

53. The Commission notes the definition of non-international armed conflicts in Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims in Non-International Armed Conflict (Protocol II) (to which the Libyan Arab Jamahiriya is a party), namely conflicts “which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”. The situation must constitute more than either isolated acts of violence or a mere internal disturbance or riot and involve protracted violence, engaging both the Government forces and an organized armed group. No definition of non-international armed conflict is provided for in the four Geneva conventions (which includes the provisions of common article 3). Jurisprudence has developed, however, defining non-international armed conflict as whenever there is “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.⁴⁴

54. In determining whether a non-international armed conflict exists, the Commission has thus had to consider the intensity of the conflict, the extent of relevant control of territory and the nature of the armed group in opposition to the Government. Examining the nature of the armed group involves considering such factors as whether there is a hierarchical command structure, the extent to which it is able to carry out organized operations (e.g. organizes into zones of responsibility, means of communication); discipline systems; the nature of logistical arrangements; and how the group presents itself (e.g. whether it is capable of involvement in negotiations).

55. Information on the intensity of the conflict and how the opposition forces have gained territorial control is more readily available than on many aspects of the organization of the armed opposition forces. On 19 February, Government opponents assumed control over the *Katiba* premises in Benghazi⁴⁵ and took control of the airport there. On the same day in Tobruk, Government opponents took over Omar al-Mukhtar *Katiba* and confiscated weaponry. On 20 February, demonstrators controlled the town of Shahat, in the east of Libya and reportedly “arrested” persons fighting with the Qadhafi forces. By 24 February, anti-Government forces appear to have taken control of Tobruk and Misrata. On 26 February, Security Council resolution 1970 (2011) welcomed various institutions’ condemnation of serious violations of human rights and humanitarian law in Libya

⁴³ The Prosecutor of the International Criminal Court in his report to the Security Council, for instance, referred to there being an armed conflict in Libya “since the end of February”, see International Criminal Court, Office of the Prosecutor, “First Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1970 (2011)” (2011), para. 37. Jakob Kellenberger, President of ICRC, stated on 10 March 2011 that a non-international armed conflict existed in Libya but without stipulating the commencement date. See ICRC, “Libya: urgent to apply the rules of war” News Release 11/53, 10 March 2011.

⁴⁴ *Prosecutor v Tadic*, Jurisdiction Decision, ICTY (Appeals Chamber), Decision of 2 October 1995, para. 70. A similar formulation was adopted in the Rome Statute (art. 8, para. 2 (f)).

⁴⁵ This was the Al Fadhil bin Omar *Katiba* premises, the major such premise in Benghazi.

(preambular para. 3).⁴⁶ While the Commission lacks full information concerning several aspects of the opposition forces' organization, it has reached the preliminary view that by or around 24 February, a sufficient non-international armed conflict had developed to trigger the application of Protocol II and common article 3 of the Geneva conventions.

56. **Coexisting international armed conflict:** The airstrikes to enforce the no-fly zone imposed by the Security Council through resolution 1973 (2011), which began on 19 March, brought into being an international armed conflict between the States participating in this military action and the State of the Libyan Arab Jamahiriya. The Commission has noted that the objective of this international military action is to enforce Security Council resolution 1973 (2011). It is also satisfied that the actions of NATO and other foreign States involved are not exercising control over the military actions of either of the parties to the non-international armed conflict. As such, it concludes that the international armed conflict is legally separate to the continuing non-international armed conflict, and is thus a coexisting international armed conflict.

2. Bodies of applicable law

57. There are three major bodies of international law most relevant to the situation in Libya from February to the present: international human rights law, international humanitarian law and international criminal law.

(a) *International human rights law*

58. International human rights law continued to apply throughout the period being examined by the Commission, albeit with potential variation during the period of armed conflict.

59. The Libyan Arab Jamahiriya is a party to major United Nations human rights treaties: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the 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 most relevantly for the current context, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The Libyan Arab Jamahiriya is also a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. At a regional level, the Libyan Arab Jamahiriya is a party to the African Charter on Human and Peoples' Rights and the Protocol on the Rights of Women in Africa. As a State party to these treaties, the Libyan Arab Jamahiriya is bound to respect, protect, promote and fulfil the human rights of all persons within its jurisdiction. This includes the right to afford an effective remedy to those whose rights have been violated (including the provision of reparations) as well as the responsibility of the State to investigate and bring to justice perpetrators of particular violations.⁴⁷ The Libyan Arab Jamahiriya is also bound by relevant rules of international human rights law which form a part of customary international law.

⁴⁶ Note also Security Council press statement on Libya (SC/10180 AFR/2120), 22 February 2011, which also speaks of international humanitarian law.

⁴⁷ See Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on State Parties to the Covenant, paras. 15–19. In this general comment, the

60. The Libyan Arab Jamahiriya has not notified the Secretary-General of any state of emergency and subsequent derogations made to its obligations under the International Covenant on Civil and Political Rights. Article 4 of the Covenant permits State parties to derogate from obligations “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed”. Derogations are only permissible to the extent strictly required by the exigencies of the situation, and the measure must not be inconsistent with their other obligations under international law or involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Article 4 also clearly stipulates the provisions which are non-derogable, which include but are not limited to the right to life, the prohibition of torture or cruel, inhuman or degrading punishment, and freedom of thought, conscience and religion.⁴⁸

61. International human rights law applies both in peace and times of armed conflict. As the International Court of Justice has concluded, “the protection offered by human rights conventions does not cease in case of armed conflict”.⁴⁹ Instead, it applies alongside international humanitarian law which is the *lex specialis* during times of armed conflict.

Non-State actors and international human rights law

62. Non-State actors in Libya, in particular the authorities and forces of the National Transitional Council, cannot formally become parties to the international human rights treaties and are thus not formally given obligations under the treaties. Although the extent to which international human rights law binds non-State actors remains contested as a matter of international law,⁵⁰ it is increasingly accepted that where non-State groups exercise de facto control over territory, they must respect fundamental human rights of persons in that territory.⁵¹ The Commission has taken the approach that, as NTC has been

Human Rights Committee considered that the duty to bring perpetrators to justice attaches in particular to violations that are criminal under domestic or international law, torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in December 2005, and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (which were recognized in a consensus resolution of the former Commission on Human Rights in 2005).

⁴⁸ Note also the further rights which the Human Rights Committee has explained are non-derogable: including the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person, the prohibition against taking hostages, abductions or unacknowledged detention, certain elements of the right of minorities to protection, the prohibition of deportation or forcible transfer of population and the prohibition of propaganda for war and advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence, as well as procedural rights necessary for the protection of non-derogable rights. These subsidiary obligations include the right to take proceedings before a court to enable the court to decide on the lawfulness of the detention and remedies such as habeas corpus. Human Rights Committee, general comment No. 29 (2001) on states of emergency (art. 4), paras. 13 and 15.

⁴⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 178, paras. 105–106. See also statements concerning international humanitarian law as *lex specialis* in *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 240, para. 25.

⁵⁰ For a more expansive view of the application of international human rights law, see Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press, 2006).

⁵¹ To similar effect, see Secretary-General, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, para. 188. Available from: http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf.

exercising de facto control over territory akin to that of a Governmental authority, the Commission will examine also allegations of human rights violations committed by NTC forces. The Commission notes that NTC has made a public undertaking in which it committed to “build a constitutional democratic civil State based on the rule of law, respect for human rights and the guarantee of equal rights and opportunities for all its citizens including full political participations by all citizens and equal opportunities between men and women and the promotion of women empowerment”.⁵²

(b) *International humanitarian law*

63. International humanitarian law binds all parties to an armed conflict. The Libyan Arab Jamahiriya is a party to the four Geneva Conventions of 1949 as well as the Protocols I and II Additional thereto. It is also a party to a range of other international humanitarian law instruments concerning weaponry.⁵³ The Libyan Arab Jamahiriya is also a party to the Organization of African Unity Convention for the Elimination of Mercenarism in Africa and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. It has not, however, ratified the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects; the Convention on Cluster Munitions; or the Convention on the Prohibition, Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. The Libyan Arab Jamahiriya is also a party to the Convention for the Protection of Cultural Property in the Event of Armed Conflict.

64. In relation to the non-international armed conflict which developed in Libya, of particular significance are the provisions of Protocol II together with the provisions of common article 3 of the Geneva Conventions (“common article 3”). The parties to the conflict are also bound by the provisions of customary international humanitarian law.⁵⁴

65. As a result of some additional treaty action by the Libyan Arab Jamahiriya, some of the standards applicable to the Government of the Libyan Arab Jamahiriya are higher. In particular, by ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Libyan Arab Jamahiriya has agreed to take all feasible steps to ensure that members of its Armed Forces under 18 years of age do not take a direct part in hostilities and that persons under 18 are not compulsorily recruited into its Armed Forces. By virtue of making a declaration under article 3, the Libyan Arab Jamahiriya has declared 18 years of age as the age of voluntary recruitment. The Optional Protocol also obliges the Libyan Arab Jamahiriya to take all feasible measures to prevent armed groups from recruiting and using in hostilities those under 18 (art. 4).

66. In relation to the international armed conflict, the full provisions of the four Geneva Conventions of 1949, as well as customary international humanitarian norms relating to international armed conflict apply to engagements. The Libyan Arab Jamahiriya and most of the States involved in the military intervention have also ratified Protocol additional to

⁵² See www.ntclibya.org/english/the-statement/. A press release concerning this undertaking was issued on 29 March, see <http://web.llibya.org/2011/03/31/ntc-press-release-a-vision-of-a-democratic-libya/>.

⁵³ Libya is a party to the Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, the Convention on the Prohibition on the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

⁵⁴ See Jean-Marie Henckaerts and Louise Doswald-Beck, eds., for the International Committee of the Red Cross, *Customary International Humanitarian Law*, 2 vols. (Cambridge, ICRC and Cambridge University Press, 2005) (henceforth the ICRC Study on Customary International Humanitarian Law).

the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I).⁵⁵

67. As the Security Council has underlined in its resolution 1325 (2011), it is important for all States to apply fully the relevant norms of international humanitarian law and international human rights law to women and girls, and to take special measures to protect women and girls from gender-based violence during armed conflict.⁵⁶

(c) *International criminal law*

68. International criminal law provides the means of enforcement at the international level of egregious violations of international human rights law and serious violations of international humanitarian law which are recognized at international law as attracting individual criminality. The Libyan Arab Jamahiriya is not party to the Rome Statute of the International Criminal Court. However, pursuant to the Rome Statute, the Security Council referred the situation of the Libyan Arab Jamahiriya to the Prosecutor of the Court in resolution 1970 (2011). The Court can exercise jurisdiction over war crimes, crimes against humanity and genocide as defined in the Rome Statute.⁵⁷ There have been no allegations of genocide in the context of Libya thus far. However, there have been allegations of facts which may constitute war crimes and/or crimes against humanity under the Statute.

69. **War Crimes:** A detailed listing of which actions constitute war crimes under the Rome Statute is contained in article 8 of the Statute. In the context of non-international armed conflict, this comprises serious violations of common article 3 and other serious violations of the laws and customs of international law applicable in non-international armed conflict. In the context of an international armed conflict, these actions comprise grave breaches of the Geneva Conventions and acts which constitute serious violations of the laws and customs of international law applicable in international armed conflict.

70. **Crimes against humanity** are crimes that shock the conscience of humanity. According to the definition provided in the Rome Statute, crimes against humanity occur where certain acts are undertaken as part of a widespread or systematic attack against any civilian population with knowledge of the attack (art. 7).⁵⁸ The individual crimes committed in this context may include murder, extermination, enslavement, deportation or forced transfer of population, imprisonment, torture, rape, persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds, enforced disappearance, apartheid, or other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health. There is no necessity for a nexus with an armed conflict in order to demonstrate that a crime against humanity has been committed.

⁵⁵ The only States participating or providing support functions for the military intervention, which are not party to Protocol I are Turkey and the United States of America.

⁵⁶ See also Security Council resolution 1820 (2008).

⁵⁷ See William Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford, Oxford University Press, 2010), Otto Triffterer, *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, second ed. (Oxford, Hart Publishing, 2008) and M. Cherif Bassiouni, *International Criminal Law* (3 vols.) third ed. (Boston, Martinus Nijhoff, 2008).

⁵⁸ See M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Practice* (Cambridge, Cambridge University Press, 2011).

III. Violations

71. The Commission has received information concerning a wide range of violations of international human rights and international humanitarian law and crimes under international criminal law. In this section, the Commission evaluates a number of the key violations, beginning with violations alleged during the demonstration period, before moving to ones specific to an armed conflict. Several categories of violations took place in both periods and so have been integrated into more than one section. In relation to the armed conflict period, the vast majority of information received has been related to the non-international armed conflict, so that chapter III, sections A–K, focus on this aspect, with violations alleged in the course of the international armed conflict addressed in chapter III, section L. Conclusions in this section are limited to referring to violations of international human rights and international humanitarian law. Discussion of the commission of international crimes is dealt with in the assessment section.

A. Excessive use of force against demonstrators

1. Introduction

72. The catalyst for establishment of this Commission of Inquiry was concern over the use of force against demonstrators in mid–late February. The Human Rights Council in resolution S-15/1 expressed “deep concern at the deaths of hundreds of civilians”, referring also to “indiscriminate armed attacks against civilians” and “extrajudicial killings”. The particular circumstances, leading up to the use of force by security forces against demonstrators, have been contested by the demonstrators and the Government. The Government has stated that its security forces refrained from using live ammunition and instead used tear gas on 15 February. The Government has further stated that demonstrators’ violent actions, in attacking police stations, necessitated the use of force by authorities. Protestors have reiterated the peaceful nature of their demonstrations. Estimates of those killed and injured also vary. On 20 February, human rights groups estimated that approximately 233 persons had been killed.⁵⁹ Saif al-Islam Qadhafi made reference to 98 persons having been killed during an interview on the same day.⁶⁰ The Office of the Prosecutor of the International Criminal Court has estimated that 500–700 persons had been killed in February (though this estimate would take into account some of the armed conflict period).⁶¹ It is accepted by both the Government and the demonstrators that Government forces used significant force, including the use of firearms and other weaponry against persons participating in demonstrations in various locations within Libya during the period studied by the Commission.

73. In examining the response to the demonstrations, in particular claims of excessive use of force, the Commission met with a variety of Government and NTC officials and spoke with over 80 persons regarding the incidents during the demonstrations, particularly

⁵⁹ Human Rights Watch, “Libya: Government Should Demand End to Unlawful Killings; Death Toll Up to at Least 233 Over Four Days”, 20 February 2011. Available from http://www.hrw.org/en/news/2011/02/20/libya-governments-should-demand-end-unlawful-killings_

⁶⁰ See Saif al-Islam speech on Libyan State Television, where he said that “the number of deaths reached 14 in Bayda and 84 in Benghazi, in total ... some mass media were exaggerating ... personally I heard the day before yesterday that more than 250 people were killed and more than 180 injured. This was an unimaginable exaggeration”. Speech translated by Commission’s staff. Speech record available from www.youtube.com/watch?v=Pp6DFM9_NuU&feature=related (minute 6:09).

⁶¹ International Criminal Court, “First Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1970 (2011)”, p. 4.

persons who had taken part in demonstrations, persons wounded, medical staff members and other persons with relevant information. The Commission also had access to a variety of reports prepared by other organizations in relation to recent events.

2. Applicable law

74. International human rights law prohibits arbitrary deprivation of life (article 6 of the Covenant on Civil and Political Rights), guarantees security of persons (article 9 of the Covenant) and prohibits cruel, inhuman or degrading treatment or punishment of persons (article 7 of the Covenant). Excessive use of force by law enforcement officials (whether police or military or other members of State security forces) impinges on these fundamental guarantees. Specialized soft law standards, in particular the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide further guidance on this subject. Non-violent means are to be used as far as possible before resorting to the use of force (principle of necessity), and any use of force must be limited to that which is proportionate to the seriousness of the offence and the legitimate objective to be achieved (principle of proportionality). Firearms are to be used only in self-defence or in defence of others against imminent threat of death or serious injury; to prevent a particularly serious crime involving grave threat to life; or to arrest a person posing such a threat and who is resisting efforts to stop the threat, or to prevent that person's escape. Before using firearms, law enforcement officials must identify themselves as law enforcement officials and give a clear warning that firearms will be used. Further, sufficient time must be provided for the warning to be observed, unless this would unduly create a risk of death or serious harm to the officer or other persons, or would be clearly inappropriate or pointless in the circumstances.⁶² Explicit guidance is also provided by the Basic Principles in relation to respecting persons' right to participate in lawful and peaceful assemblies in accordance with article 21 of the Covenant on Civil and Political Rights.⁶³ Depending on the circumstances, particular violations might also amount to constituent acts of a crime against humanity (e.g. murder or persecution) if committed as part of a widespread or systematic attack against a civilian population with knowledge of that attack (art. 7, para. 1 (a) and (h), of the Rome Statute).

3. Factual findings

75. The Commission has concluded that the Government's reaction, in seeking to repress the demonstrations, involved the use of lethal force and that, in the early days of the protest, there was little evidence to suggest that the protestors were engaged in anything other than peaceful assembly. The Commission has not been able to determine the exact numbers of casualties during the demonstration phase, in part because its access to places and persons was limited, but also due to specific Government action taken in the aftermath of the demonstrations which has limited available physical and documentary evidence. The Commission received specific information concerning events in the following locations.⁶⁴

⁶² See article 3 of the Code of Conduct for Law Enforcement Officials and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁶³ If an assembly is unlawful but nonviolent, law enforcement officials must avoid using force, or where this is not practicable, must restrict force to the minimum extent necessary. In the case of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary (principles 13 and 14, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials).

⁶⁴ This listing of locations relates to places or events on which the Commission has gathered the most information, in part due to the locations it was able to visit. However, this should not be taken to be

76. **Benghazi:** The Commission received information that 20 demonstrators were killed in Benghazi on 17 February⁶⁵ with a further 20 killed on 19 February and 60 on 20 February.⁶⁶ According to Benghazi Medical Centre, of the fatalities registered at that location on 17 February (estimated at 11), 90 per cent were shot in the upper part of the body, most often in the chest and head. Doctors and nurses at the Benghazi Medical Centre indicated that a significant number of fatalities arrived in the following days.

77. **Tripoli:** The Commission interviewed persons with information concerning demonstrations in Tripoli on 17 February. Persons spoke of security forces using force to disperse demonstrators in Green Square and Algeria Square, leaving several protestors dead. On 21 February, there were indications of some violent actions by protestors with the burning of Government buildings, such as police stations on Omar al-Mukhtar Street and the People's Hall on Andalus Street and the Friday market area. However, the Commission received information that even if security forces were justified in using some sort of force, the use of force was indiscriminate. One example given was that of a 21-year-old woman who was killed while watching the scene in Sidi Khalifa Street in the city.

78. Human Rights Watch stated that at least 62 corpses were brought to the morgues in Tripoli between 20 and 22 February after protestors had been fired at randomly by Libyan forces.⁶⁷ In relation to demonstrations in the Fashlum, Tajurah and Al-Dibri neighbourhoods of Tripoli, the Commission received information that, on 20 February, Government forces shot at demonstrators, leaving an estimated 15 persons dead and many others injured. The Commission received further information that the repression of the demonstrations continued on 23 and 25 February.⁶⁸

79. The Commission was told by several witnesses that security forces of the Government collected the corpses of persons from streets and hospitals. There were also accounts of bodies being exhumed by bulldozers after being buried. Security forces were also said to have raided hospitals to remove injured persons. It was also reported to the Commission that a number of wounded were denied access to hospitals, while others did not seek medical treatment for fear of being detained by the security forces.

80. **Darnah:** The Commission received information that six persons were killed in Darnah on 17 February when security forces opened fire at approximately 150 persons protesting against the regime. No tear gas or warning shots were said to have been employed before the use of live ammunition. A number of those who were killed had been shot in the upper part of the body. In one case, an individual was said to have been shot six times in the head and chest by a member of ISA. One witness, explained:

an exhaustive list, since confrontations between demonstrators and Government forces happened in other locations.

⁶⁵ Human Rights Watch, "Libya: Security Forces Kill 84 Over Three Days; End Attacks on Peaceful Protesters", 18 February 2011. Available from www.hrw.org/en/news/2011/02/18/libya-security-forces-kill-84-over-three-days.

⁶⁶ Amnesty International, "Libyan Leader Must End Spiralling Killings", 20 February 2011, available from www.amnesty.org/en/news-and-updates/libyan-leader-must-end-spiralling-killings-2011-02-20, and Human Rights Watch "Libya: Government Should Demand End to Unlawful Killings".

⁶⁷ Human Rights Watch, "Libya: Commanders Should Face Justice for Killings", 22 February 2011. Available from www.hrw.org/en/news/2011/02/22/libya-commanders-should-face-justice-killings.

⁶⁸ A medical practitioner interviewed by the Commission stated that, following the repression of demonstrations in Tajurah, he saw 15 persons killed and 10 wounded on 20 February 2011 and that most were hit at the head, chest and abdomen. He also saw 35 who had received wounds to the head and chest on 25 February 2011.

“We went to peaceful demonstration [on 17 February] and were attacked by security. Six were killed during the 30 minutes demonstration. I was hit ... Children are targeted in the face, without differentiating. Six people were hit in face on 17th in Darnah ... Snipers were on top of buildings shooting. Not a *Katiba* but people from internal security, instructed to do so, to target people, no tear gas used, they targeted us with live bullets.”

81. **Tobruk:** The Commission collected information regarding the demonstration in Ash-Shuhada Square (previously known as Al-Jamahiriya Square) in Tobruk which triggered an intervention, according to witnesses, from joint Government security agencies, including ISA, riot police, and revolutionary committees. Witnesses reported that several security personnel were stationed on the roofs of nearby buildings and were firing at demonstrators. The Commission has established that live ammunition was used, killing at least four demonstrators and injuring 51 others.

82. **Al-Bayda:** According to medical records provided to the Commission, at least 40 persons were killed during peaceful demonstrations between 16 and 19 February. On 16 February, members of Al-Bayda Internal Security Agency fired live ammunition at a demonstration in Al-Salhi Square and the Commission has verified that several demonstrators had been killed. On 17 February, according to information received by the Commission from forensic and prosecutorial authorities, security forces of Khamis *Katiba* were deployed in Al-Bayda where they shot at demonstrators without prior warning, resulting in the deaths of 11 other demonstrators. Other witnesses spoke specifically of actions of ISA and revolutionary committees in shooting at persons during demonstrations.

83. On 18 February, at the demonstrations near Al-Abraq Airport⁶⁹ (east of Al-Bayda town), the Commission received information that 11 persons were killed by security personnel of Khamis *Katiba*, including the Commander of Husein al-Jiwiki *Katiba*. According to several sources, the Commander was shot as a result of his refusal to shot at demonstrators. Witnesses noted that an 11-year-old child was shot in the head while sitting inside a house close to the place of incident.

84. Medical sources and forensic specialists in Al-Bayda mentioned that the vast majority of those killed had been shot in the upper part of their bodies. They estimated that 80 per cent had been shot in the head and another 10 per cent had been shot in the chest, neck, or mouth. According to the same sources, the vast majority of those killed were shot with only one bullet.

85. **Misrata:** The Commission received information relating to Misrata and demonstrations held there between 19 and 22 February. The Commission heard evidence that riot-control police shot live ammunition at demonstrators killing at least one person, Khaled Abu Samah, on 19 February. On 20 February, following the funeral of Mr. Abu Samah, thousands of people gathered on Tripoli Street, Misrata, to protest and met with security forces again shooting live ammunition. In addition to the riot-control police, members of the *Baltajiyah*⁷⁰ were also said to be present and to have taken part in shooting at demonstrators. The Commission has also been informed that AK47's and anti-aircraft weapons were used against demonstrators. On 21 and 22 February, demonstrators attacked revolutionary committee offices, police stations and military barracks, taking arms and weapons from these locations.

⁶⁹ The event is commonly known among Libyans as “Al-Abraq Airport battle”.

⁷⁰ In describing these *Baltajiyah*, witnesses referred to armed young men acting as groups in a “gang-like” fashion to disrupt the demonstration.

86. The Commission was told that when the demonstrations erupted, instructions were given to security forces to withdraw from police stations and security premises.⁷¹ The Government has stressed that the live ammunition was only employed in response to demonstrators' violent actions. The Government also noted that demonstrators attacked police stations, destroying approximately 17 stations several of them in various cities and towns of Libya, and that demonstrators took up arms against the security forces. The Government was thus of the view that any use of force had been justifiable.

87. The majority of information collected by the Commission, however, indicates that the Government forces used live ammunition against unarmed peaceful demonstrators in many instances. While in some locations, in particular after 19 February, demonstrators increasingly took violent actions, the Commission concludes that the early days of the demonstration were peaceful. This conclusion is based upon information received from participants in the demonstration, but has also been corroborated by information collected from some security personnel. One member of security personnel, currently in detention, stated that he was among 250 soldiers deployed by the regime to "contain demonstrators" in Benghazi on 17 February. Interrogation records provided to the Commission by the Benghazi General Prosecutor's Office state that members of the security forces were given orders, by their commanding officers, to use force against demonstrators. In at least one transcript, there is an admission of involvement by a member of the security forces in the random shooting of protestors in Benghazi on 20 February. Similar information was provided in relation to the deliberate deployment of members of *Kata'eb* to violently disperse demonstrations in Al-Bayda. In one case a former security director who has since joined with opposition forces disclosed that he sought to gain approval for the redeployment of officers outside Al-Bayda from the highest levels of ISA and senior political figures. He did not receive authorization and was told to take instructions only from Khamis Qadhafi. The Benghazi Prosecutor's Office has also collected information relating to orders being given to fire at demonstrators on 17 February in Ras Lanuf and that security personnel had complied with said orders by utilizing anti-aircraft weaponry.

88. The Commission has not been able to determine if all participants in the demonstration were unarmed. However, from the information it has received, together with the videos and photos it has examined, it considers it likely that in the early days of the protest, the protestors were engaged in peaceful assemblies.

4. Conclusions

89. The Commission considers that there is sufficient evidence to suggest that the Government forces engaged in excessive use of force against demonstrators, at least in the early days of the protests, leading to significant deaths and injuries. The nature of injuries inflicted in several locations (with a high proportion of those wounded or killed shot in the head or upper body) is indicative of "shoot-to-kill" operations. From the common style of response by the forces in many parts of the country, it would appear likely that the forces were given orders to engage in the harsh crackdown of demonstrators. Such actions represented a serious breach of a range of rights under the Covenant on Civil and Political Rights including the right to life, the right to security of person, as well as freedom of assembly and freedom of expression. In relation to the latter days of protests as the situation escalated, more investigation would be required to assess the security forces' use of force,

⁷¹ "The Great Socialist People's Libyan Arab Jamahiriya Response to Accusations Relating to Human Rights Violations" report submitted to the Commission by Libyan Ministry of Foreign Affairs, on 16 May 2011 in Geneva. This was confirmed in discussions with representatives of NTC. The Government ascribed this action to a desire to minimize civilian casualties, a position with which NTC did not agree.

in particular more detail concerning the actions taken by demonstrators in these days in order to assess the response by Government authorities.

B. Arbitrary detentions and enforced disappearances

1. Introduction

90. Claims have been made of hundreds of arbitrary detentions of persons and/or their enforced disappearance as part of a Government repression of dissent. Particular groups who have been said to be subject to such treatment include those associated with the protests and journalists. The Human Rights Council in its resolution S-15/1 expressed its “deep concern” at the “arbitrary arrests, detention and torture of peaceful demonstrators”. The Commission held over fifty interviews with persons (including detainees, their families and eyewitnesses in Libya, Egypt and Tunisia) who referred to cases of arbitrary detention and disappearance both during the demonstration and armed conflict periods. The Commission has also been provided with information from a variety of human rights organizations. The Commission has not been in a position to verify the hundreds of cases put to it by other organizations, however, it has sought to investigate whether a pattern of arbitrary arrests and/or detentions occurred.

2. Applicable law

(a) Arbitrary detention

91. Article 9 of the Covenant on Civil and Political Rights prohibits arbitrary arrest or detention of individuals. It provides that “no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law”. Persons arrested are to be informed at the time of arrest of the reasons for the arrest and promptly informed of any charges (art. 9, para. 2). Anyone arrested or detained on a criminal charge is to be brought promptly before a judge or other officer authorized by law to exercise judicial power and is entitled to trial within a reasonable period or release (art. 9, para. 3). Persons have a right to take proceedings before a court for the purposes of reviewing the lawfulness of detention and to be released if the detention is unlawful (the Covenant also provides for a right of compensation for unlawful arrest or detention). Lawfulness of detention is to be considered as both lawfulness under domestic law and lawfulness under international law.⁷² The term “arbitrary” needs to be considered in terms of appropriateness, proportionality and reasonableness.⁷³

(b) Enforced disappearance

92. While the Libyan Arab Jamahiriya is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance, it is a party to the Covenant on Civil and Political Rights, provisions of which are infringed by enforced disappearance. Such action violates a person’s right to recognition as a person before the law (art. 16 of the Covenant), and to liberty and security and freedom from arbitrary detention, including the right to be brought promptly before a judge or other official for review of the lawfulness of

⁷² See, for instance, Human Rights Committee, *A. v. Australia*, communication No. 560/1993, CCPR/C/59/D/560/1993, para. 9.5.

⁷³ *Ibid.*, para. 9.2. In considering unlawful remand, the Committee has also highlighted that factors of inappropriateness, injustice and lack of predictability that may render arbitrary an otherwise lawful detention; see Human Rights Committee, *Van Alphen v. The Netherlands*, communication No. 305/1988.

detention (art. 9 of the Covenant). Disappearance may also be associated with torture and other forms of cruel, inhuman or degrading treatment and extrajudicial execution, in violation of the right to life and torture and other forms of cruel, inhuman or degrading treatment.⁷⁴

93. Under international humanitarian law, persons taking no active part in the hostilities are entitled to be treated humanely (art. 4, para. 1, of Protocol II, and common article 3). Customary international humanitarian law rules also include a prohibition on arbitrary deprivation of liberty⁷⁵ and require parties to the conflict to keep a register of persons deprived of their liberty,⁷⁶ respect detainees' family life, permit detainees to receive visitors, especially near relatives to the degree practicable⁷⁷ and allow correspondence between detainees and their families.⁷⁸ Parties to a conflict must take all feasible measure to account for persons reported missing as a result of the conflict and efforts must be made to provide family members with any information the party has on their fate.⁷⁹ The practice of enforced disappearance also may be a gateway to other violations such as torture, murder or extra judicial executions. The combined effect of particular international humanitarian law obligations leads to the conclusion that the practice of disappearance is prohibited by customary international humanitarian law.⁸⁰

94. Furthermore, "imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law" and enforced disappearance are acts recognized in the Rome Statute as potentially giving rise to a crime against humanity if committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack (art. 7, para. 1 (e) and (i)).⁸¹

3. Factual findings

95. In a number of cities visited, the Commission has been able to observe posters on public buildings, courthouses and hospitals containing the pictures and names of disappeared persons. Family members had placed such posters in the hope that someone would be able to provide them with information as to the whereabouts or death of their relatives.

96. The Commission received considerable information concerning the detention of persons by Government forces. The information received by the Commission, indicated that Government forces arrested or detained hundreds of civilians in many cities and towns

⁷⁴ The Human Rights Committee in its general comment No. 20 (1992) on article 7, para. 11, recognized that safeguards against torture included having provisions against incommunicado detention, granting detainees suitable access to persons such as doctors, lawyers and family members, ensuring detainees are held in places that are officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.

⁷⁵ Rule 99, ICRC Study on Customary International Humanitarian Law, p. 344.

⁷⁶ Rule 123, ICRC Study on Customary International Humanitarian Law, p. 439.

⁷⁷ Rule 126, ICRC Study on Customary International Humanitarian Law, p. 438.

⁷⁸ Rule 125, ICRC Study on Customary International Humanitarian Law, p. 445. This right is also explicitly protected in article 5, paragraph 2 (b), of Protocol II.

⁷⁹ Rule 117, ICRC Study on Customary International Humanitarian Law, p. 421.

⁸⁰ Rule 98, ICRC Study on Customary International Humanitarian Law, p. 340.

⁸¹ Enforced disappearance is further defined in article 7, paragraph 2 (i), as "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

across Libya, in an organized fashion, utilizing various brigades and other security forces. Interviewees reported that the authorities' repression of demonstrations was followed by reprisals against individuals having organized or participated in demonstrations. Numerous reports were received of persons being taken to "informal" places of detention. Following their release, a number of persons gave information concerning their being held along with others in such unofficial places of detention maintained by Government forces.

97. When persons were detained, they were not informed of the basis for the deprivation of liberty. Many persons arrested, in the aftermath of the demonstrations, have not been brought before a competent, independent and impartial court or other authority to have the lawfulness of their detention reviewed. Instead, they have been held beyond the reach of the law, without the possibility of recourse to legal procedures. Consistent testimonies received by the Commission indicate that Government forces stopped civilians at checkpoints or in the streets, regularly verified identity cards of travellers, arrested and detained persons according to their place of origin or residence, each being used as proxies to indicate that persons were supporters of the opposition. While some were released after being questioned, others were taken by authorities and are suspected to be held in detention facilities or prisons in Tripoli, or transferred to Ianzana, Al-Jdaydah and Abu Salim detention facilities. Two persons from Nalut, for instance, stated to the Commission that: they had been arrested by Government forces and later transferred to an unknown military location. They were detained alongside other persons, some of whom are still missing.

98. The Commission received information about a large number persons missing or disappeared, both during the demonstrations and during the armed conflict. Reports were forthcoming from several cities in the east including Ajdabiya, Al-Bayda, Darnah, Misrata, Ras Lanuf, Sirte and Tobruk, as well as cities in the west including in Tripoli Az-Zawiyah, Zuwarah and the Nafusa Mountains. Interviewees noted that hundreds of persons disappeared in the first days of demonstrations, as well as after the conflict started. Witnesses told the Commission that some Government forces specifically communicated threats that abductions would continue unless their community aligned with the Qadhafi regime. Interviewees stated that the majority of persons who disappeared during the conflict were civilians who had been travelling within the country or had encountered checkpoints run by Government forces. Some were simply walking in the streets or buying groceries when they were last seen.

99. It is difficult to ascertain the exact number of disappearances. The Commission received a list of 10 names of persons reported to have disappeared during the second half of February in Tobruk, and of 110 disappeared persons who disappeared from the Nafusa Mountain area. The Fondation Alkarama submitted to the Commission a list of 740 names of persons who had been reportedly arrested, detained or abducted by Government forces and were believed to have been disappeared. Human Rights Watch documented 72 possible disappearance cases based on interviews with family members or witnesses to the arrest of missing persons. According to Human Rights Watch, the Libyan Red Crescent Society in Benghazi has recorded 370 missing person cases from Benghazi and Al-Bayda.⁸²

100. The Commission collected considerable information relating to the disappearances of persons from the Nafusa Mountain area in particular.⁸³ According to several interviews

⁸² Human Rights Watch, "Libya: At Least 370 Missing From Country's East; Fate of Libyans in Government Custody Unknown", 30 March 2011. Available from www.hrw.org/en/news/2011/03/30/libya-least-370-missing-countrys-east.

⁸³ As indicated earlier, the Commission has received reports of disappearances from many geographical locations. The inclusion of particular cases from Nafusa Mountain area reflects the nature of the Commission's field investigations only.

conducted by the Commission with eyewitnesses and families of victims in refugee camps in Tunisia, a large number of persons have been disappeared since mid-February.

101. An interviewee from Zintan District reported to the Commission that Government forces started stopping travellers as of mid-March on their way to the mountain to check their identity cards, detaining them if they were residents of districts supporting the opposition. They were then taken away to unknown places. The interviewee also noted that the Government forces restricted the locations where fuel was available in the outskirts of Yafran and Zintan districts and would then capture persons from those locations.

102. Witnesses referred to the failure of the authorities of the Libyan Arab Jamahiriya to acknowledge detention and failure to respond to requests for information about those missing. In several interviews, the Commission heard that relatives called a missing person's mobile phone and ended up speaking with someone who they believed to be from the Government's security forces. The Commission met with persons who had reappeared after being held incommunicado, tortured or ill-treated over a number of days.

103. One interviewee told the Commission that hundreds of residents of the Nafusa Mountain area have disappeared as of mid-February throughout March and April 2011. He stated that his cousin from Yafran District and his friend from Jado District disappeared in March 2011. None of them had been carrying weapons. Their families have not heard from them since. Another interviewee noted that Government forces abducted his civilian cousin from Nalut District on 18 March 2011. He reported that his cousin had been detained for expressing pro-opposition views, and that he had not taken part in the hostilities. His whereabouts remain unknown.

104. In some cases documented by the Commission, persons who had been disappeared appeared subsequently on Al Libya television channel, a channel which is owned by Saif al-Islam Qadhafi. They were reportedly forced to state their allegiance to the regime during a live transmission in an attempt to send a message to the opposition that their followers are traitors. During the broadcast, some others confessed to being members of Al-Qaida group in Libya while having visible signs of torture or ill-treatment on their faces and bodies.

105. Interviewees from the Nafusa Mountain, for example, stated that three residents of Nalut District disappeared in Tiji District around 6 March 2011, 40 kilometres away from Nalut, while travelling to Tripoli to buy car spare parts. Two days later, the Al Libya television channel broadcast them voicing their allegiance and support to Colonel Qadhafi. Signs of beating were evident with their faces swollen and blue bruises marked their eyeballs.

106. The Commission documented cases of the disappearance of at least 14 medical personnel by Government forces from hospitals in Az-Zawiyah, Benghazi and Tripoli. An Egyptian physician told the Commission that his colleague, a Libyan physician disappeared together with an Egyptian practitioner in the beginning of March, in Ras Lanuf. His colleague was later seen on Al Libya TV wearing military uniform and confessing that he belonged to Al-Qaida. This case was also referred to in the submission of the Fondation Alkarama to the Commission, along with the details of six other cases of disappearances of doctors in western Libya since the beginning of the uprising. Another physician told the Commission about the disappearances of four anaesthetic surgeons in Az-Zawiyah between February and March 2011. The Commission received further information concerning the arrest of a physician from Misrata with his 3 children and his 18 years old daughter in Tripoli. Their whereabouts remain unknown.

107. Reports indicate that journalists who were covering events were also subject to arbitrary arrests and disappearance. As a result of international pressure, some have been released but others are still missing or unaccounted for. At least a dozen journalists and other media professionals, including foreign nationals, went missing in Libya. These cases

(and the Commission's specific interventions in these cases) have been further explored in chapter III, section E, of the present report.

108. Foreign nationals also reported to the Commission that a number of migrants had disappeared in Tripoli. Interviewees in refugee camps in Tunisia noted that migrant workers had disappeared since the uprising had begun, mainly in raids conducted by Government forces in migrants' camps in Tripoli. Their whereabouts are still unknown. Several interviewees mentioned that Saif al-Islam Qadhafi's *Katiba* had entered workers' compounds, ill-treated residents, robbed them of their belongings and had taken people away. They also told the Commission that migrants had been abducted in the streets, taken from their homes, ill-treated and/or blackmailed against their release. While some had succeeded in finding a way out by paying ransoms, others remain in custody.

109. The Commission has received very little information on violations committed by the armed opposition in relation to arrest, detention of abduction or any form of deprivation of liberty or disappearance.

4. Conclusion

110. The Commission concludes that Government forces have arbitrarily detained a significant number of persons in many towns and cities across Libya. In addition to not affording persons proper legal protections, that the Government forces' arrests and detentions appear to have been carried out in a "blanket" fashion, targeting suspected opposition supporters or regions viewed as being against the regime, rather than those suspected of criminal responsibility or other security-related reasons associated with the armed conflict. The Commission has also documented a range of cases of persons who have been disappeared, many of whom remain unaccounted for. On the basis of its investigation, the Commission is satisfied that 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 and international humanitarian law. The Commission has received very little information on violations committed by the armed opposition in relation to arbitrary arrest, or other forms of deprivation of liberty or disappearances.

C. Torture and other forms of ill-treatment

1. Introduction

111. Reports concerning the use of torture and other forms of cruel, inhuman or degrading treatment or punishment by both Government and opposition authorities have been received by the Commission. Both entities have denied their involvement in such violations. As part of its investigation, the Commission visited two detention facilities, one each in Benghazi and Tripoli, and interviewed a total of 30 detainees. The Commission also interviewed other witnesses and alleged victims of torture and ill-treatment in the course of its field mission.

2. Applicable law

112. Under international human rights law, there is a clear prohibition of torture and other forms of cruel, inhuman or degrading treatment in article 7 of the Covenant on Civil and Political Rights. A fuller definition of torture is provided for in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason

based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (art. 1, para. 1). International humanitarian law explicitly prohibits the torture and cruel treatment of persons taking no active part in hostilities (including members of armed forces who have laid down their arms or been rendered *hors de combat*) (art. 4, para. 2 (a), of Protocol II and common article 3). Such conduct constitutes a war crime and torture is an act which can form part of a crime against humanity (see article 8, paragraph 2 (c) (i), and article 7, paragraph 1 (f), of the Rome Statute).

3. Factual findings

(a) *Violations committed by Government forces*

113. The Commission received information from many persons of their torture or cruel, inhuman or degrading treatment or punishment.

114. One man who spoke with the Commission related that he had been arrested by members of the Public Security Agency and ISA in Benghazi on 17 February and taken to the Benghazi police station. At that point, he and the other 26 persons arrested were all beaten by security personnel. Clubs and rifles were used to inflict the beating. About 15 minutes after the beating finished, the group were transported to ISA premises in Sidi Jaber, in central Benghazi, where they were tortured with electricity shocks on their sexual organs. The man also reported seeing ISA forcibly removing the nails and teeth of another detainee. When the Commission visited Al-Jdaydah detention centre in Tripoli, two detainees of the five interviewed, told the Commission that they had been subjected to severe beating during the first days of their detention.

115. Another man arrested on 25 February in connection with a demonstration in Tajurah, reported that he was blindfolded and taken to an unknown destination where he was beaten with electric wires. His arms were tied behind his back while he was repeatedly hit with a Kalashnikov on his forehead and the back of his head. He stated that he was detained for 10 days and beaten by batons. During his detention, he could also hear the voices of other persons screaming and moaning from pain. On the fifth day, the abusive treatment led to the inflammation of his wounds, causing him to faint due to the pain. When he woke up, he was beaten again. He was threatened with being beaten again if he did not go on Al Libya TV channel saying that he was supportive of Colonel Qadhafi and confess to being part of the Al-Qaida group.

116. A Jordanian migrant reported that he was stopped by Khamis *Katiba* soldiers on his way to a nearby shop in his neighbourhood in Maya area in Tripoli. He stated that after being beaten on all parts of his body, he was taken to a nearby detention facility, where he was held and beaten for a week on the head, face, fingers, hands and legs with batons and rifles. He was stripped and “forced to perform like a dog”. He noted that he fainted many times under torture. The Commission could see bruises on his fingers while interviewing him, several weeks after his detention.

(b) *Violations committed by opposition armed forces*

117. On 20 April, the Commission visited Benghazi Detention Centre, a facility run by Opposition forces. The Commission met with 25 detainees of the 72 held at the Centre at that time. Detainees interviewed included five foreign nationals from Algeria, Chad, Niger and the Syrian Arab Republic. The majority of interviewees said that they had not been beaten during their detention. However, some reported, being beaten with clubs at the time of their capture.

118. Information was also received that foreign nationals had been tortured or subject to other forms of ill-treatment by opposition forces. One Palestinian man stated that on 22 March 2011 approximately 50 armed men raided his house in Az-Zawiyah and arrested him along with five other male members of his family. According to information received by the Commission, armed men in green uniforms blindfolded him and took him to a hospital being used as a detention facility in Az-Zawiyah. During the three days of his detention, he reported that he was repeatedly kicked and beaten with batons and was subjected to inhuman treatment. Physical abuse was said to be a daily routine in the facility. He witnessed other people in the detention centre being subjected to inhuman treatment. He reported that many of them were perceived to be pro-Qadhafi and included both Libyans and migrants. He noted that detainees were kept in very poor conditions and had been regularly threatened with death.

4. Conclusion

119. The Commission concludes that torture and other forms of cruel, inhuman or degrading treatment was committed by both the Government and the opposition forces in violation of obligations under international human rights and humanitarian law. Violations were most common with respect to persons held in detention (including incommunicado detention) and persons perceived to be supporters of “the other side” to the conflict. The cases involving Government responsibility occurred both in peacetime (against persons detained in relation to the demonstrations) and (subsequently) during the armed conflict.

D. Denial of access to medical treatment

1. Introduction

120. The Commission received numerous reports in its investigation that Government forces prevented persons from gaining access to medical treatment in the aftermath of the demonstrations. This prevention took the form of refusing to facilitate medical assistance, blocking access to medical facilities or in the most extreme cases, allegedly attacking persons or abducting persons in hospital viewed as associated with the protests. During the course of its investigation, the Commission spoke to over 40 persons who raised topics related to being hindered in their attempts to access health care, primarily following the demonstrations.⁸⁴

2. Applicable law

121. Under article 12 of the International Covenant on Economic, Social and Cultural Rights, the Libyan Arab Jamahiriya is bound to respect the right to everyone to the enjoyment of the highest attainable standard of physical and mental health. As the Committee on Economic, Social and Cultural Rights highlighted in its general comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12 of the Covenant), this includes an obligation not to prevent access to health services as a punitive measure. While the specific example provided by the Committee relates to where medical services are prevented as a punitive measure in times of armed conflict contrary to international humanitarian law, this obligation applies at all times (general comment, para. 34).

⁸⁴ This section deals primarily with impeding access to health care in the aftermath of the demonstrations. The subject of attacks on medical personnel and facilities and failure to fulfil obligations with respect to tending the wounded and sick during the armed conflict are dealt with separately under chapter III, section F.

3. Factual findings

122. The Commission repeatedly heard of cases in which persons were either denied access to medical care or faced obstacles imposed by security forces in accessing health care after having been wounded in demonstrations. In one case reported to the Commission, a protestor in Al-Bayda on 18 February received three gun shots and was provided with no medical care despite calls for the security forces to provide assistance. He was left bleeding from 4 p.m. until 8 p.m. when he died, as a result of the lack of medical attention. In a separate case, another man from Al-Bayda also spoke of the lack of medical attention:

“Those in the airport came out on to us firing arms and I was shot along with Sharah Albal who died later in the evening without medical care.⁸⁵ I was shot on my right thigh on the left side ... We requested medical emergency because we were wounded and no one responded. We asked for water they refused and searched us. On Saturday 19 February afternoon, we were then moved from the hall and literally thrown into a truck after blindfolding us and whoever moved was hit. We were put on board a military airplane on the floor and we arrived to Tripoli at night. We could hear them say ‘this one is dead, this one is alive’. We landed in Mateigha airport and were taken to the military hospital there. There the doctors took the blindfold off and put me in a bed for half an hour then they took me into surgery.”

123. Another witness from Benghazi who had been shot while participating in a demonstration on 17 February reported hearing instructions that no medical help was to be given and that a debate ensued amongst the military before he was taken to Benghazi Medical Centre:

“I could hear the crowd around me say this one is still alive, I heard another reply don’t touch anyone. Someone said to put me in the dumpster. I could hear a quarrel among them. One said: one is still alive, another said I will take him for medical help in the ambulance, another replied no, another replied I will take him in my personal car so the one who said no told them to disarm and take off their military uniform. They put me in the back seat and took me out of the military camp from the back gate and handed me to the Benghazi Medical Centre.”

124. The Commission also received information from medical professionals that the entries and exits to hospitals and accident centres had been closed by Government forces to prevent people from entering to receive treatment. A doctor in Tripoli reported:

“Ambulances full of mercenaries or Qadhafi forces did not let me out of hospital and prevented all exit and entry. I spoke with colleagues at Abu Salim accident centre and Az-Zawiyah and they also said no one could enter.”

125. The Fondation Alkarama also reported that border guards and Colonel Qadhafi’s security services were preventing injured individuals from crossing into Tunisia to seek medical assistance.

126. The Commission also heard several reports of attacks on wounded persons and abductions from hospitals. According to one person interviewed by the Commission, in Benghazi in the early days of the protest, an employee at Al-Jalaa’ hospital let alleged mercenaries enter through a back door “in order to kill the injured demonstrators”. Another person reported having heard similar accounts and that a fight erupted inside the hospital as friends and relatives of the injured banded together to protect them from being taken or killed. A nurse in Benghazi speaking to the British television network Channel Four said that on the evening of 17 February, armed men wearing “military or police” uniforms

⁸⁵ This may be a reference to the person who died in the previous witness’s account.

entered the hospital at which she was working at around 2.00 a.m. and carried away three patients who had been injured during the protest on the same date. The nurse added that staff were ushered into a room and kept there until the patients had been loaded into a vehicle outside.⁸⁶

127. An interviewee from Zintan in the west stated that, on the night of 21 February, Government forces invaded hospitals, abducted patients and killed others on the spot. Medical personnel who tried to protect patients were abducted.

128. In Tripoli, a doctor serving at the Medical Centre reported witnessing members of the *Kata'eb* abducting the wounded from his hospital. Reports of such abductions were said to have had a chilling effect on persons accessing hospitals.

4. Conclusion

129. The Commission considers that a range of actions taken by Government forces have had the effect of impeding or preventing altogether access to medical care. This has taken the form of refusing assistance in the immediate aftermath of demonstrations, later interrupting access to hospitals, taking action against medical personnel and allegedly abducting persons from hospitals. In such actions, there have been clear violations of the right to adequate standard of health, as well as other serious violations involved in the particular actions undertaken against medical personnel or patients.⁸⁷

E. Freedom of expression

1. Introduction

130. Both the Human Rights Council (in its resolution S-15/1) and the Security Council (in its resolution 1970 (2011)) have made specific reference to concern regarding issues surrounding freedom of expression. The Council called upon the Government of the Libyan Arab Jamahiriya to cease intimidation, persecution and arbitrary arrests of individuals, including journalists (Council resolution S-15/1, para. 3), while the Security Council condemned acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel (Security Council resolution, para. 6).⁸⁸ The Committee to Protect Journalists has documented more than 80 attacks on the press between 16 February and 20 May, which includes 5 fatalities, at least 3 serious injuries, 50 detentions, 11 assaults, 2 attacks on news facilities, the jamming of Al-Jazeera and Alhurra transmissions, at least four 4 of obstruction of journalists' activities and expulsion of 2 international journalists.⁸⁹

2. Applicable law

131. International human rights law expressly provides for freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice. While it can be subject to restrictions, these are to be only such as

⁸⁶ Channel 4 News, "Libya: 'Armed men kidnap wounded from Hospital'", 18 April 2011. Available from www.channel4.com/news/libya-armed-men-kidnap-wounded-from-hospital.

⁸⁷ Reference is made in other sections of this report to other such violations as abductions and enforced disappearance.

⁸⁸ See also paragraph 10 on the need to respect freedom of expression, including freedom of the media.

⁸⁹ Committee to Protect Journalists, "Journalists under attack in Libya: The tally". Available from www.cpj.org/blog/2011/05/journalists-under-attack-in-libya.php (accessed on 27 May 2011).

are provided for by law and are necessary for respect for the rights or reputations of others, for the protection of national security, public order, public health or morals (art. 19 of the Covenant on Civil and Political Rights). The Human Rights Committee has referred to the role of journalists in disseminating information and the way in which attacks on journalists, whether in the form of arbitrary arrests, torture, killings or other means are incompatible with article 19.⁹⁰ Under international humanitarian law, journalists are civilians and thus entitled to the range of protections for civilian personnel,⁹¹ as underlined in Security Council resolution 1378 (2001). While the Rome Statute does not refer specifically to attacks against journalists, particular actions can be considered within the existing framework of war crimes and crimes against humanity.

3. Factual findings

132. Reports received by the Commission indicate that Libyan authorities frequently resorted to action aimed at restricting the dissemination of information including cutting off landlines, Internet access and media outlets. A significant number of interviewees informed the Commission of an extensive media blackout implemented by authorities, particularly in the eastern part of the country. Social networking and mobile phones used by groups to rally support for demonstrations were also reportedly blocked. Internet connections were slowed down in major cities and various websites were blocked, in particular those that relayed views that were not sympathetic towards the Government. According to several media sources, around 18 February, Twitter, Facebook and Al-Jazeera websites were blocked.⁹² According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), the authorities also jammed the signal of foreign media.⁹³

133. Persons who were using mobile phones to take photograph or to film the demonstrations were allegedly arrested and had their phones seized by security forces. One man interviewed by the Commission reported that persons were prevented from filming injured persons in Tajurah on 25 February by security forces. The Commission also received information suggesting that the Government forces continued to confiscate electronic equipment, including mobile phones, cameras, computer and memory sticks, from persons leaving Libya in order to prevent the transmission of information outside the country.⁹⁴

134. Media activists based in Tripoli reported restrictions on means of communication and reported remaining under persistent Government surveillance. Some foreign journalists faced expulsion. Several received warnings from the authorities to leave the country.⁹⁵

⁹⁰ For a recent discussion of this topic, see Human Rights Committee, general comment No. 34 (2011) on article 19: freedoms of opinion and expression, paras. 12 and 22.

⁹¹ See rule 34, ICRC Study on Customary International Humanitarian Law, p 115.

⁹² See, for instance, Committee to Protect Journalists, "Journalists under attack in Libya: The tally" and BBC News, "As it happened: Clashes rock Libya and Bahrain", available from http://news.bbc.co.uk/2/mobile/middle_east/9402327.stm.

⁹³ UNESCO, "Director-General condemns violence and intimidation of journalists in Libya" 16 March 2011. Available from www.unesco.org/new/en/media-services/. Also, Reuters, "Libya cuts off internet services-network monitor", 19 February 2011. Available from www.reuters.com/article/2011/02/20/libya-protests-internet-idUSN1917005520110220.

⁹⁴ The Commission interviewed several foreign nationals and Libyans fleeing the fighting towards Tunisia who reported that their SIM cards were broken and phones taken away by Government forces at checkpoints to conceal evidence they may possess.

⁹⁵ On 30 March 2011, Libyan authorities expelled, without justification, Michael Georgy, a Reuter's correspondent who had been covering the conflict since 28 February. See Reuters, "Libyan Government expels Reuters Correspondent", 30 March 2011, available from www.reuters.com/article/2011/03/30/us-libya-reuters-idUSTRE72T3XH20110330, and Committee to

Specific actions by Government forces were taken to restrict reporting. On 4 March, for instance, authorities prevented international journalists from reporting on a Government crackdown on protesters in Tajurah District.

135. According to media reports, on 16 February, Libyan security forces reportedly arrested four persons being interviewed by a journalist in Al-Izba al-Khadrah, Tripoli. The detainees were subsequently transferred to an undisclosed location. One person interviewed by the Commission reported that he was forced to flee Libya upon receiving threats of attack or arrest by Government forces after having spoken with international media. The treatment of journalists at the event in which Iman al-Obeidi shared her account of being gang-raped by Government forces has been well-publicized. Security guards were said to have physically assaulted some journalists who attempted to protect her and destroyed the cameras and recording equipment of those who had recorded her statement.⁹⁶

136. Journalists and media personnel have themselves been subject to arbitrary detention and disappearance. Foreign journalists were constantly watched by Government officials and routinely detained by security forces. Staff working for eight news outlets, including the Los Angeles Times, the British Broadcasting Corporation (BBC) and Agence France-Presse, were detained on 5 March outside Az-Zawiyah for nearly seven hours.⁹⁷ During a visit to Al-Jdaydah Detention Centre, the Commission interviewed a Tunisian-Canadian journalist and correspondent of the Canadian newspaper, who had been arrested on 17 March 2011 after crossing into Libya from the Al-Dehiba crossing point, south-east of Tunisia. This journalist was eventually released on 19 May, after spending over 60 days in prison.⁹⁸ The journalist informed the Commission that, upon his entry into Libya, the Libyans took him to prison. Although he did not report ill-treatment while inside the prison, there were concerns about his psychological and physical integrity. He was not brought before a competent court nor were charges levelled against him. He was allowed once to make a phone call.

137. Attacks against journalists and media professionals continue to be reported and are escalating. This has included killings, expulsion and enforced disappearances. There have been reported cases of the authorities being viewed as inciting violence against journalists.⁹⁹ On 24 February, in an interview with Al-Jazeera, Saif al-Islam attacked the Arab media for broadcasting what he referred to as “lies”, adding that it was a media war. He stated “the conspiracy does not come from Libyans but from your Arab brothers who

Protect Journalists, “Journalists under attack in Libya: The tally”, available from www.cpj.org/blog/2011/05/journalists-under-attack-in-libya.php (accessed on 27 May 2011).

⁹⁶ See for instance, Human Rights Watch, “Immediately Release Woman Who Alleged Rape”, 28 March 2011, available from www.hrw.org/en/news/2011/03/28/libya-immediately-release-woman-who-alleged-rape, and Amnesty International, “Libya: End campaign to discredit Eman al-Obeidi”, 31 March 2011, available from www.amnesty.org/en/news-and-updates/libya-end-campaign-discredit-eman-al-obeidi-2011-03-31.

⁹⁷ Committee to Protect Journalists, “Libya must free Guardian reporter; obstruction continues”, 11 March 2011. Available from www.cpj.org/2011/03/libya-must-free-guardian-reporter-obstruction-cont.php.

⁹⁸ Ibid.

⁹⁸ Canoe.ca, “Lotif Ghars: Journaliste Tuniso-canadien libere”, 19 May 2011, available from <http://fr.canoe.ca/infos/quebeccanada/archives/2011/05/20110519-110608.html>, and Press TV, “Al-Alam reporter gives account of Libya ordeal”, 26 May 2011, available from <http://www.presstv.ir/detail/181763.html>.

⁹⁹ UNESCO, “Director-General condemns violence and intimidation of journalists in Libya”.

unleashed on you their broadcaster's poisoned words and false rumours. They misguided the Libyans with media and false information."¹⁰⁰

138. The Commission has received reports that at least five journalists have been killed, while others have endured harassment, torture and detention incommunicado. In one of the incidents, the Commission received information that, on 12 March, Ali Hassan Al Jaber, a cameraman for the Al-Jazeera television network was killed and his colleague injured in an ambush on the outskirts of Benghazi. The team was on their way back to Benghazi from a trip to Slough where they had been conducting interviews with demonstrators. Two masked assailants opened fire on their car in the middle of the road between Al-Nuwagia and Al-Hawari.

139. On 20 April, photojournalist and film-maker Tim Hetherington¹⁰¹ and photographer Chris Hondros¹⁰² were killed and two other non-Libyan co-workers were injured in what appears to be a mortar attack in the city of Misrata.¹⁰³ According to information received, Mr. Hetherington and Mr. Hondros were among other journalists reporting from Tripoli Street in Misrata when the incident occurred.

140. On 5 April on the outskirts of Al-Brega, Anton Hammerl was with three other journalists¹⁰⁴ covering the fighting when he was shot and killed by Government forces. One of his colleagues present at the time, James Foley, was quoted in the *Globalpost* as saying that they witnessed two armoured Libyan military trucks carrying pro-Qadhafi troops who were firing AK-47s over their heads: "We thought we were in the crossfire. But eventually, we realized they were shooting at us. You could see and hear the bullets hitting the ground near us".¹⁰⁵

141. The Commission is aware of reports relating to the detention of four *New York Times* journalists¹⁰⁶ on 15 March who were released on 21 March into the custody of Turkish diplomats. *The New York Times* has reported that its personnel were handcuffed, blindfolded and beaten, and the female reporter was sexually assaulted while in captivity.¹⁰⁷ The female staff member reported that "There was a lot of groping. Every man who came in contact with us basically felt every inch of my body short of what was under my

¹⁰⁰ Alarabiya TV website, 24 February 2011, available from www.alarabiya.net/articles/2011/02/24/139040.html, and Committee to Protect Journalists, "Journalists under attack in Libya: The tally".

¹⁰¹ Tim Hetherington, 40, was a seasoned photojournalist who contributed photographs to American magazine *Vanity Fair*. He directed *Restrepo*, an acclaimed 2010 documentary film about fighting in Afghanistan, which was nominated for an Oscar.

¹⁰² Chris Hondros, 41, award winning American war photographer worked for Getty Images.

¹⁰³ Human Rights Watch, "Journalists killed in Libya", 20 April 2011, available from www.hrw.org/en/news/2011/04/20/libya-journalists-killed-misrata, and UNESCO, "Director-General deplures death of photojournalists Tim Hetherington and Chris Hondros in Libya", 22 April 2011, available from www.unesco.org/new/en/media-services/.

¹⁰⁴ Manuel Varela de Seijas Brabo (Spanish freelance photographer on contract with the European Press Photo Agency); James Foley (American citizen, working for the *Global Post*); and Morgana Gillis (American freelancer for *Christian Science Monitor*, the *Atlantic* and *USA Today*). They were all released on 18 May 2011.

¹⁰⁵ John Jensen, "Reporter release tempered by news of colleagues death", *Globalpost*, 19 May 2011. Available from www.globalpost.com/dispatch/news/regions/africa/110519/libya-journalist-death-anton-hammerl-james-foley-clare-gillis. In this as in most of the cases reported in this section, the details of the events have been included in many news reports.

¹⁰⁶ The journalists are Anthony Shadid (the *New York Times* Beirut bureau chief), Tyler Hicks and Lynsey Addario (photographers), and Stephen Farrell (reporter and videographer).

¹⁰⁷ Jeremy W. Peters, "Freed times journalists give account of captivity", *The New York Times*, 21 March 2011, available from www.nytimes.com/2011/03/22/world/africa/22times.html?pagewanted=1.

clothes.” One man grabbed her breasts and another punched her in the face. Others explained that they were repeatedly beaten with punch, rifle butts and continuously told they were going to die. They were transported into a vehicle, which stopped repeatedly at checkpoints, each time allowing for a new group of soldiers to land a fresh punch or a rifle butt in their backs.¹⁰⁸

142. A three-person BBC news team was detained on 7 March at an army roadblock and taken to a military barrack in Tripoli. They reported that they were blindfolded, beaten with fists, knees and rifles, hooded and subjected to mock executions by members of the Libyan army and secret police. One of the three, Chris Cobb Smith was quoted saying that the situation inside the detention centre was horrendous, with people being handcuffed with swelling hands and broken ribs. He stated that at one point a guy in plainclothes with a small sub-machine gun, walked up to him, putting his gun next to his neck and pulling the trigger twice. The bullet whisked past his ear. The soldier just laughed. The second member of the team, Feras Killani, a correspondent of Palestinian descent, was particularly singled out for repeated beatings and was accused of being a spy. At some point, they were all convinced they were going to die.¹⁰⁹

143. There have also been a significant number of disappearances of journalists reported. The Commission drew the attention of the Government of the Libyan Arab Jamahiriya to the cases of at least 18 journalists and other media professionals, including both Libyans and foreigners, who went missing in Libya and whose whereabouts remains unknown. The Commission wrote to the Libyan authorities on 26 April and 5 May, registering concerns with regards to the cases of 18 missing journalists and requested thorough investigations of these cases. Among the cases referred by the Commission to Libyan authorities were six Libyan journalists, who have been missing since February. On 19 May 2011, the Commission, in a letter to the Libyan authorities, welcomed the release of four journalists¹¹⁰ and urged them to look into the cases of the remaining detained journalists with a view to releasing them. The Commission also renewed its appeal for the release on humanitarian grounds of the two detained journalists Lotfi Ghars and Mohamed Ali Abdelrahman, with whom the Commission met during the visit to Al-Jdaydah detention centre in Tripoli. The Commission received guarantees by the Libyan authorities, who vowed to investigate the cases of missing journalists and assured the Commission that they would be released before June 2011. On 25 May 2011, the Libyan authorities informed the Commission through a letter that Mr. Ghars had been released, but that Mr. Abdelrahman remained in detention awaiting trial on charges including the dissemination of incorrect information. The Commission has been disturbed by reports of the killing of one of the journalists that the Commission inquired about, Anton Hammerl, who had been killed on 5 April at the outskirts of Al-Brega (see paragraph 140 above).

4. Conclusion

144. During its investigations, the Commission has established that Government forces were responsible for attacks on journalists and other media professionals, designed primarily to stifle coverage of the Government response to the demonstrations, the ongoing armed conflict and/or to retaliate for perceived or feared criticisms of the regime. Media professionals have been subject to arbitrary arrest, torture, ill-treatment, harassment, intimidation, enforced disappearances and in some cases have been the object of targeted

¹⁰⁸ Ibid.

¹⁰⁹ BBC News, “Gaddafi forces detain and beat BBC Arabic team”, 10 March 2011, available from www.bbc.co.uk/news/world-africa-12695077.

¹¹⁰ Manuel Varela de Seijas (Spanish), James Foley (American), Clare Morgana Gillis (American) and Nigel Chandler (British) were all released on 18 May by the Libyan authorities.

attacks. In addition, authorities took specific action to impede the flow of information (within as well as outside the country), including cutting landline telephone communications, Internet access and other means of communication. Such actions represent violations of the Government's obligation under international human rights law and international humanitarian law.

F. Attacks on civilians, civilian objects, protected persons and objects

1. Introduction

145. During the armed conflict which has emerged in Libya, there have been a range of reports made concerning attacks on civilians and civilian objects, either alleging intentional targeting or indiscriminate attacks or attacks having a disproportionate impact on civilian populations. Limited access to cities where fighting was ongoing and the fluid dynamics of the conflict limited the collection of accurate data and hindered the Commission's ability to verify information received. Thus, the Commission has not had full access to information regarding the relevant military targets in particular locations, nor indeed was able to verify the status of all affected persons. It has received, however, significant information concerning the impact of the conflict on civilians and civilian objects and certain general contextual information through speaking to over 115 persons and reviewing other material. In this section, the first part deals with intentional or indiscriminate attacks on civilians and civilian objects in general, with the latter part examining allegations with respect to persons and objects enjoying an explicit protected status under international humanitarian law.

2. Applicable law

146. In times of armed conflict, international humanitarian law is the *lex specialis*. International humanitarian law prohibits the intentional targeting of civilians¹¹¹ and indiscriminate attack on civilians.¹¹² Forces are to distinguish between civilian and military persons.¹¹³ Forces must also distinguish between civilian and military objects. Deliberate attacks on civilian objects are prohibited. The notion of "civilian objects" embraces all objects (e.g. houses, private dwellings, orchards, schools, shelters, hospitals, churches, mosques, synagogues, museums and works of art) that neither serve nor are used for military purposes. Attacks on places where both civilian and combatants may be found are prohibited if they are not directed at a specific military objective or if they use methods or means of combat which cannot be directed at a specific military objective. It is prohibited to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, and/or damage to civilian objects which would be excessive in relation to the anticipated concrete and direct military advantage.¹¹⁴

147. In order to protect civilians, customary international law requires parties to take precautions including to:

- (a) Do everything feasible to verify that targets are military objectives;

¹¹¹ See Protocol II, article 13, paragraph 1: "The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." See also paragraph 2: "The civilian population as such, as well as individual civilians, shall not be the object of attack". Common article 3 prohibits "violence to life and person, in particular murder of all kinds" against persons taking no active part in hostilities.

¹¹² See rule 11, ICRC Study on Customary International Humanitarian Law, p. 37.

¹¹³ Implicit in article 13, paragraph 2, of Protocol II and rule 1, ICRC Study on Customary International Humanitarian Law, p. 3.

¹¹⁴ See rule 14, ICRC Study on Customary International Humanitarian Law, p. 46.

(b) Take all feasible precautions in the choice of means and methods of combat with a view to avoiding and in any event to minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects;

(c) Do everything feasible to assess extent to which the attack may be expected to cause incidental damage and refrain from launching attacks which may be expected to cause incidental loss of civilian life or injury to civilians or civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated; and to cancel/suspend an attack should it become apparent that the target is not a military objective or that the incidental damage would be excessive;

(d) Give effective advance warning of attacks which may affect the civilian population unless circumstances do not permit, for example, where a surprise attack is necessary to the success of an operation;

(e) When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.¹¹⁵

148. International humanitarian law also incorporates specific protections for persons or objects. Of particular relevance in the current conflict are the following rules. It is prohibited to commit an act of hostility directed against historic monuments, works or art or places of worship which constitute the cultural or spiritual heritage of peoples (art. 16 of Protocol II). Attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of the civilian population is prohibited (article 14 of the Protocol II). Sieges must still allow for vital foodstuffs and other essential supplies to be delivered to the civilian population.¹¹⁶ Parties to a conflict are obliged to allow and facilitate the unimpeded passage of humanitarian relief for civilians in need.¹¹⁷ Humanitarian relief personnel must be respected and protected as well as objects used for humanitarian relief operations.¹¹⁸

149. Detailed international humanitarian law provisions deal with the protection of medical personnel and associated topics. Medical personnel and medical units and transport must be respected and protected in all circumstances. This rule is implicit in common article 3 of the Geneva Conventions, which requires that wounded and sick be collected and cared for. It receives more explicit recognition under Protocol II which requires respect and protection of medical personnel, medical units and medical transport, which must not be the object of attack (arts. 9, para. 1, and 11, para. 1),¹¹⁹ which also provides specific rules regarding tending to the wounded and sick (see, for instance, article 8). The distinctive emblem of the red cross/red crescent is to be displayed by medical units and on medical transports and is to be respected in all circumstances. It is not to be used improperly (art. 12).

150. There are also a range of guarantees under international human rights law of particular relevance for this topic. This includes not only the prohibition of arbitrary

¹¹⁵ See rules 15–21, ICRC Study on Customary International Humanitarian Law, pp. 51–67.

¹¹⁶ While sieges to achieve a military objective are permitted, sieges that cause starvation are not (see article 14 of Protocol II). The passage of foodstuffs and other essential supplies must be permitted: see rules 53 and 55 of the ICRC Study on Customary International Humanitarian Law, pp. 186 and 193.

¹¹⁷ See rule 55 of the ICRC Study on Customary International Humanitarian Law, p. 193.

¹¹⁸ See rules 31–32 of the ICRC Study on Customary International Humanitarian Law, pp. 105 and 109. Note also article 8, paragraph 2 (e) (iii) of the Rome Statute.

¹¹⁹ Medical personnel, units and transport lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy: see article 11, para. 2 of the Protocol.

deprivation of life (art. 6 of the Covenant on Civil and Political Rights), but the right to the highest attainable standard of physical and mental health (art. 12 of the Covenant on Economic, Social and Cultural Rights), the right to an adequate standard of living (art. 11 of the Covenant on Economic, Social and Cultural Rights), freedom of religion (art. 18 of the Covenant on Economic, Social and Cultural Rights) and cultural rights (art. 15 of the Covenant on Economic, Social and Cultural Rights and art. 27 of the Covenant on Civil and Political Rights).

151. Under the Rome Statute, there are a variety of war crimes that correspond to breaches of many of the international humanitarian law guarantees. These include the war crimes of intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities, intentionally directing attacks against civilian buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives, intentionally directing attacks against medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law (art. 8, para. 2 (e)) in addition to the war crimes representing serious violations of Common Article 3 (art. 8, para. 2 (c)). Particular type of attacks against civilians (including medical personnel) may also amount to a crime against humanity if committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack.

3. Factual findings

(a) *Intentional or indiscriminate attacks on civilians*

152. The Commission received considerable information from witnesses concerning intentional or indiscriminate attacks on civilians or attacks having a disproportionate impact on civilians. During its field missions, civilian witnesses raised examples in three locations in particular: Ajdabiya, Nafusa Mountain and Misrata.¹²⁰

153. **Ajdabiya:** The Commission received information about heavy fighting in Ajdabiya where artillery and rocket-propelled grenades were reportedly used. One witness referred to the case of a family whose car was hit by a rocket exploding 10 meters away while they were fleeing the fighting in Ajdabiya. As a result, three family members were killed and two others were injured, including an 8-year-old boy treated in the Benghazi Medical Centre. A doctor working in Ajdabiya noted to the Commission that the wounds of the injured persons treated in this city were consistent with the use of arms with high calibre and missiles.

154. **Nafusa Mountain area:** One person interviewed from the Kikla District of Nafusa Mountain, informed the Commission that Government forces had been firing mortars and Grad rockets into residential areas of the Nafusa Mountain since 13 April 2011, leading to many casualties and causing fear and panic within the community. The Grad rockets, he added, had been fired in a random and indiscriminate manner towards the mountainous area and had landed over a wide residential area, inflicting large-scale civilian casualties. Other witnesses confirmed that the Nafusa Mountain area had been under bombardment since the beginning of April 2011 with little apparent distinction being made between civilian and military targets. One witness referred to a bombardment in Kikla District, causing the death of at least 11 civilians, including women and children.

¹²⁰ There have been reports of attacks on civilians in many locations in Libya. The choice of the two areas featured in this report is based upon locations where the Commission gathered first-hand information and should not be taken as indicative of allegations being limited to these areas.

155. 165. Borders and crossing points were identified as a particular site of indiscriminate shelling, including firing from the Libyan-Tunisian border towards the Al-Dehiba crossing point. Medical staff from Zintan reported the killing of four shepherds by members of the Sahab *Katiba*. The doctor reported that most of the seriously injured coming to the clinic where he worked in Zintan, suffered wounds from heavy weaponry such as anti-aircraft weapons, tank shells, Katyusha and Grad missile.

156. **Misrata:** The Commission received a number of accounts of indiscriminate attacks on civilians in Misrata. The exact number of civilian casualties is unconfirmed. In a statement on 11 April, UNICEF Regional Director for the Middle East and North Africa stated that the Fund had verified at least 20 deaths and many more injuries due to shrapnel from mortars and tanks and bullet wounds. A senior medical doctor and an administrator of the city's main hospital was quoted in the media as stating that as of 18 April, about 1,000 people had been killed and 3,000 injured, with some 80 per cent of the deaths being civilian.¹²¹ Following an inter-agency assessment mission to Misrata on 21 and 22 May, the World Health Organization stated that "although medical records were very much affected during the conflict, figures collected suggest that an average of 70 people were injured and 12 killed everyday".¹²² In many of the cases, while the Commission was able to establish that many civilians (including children) have been killed or injured, the Commission was not able to determine the full circumstances of the attacks in order to be able to evaluate whether the attacks were intentional, indiscriminate and/or disproportionate. There were numerous cases of shells hitting houses causing fires and persons being killed when shots entered their cars. Many persons from Misrata reported that they had suffered injuries at check points as a result of rounds launched by Government forces. Reports were also received of snipers taking aim and shooting at any and all persons who left their homes near the Bu Minyar building, which was one of the three tall buildings utilized by snipers supporting the efforts of Government forces in Misrata.

(b) *Attacks on cultural objects and places of worship*

157. In Libya, mosques are not just places of worship for Muslims, who constitute the overwhelming majority of the population, they also have become, by default, the only gathering place of the population that is not under full control of the authorities. During the demonstration period, there were occasions in which authorities fired on persons as they came out of the mosque, after Friday prayers or after religious ceremonies for those who had died during the crisis. The Commission received credible reports, supported by photographs, that mosques were damaged by shelling during attacks by Government forces on inhabited areas. More investigation would be required to determine if the attacks were intentional or incidental. Witnesses from the Nafusa Mountain told the Commission that mosques were intentionally targeted, with particular reference made to Takut Mosque, Al-Baruni Mosque in Yafran, Zintan Mosque, Kikla Mosque and Kut Mosque between March and April 2011. Human Rights Watch stated that Government attacks hit four mosques in Zintan as of 21 April, namely, the Al-Khalil, Ali Hdibah, Al-Aswad and Rahmah Mosques, as well as a Ghasro Mosque in Takut. Amnesty International reported that on 17 April rocket and mortar attacks in Misrata were ongoing and there was extensive damage to Omar Abdel Aziz al-Senusi Mosque.¹²³ The Commission did not receive any information suggesting the use of mosques for military purposes. Human Rights Watch, in their report

¹²¹ *Mail and Guardian Online*, 18 April 2011.

¹²² World Health Organization, "Boosting humanitarian health support inside Libya", May 2011. Available from www.who.int/hac/crises/lby/highlights_may2011/en/.

¹²³ Amnesty International, *Libya: Misratah - under siege and under fire* (London, 2011), p. 15, available from <http://www.amnesty.org/en/library/info/MDE19/019/2011/en>.

on attacks on mosques, stated that the rebels had never used nor been present in the mosques or the surrounding neighbourhoods.¹²⁴

158. The Commission also received specific information about a site considered of cultural importance by the Amazigh community of the Nafusa Mountain area, The Ben Niran Palace (Ghasrow Majar in Tamazight language). The Palace was destroyed by Government forces, with one witness putting the date as 2 or 3 April 2011.

(c) *Destruction of objects indispensable to the survival of the civilian population*

159. The Commission received numerous accounts, particularly in the Nafusa Mountain area, of the destruction of objects indispensable to the survival of the civilian population. In some cases, the allegation was of deliberate destruction. In others, it would appear that the damage may have been collateral. One witness spoke of livestock being deliberately killed with small firearms and agricultural land being burnt down. Another witness in the same area noted that “shelling has spared neither livestock nor agriculture lands, with reports of burning fields, and killing of livestock”.¹²⁵ A witness from Yafran also spoke of “livestock, farms, and crop growing have been hit intentionally in Zintan in particular to ensure that people under the siege would be deprived of food leading to malnutrition and ultimately to starvation”.

160. Another testimony referred to “Qadhafi forces entering villages, robbing belongings of residents, and burning down houses after killing what remains of the livestock”. Two witnesses mentioned the contamination of wells by Government forces.

(d) *Impeding access to humanitarian relief and attacks on humanitarian personnel*

161. There has been a long-term siege of cities or entire areas by the Government forces in the Nafusa Mountain area and Misrata and more briefly in Ajdabiya, Az-Zawiyah and Zuwarah. The Commission heard from witnesses particularly from the Nafusa Mountain area and Misrata that the effect of such sieges has been to prevent food and other vital supplies being received. The blockading of cities, in particular the cutting of power and water supplies, and the limiting of food supplies has particular implications for the population’s human rights, including their right to an adequate standard of living (art. 11 of the Covenant on Economic, Social and Cultural Rights). The Secretary-General of the United Nations and the Executive Director of the World Food Programme called on 11 and 12 May respectively for a ceasefire to allow humanitarian access to Misrata and the western area but these calls have not been heeded by the Government.¹²⁶ On 27 May, the medical NGO Medecins Sans Frontieres announced it was withdrawing from Zintan, where it had been working for four weeks, due to the intensity of the fighting and the fact that “several rockets [had been] landing just 100 to 200 metres from the hospital”.¹²⁷

¹²⁴ Human Rights Watch, “Libya: End Indiscriminate Attacks in Western Town”, 9 May 2011, available from: <http://www.hrw.org/en/news/2011/05/09/libya-end-indiscriminate-attacks-western-mountain-towns>.

¹²⁵ Article 14 AP II.

¹²⁶ UN News Centre, “Libya: UN Secretary-General urges immediate end to attacks against civilians”, 11 May 2011. Available from www.un.org/apps/news/story.asp?NewsID=38348&Cr=libya&Cr1=. Also, “Libya: UN official voices concern as fighting blocks aid delivery in west”. Available from <http://www.un.org/apps/news/story.asp?NewsID=38352&Cr=Libya&Cr1=>.

¹²⁷ Medecins sans frontieres, “MSF evacuates team from Zintan, Libya”. Available from www.msf.org/msf/articles/2011/05/msf-evacuates-from-zintan-libya.cfm.

(e) Attacks on humanitarian personnel and transport

162. In Misrata, one boat on which humanitarian activities were being conducted was shelled by Government forces.¹²⁸ A number of humanitarian organizations conducting resupply (food and non-food items, medical supplies and equipment) and evacuation missions by boat to Misrata¹²⁹ have been endangered by actions of Government forces. There have been reports of fire coming from the mainland on 25 April,¹³⁰ anti-vehicle mines being dropped from shells over the port on 29 April and 5 May and sea mines being placed without notice.¹³¹ Reuters reported that the Government of the Libyan Arab Jamahiriya acknowledged the aforesaid shelling on local television, but justified it by stating that the boats were breaching the arms blockade and carrying fighters.¹³²

163. The Government of the Libyan Arab Jamahiriya transmitted information to the Commission which had been prepared originally at the request of the Office for the Coordination of Humanitarian Affairs. In the 21-page report received on 12 May, negative consequences of the implementation of Security Council resolutions 1970 (2011) and 1973 (2011) on food production and import of foodstuff to Libya are detailed. The report points to difficulties in paying for the import of food, other imported goods and spare parts owing to the imposition of financial sanctions. It also refers to the mass departure of foreign labour from the farming, fishing and industrial sectors (producing fertilizers, pesticides and animal feed) leading to the mass death of uncared-for livestock and the impossibility of flying small aircrafts used in agriculture due to the no-fly zone. The Government also refers to the breakdown of communication between regions of the country preventing transport of inputs and food stuff, and to loss of access to water and suspension of work on several water supply projects. The report provides preliminary data on the drop in food production and makes alarming forecasts on the upcoming grain harvests.

(f) Attacks on protected medical personnel, transport and facilities

164. The Commission notes that the deteriorating security situation has had a deleterious effect on the health sector, as it has led to the exodus of many foreign medical workers from Libya. Major areas, including much of eastern Libya, Misrata and the Nafusa Mountain area progressively lost access to the network of medicines for chronic disease distributed by the Ministry of Health. The Commission has also received reports of the intentional targeting of protected medical personnel, transport, units and facilities. Several cases from Misrata were related to the Commission. A volunteer ambulance staff member in Misrata told the Commission that, “his ambulance team went out to collect two wounded persons who required assistance near the medical clinic compound. When he stepped out from the ambulance, shootings started and he said that “a sniper” shot the driver at the head and killed him. Another volunteer in the ambulance and himself were injured. A second

¹²⁸ UN Press Release, “Libya: UN official voices concern as fighting blocks aid delivery in west”.

¹²⁹ See successive Office for the Coordination of Humanitarian Affairs (OCHA) updates on Libya in April and May 2011.

¹³⁰ UN Press Release, “Libya: UN official voices concern as fighting blocks aid delivery in west”.

¹³¹ Amnesty International, “Al-Gaddafi’s forces carry out indiscriminate attacks in Misrata”, 8 May 2011. Available from www.amnesty.org/en/for-media/press-releases/al-gaddafi%E2%80%99s-forces-carry-out-indiscriminate-attacks-Misrata-2011-05-08.

¹³² Reuters, “Libya says shelled port to stop arms delivery to rebels”, 1 May 2011. Available from www.reuters.com/article/2011/05/01/us-libya-misrata-port-idUSTRE74024120110501.

ambulance arrived to rescue them, raising a white flag and negotiating the possibility to approach the wounded persons through a microphone”.¹³³

165. On 17 May, ICRC stated that “the Libyan Red Crescent reports that in the past four days, three of its ambulances have been hit in three separate incidents, resulting in the death of a nurse and injuries to a patient and three volunteers”.¹³⁴ The responsible party in these three incidents can not be ascertained by the Commission without further investigation.

166. Reports from eastern Libya also mention ambulances being shot at. One witness told the Commission of seeing an ambulance being targeted at Ajdabiya, with another witness (a fighter with NTC) reporting on the shooting of the ambulance carrying him and wounded fighters. A former fighter with NTC in Yafran also stated that Government forces hit ambulances.

167. Attacks on hospitals have been repeatedly reported to the Commission. A fighter with the opposition forces from Yafran told the Commission that a mortar round had hit Yafran hospital in March 2011, leading to the destruction of main parts of the medical facility. A witness from Al Hikma Clinic in Misrata told the Commission that it had been targeted twice by Government forces but was still functioning. A doctor from Misrata told media that the Misrata hospital had been targeted by Government tanks.¹³⁵ In another media account on 6 March, it was reported that in Az-Zawiyah pro-Qadhafi forces attacked the forecourt of the hospital where injured were being treated. On 23 March, Reuters reported that Qadhafi forces bombarded the main hospital in Misrata as doctors were trying to move the wounded away from the hospital: “The snipers are shooting at the hospital and its two entrances are under heavy attack. No one can get in or out”, a Misrata resident, told Reuters by telephone. Amnesty International, in its report on the siege of Misrata, noted that on 16 April, the surroundings of a clinic were shelled at least three times according to eyewitnesses, who were themselves wounded.¹³⁶ The Commission also received information from several witnesses concerning the destruction of hospital supplies including medications.

168. Similar to reports received during the demonstration period outlined in chapter III, section A, the Commission also received information concerning the abduction of patients from hospitals. On 16 March, the Fondation Alkarama stated in a press release that “injured rebel forces and innocent civilians are being kidnapped from hospitals, risking torture, even death. As a consequence, the wounded are refusing to seek medical assistance for fear of being kidnapped or killed.”¹³⁷ In Zintan, a doctor mentioned that the wounded treated at his hospital were not registered as there was a fear that the Government would regain control and detain the injured.

¹³³ See also ICRC statement issued fifteen days before, on 3 March 2011, according to which “two Libyan Red Crescent ambulances were shot at today [3 March] in Misrata, West of Benghazi, resulting in two volunteers being injured and one of the ambulances being completely burnt”.

¹³⁴ ICRC, Operational Update No. 05/11, “Libya: Red Crescent volunteers and medical personnel in danger”, 17 May 2011. Available from www.icrc.org/eng/resources/documents/update/2011/libya-update-2011-05-17.htm.

¹³⁵ Hamid Ould Ahmed, “Rebels say 16 dead in Misrata, hospital attacked”, *Reuters*, 23 March 2011. Available from www.reuters.com/article/2011/03/23/us-libya-misrata-strikes-idUSTRE72M8BY20110323.

¹³⁶ Amnesty International, *Libya: Misratah – under siege and under fire*, p. 14.

¹³⁷ Fondation Alkarama, “Libya: Injured abducted from hospitals by pro-Gaddafi forces”, 16 March 2011. Available from http://en.alkarama.org/index.php?option=com_content&view=article&id=697:libya-injured-abducted-from-hospitals-by-pro-gaddafi-forces&catid=27:communiqu&Itemid=138.

(g) *Misuse of the red cross/red crescent emblem*

169. The Commission heard evidence of several instances of misusing the Red Cross/Red Crescent emblem. In Nalut in the Nafusa Mountain area, for instance, a witness told the Commission of ambulances being used “as a trick, to enter towns carrying soldiers, and then shoot at civilians in the street”, raising also the issue of perfidy. Similar stories emerged from Yafran. The Commission also notes the widely reported case on 8 May relating to sightings of one or several helicopters over Misrata port dropping mines in violation of the no-fly zone on 5 May. The helicopters, according to some, but not all media sources, carried either the red cross or the red crescent. In a statement issued on 9 May, ICRC expressed its concern at what it considered “recent allegations of the red cross or red crescent emblem being used for military purposes in Libya” and added that “the alleged practices, if true, represent a serious misuse of the emblem”.¹³⁸ On 17 May ICRC issued another statement on the dire situation in Misrata and mentioned receiving “allegations concerning the misuse of the red cross and red crescent emblems to support military operations and the use of ambulances to transport arms and weapon bearers”.¹³⁹

4. Conclusions

170. Due to the circumstances of the current conflict, the Commission has not had access to full information allowing it to definitively evaluate allegations of all of these violations of international humanitarian law.¹⁴⁰ However, the Commission has received consistent information concerning the level of injuries and 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 intentional targeting of civilians. Protected objects such as mosques and cultural objects have certainly been damaged during conflict. The Commission at this point is unable to determine whether attacks on such objects were intentional. The Commission is able to establish that there have been instances of the deliberate destruction of objects indispensable to the civilian population. The Commission considers that there have been some attacks on medical transports and facilities which appear to have been targeted attacks, with some other attacks requiring further investigation. It also considers that Libyan authorities have failed to facilitate access for humanitarian agencies to address the needs of civilian populations in Libya. It considers that there have been attacks on humanitarian units, although it is not able to establish whether these were intentional or not without further information. The Commission does conclude that there has been a failure to take precautionary steps to minimize damage to civilian/protected objects. The Commission is also satisfied that there has been misuse of the Red Cross/Red Crescent emblem by Government forces in Libya during the conflict. The Commission did not receive any first-hand information concerning violations by the armed opposition force and as such is not in a position to determine whether any relevant violations occurred.

¹³⁸ ICRC, News Release No. 11/111, “Libya: much-needed humanitarian aid reaches Misrata”, 9 May 2011. Available from www.icrc.org/eng/resources/documents/news-release/2011/libya-news-2011-05-09.htm.

¹³⁹ ICRC, “Libya: Red Crescent volunteers and medical personnel in danger”.

¹⁴⁰ The discussion in this segment has been structured around international humanitarian law guarantees. The Commission notes that many of the same actions violate international human rights law.

G. Prohibited weapons

1. Introduction

171. Available information suggests that over the past few decades Colonel Qadhafi has acquired and stockpiled a large arsenal of weapons.¹⁴¹ There have been allegations made about the use of weapons in a manner contrary to international law. The Commission has only had access to a limited number of victims and has not been able to access sites involved in reports of prohibited weapons to collect forensic evidence or to collect evidence from victims' wounds or other medical records in a comprehensive manner. However, the Commission's preliminary investigations indicate matters of concern worthy of further consideration. In this section, the Commission considers both weapons prohibited as a matter of international law and lawful weapons allegedly used in a manner so as to be unlawful under international law.

2. Applicable law

172. International humanitarian law prohibits the use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering.¹⁴² As the ICRC publication *Customary International Humanitarian Law* highlights, there are differing views as to whether this rule renders a weapon illegal or whether a weapon is illegal only if a specific treaty or customary rule prohibits its use (p. 242). The International Court of Justice in the *Nuclear Weapons* case, however, undertook its analysis on the basis of the rule itself,¹⁴³ without requiring treaty law and this approach has been adopted by the Commission here. Other rules of general application in this area include the prohibition of the use of weapons which are by their nature indiscriminate, arising out of the duty to direct hostilities to legitimate military objectives.

173. As noted in paragraph 63 of the present report, Libya has ratified certain weapons conventions, but is not a party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 1977, or to the Convention on Cluster Munitions, 2008. The general norms from customary international humanitarian law must thus be applied to these situations. In addition to the general principles noted above, there are some other specific rules of customary international humanitarian law relating to for instance, landmines (requiring particular care to minimize their indiscriminate effects),¹⁴⁴ and expanding bullets.¹⁴⁵

¹⁴¹ Peter Bouckaert, "Qaddafi's Great Arms Bazaar", Human Rights Watch, 8 April 2011. Available from www.hrw.org/en/news/2011/04/08/qaddafis-great-arms-bazaar. Also, Philippe Gros, "De Odyssey Dawn à Unified Protector: bilan transitoire, perspectives et premiers enseignements de l'engagement en Libye", Fondation pour la Recherche Stratégique, note No. 04/11. Available from www.frstrategie.org/barreFRS/publications/notes/2011/201104.pdf.

¹⁴² See rule 70, ICRC Study on Customary International Humanitarian Law, p. 237.

¹⁴³ *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 1996 ICJ, para. 238, as referred to in ICRC Study on Customary International Humanitarian Law, p. 243.

¹⁴⁴ See rule 81, ICRC Study on Customary International Humanitarian Law. Where landmines are used, particular care must be taken to minimize their indiscriminate effects.

¹⁴⁵ Rule 77 of the ICRC Study on Customary International Humanitarian Law states that the use of bullets which expand or flatten easily in the body is prohibited in both international and non-international armed conflict. In 2010, the Rome Statute was amended to include article 8, paragraph 2 (e) (xv), specifically prohibiting the use of "employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions". This amendment is not yet in force, but will enter into force for a State party one year

3. Factual findings

174. **Expanding bullets:** Three doctors interviewed by the Commission in Benghazi and one in Al-Bayda gave accounts of wounds that they had treated, whose cause may be consistent with the use of “expanding” bullets. Doctors and victims have described small entry wounds and larger exit wounds, a circle of 7 or 10 cm in diameter in some cases.¹⁴⁶ Doctors have also described small entry wounds with various internal organs shredded by the bullet. Further investigation, including military and forensic pathologist expertise is, however, required to confirm or deny the usage of expanding bullets.

175. **Cluster munitions:** The Commission is aware of reports of the use of cluster munitions by pro-Government forces in their attempt to regain control of the besieged city of Misrata. On 15 April 2011, Human Rights Watch reported that Government forces had fired cluster munitions in residential neighbourhoods of Misrata further specifying that the cluster munitions were the Spanish-produced MAT-120mm mortar projectile, which open in mid-air and release 21 submunitions over a wide area.¹⁴⁷ Other independent sources including Amnesty International have confirmed the incident and stated that Spain sold such munitions to Libya in 2007. Further investigation, including military and forensic pathologist expertise is, however, required to confirm or deny the usage of cluster munitions.

176. **Mines:** The Commission notes the rule of customary international humanitarian law requiring that where landmines are used, particular care must be taken to minimize their indiscriminate effects.¹⁴⁸ Information collected from various sources including Human Rights Watch indicates that anti-tank mines in Colonel Qadhafi’s hands are made mostly out of hard-to-detect plastic and can be armed with an anti-lifting device that causes the mine to explode when attempts are made to remove it from the ground, making them particularly dangerous. On 24 March, Human Rights Watch confirmed the discovery of this type of anti-vehicle mines in the area around Ghar Yunis University in Benghazi. A United Nations demining expert located 12 warehouses filled with tens of thousands of anti-vehicle mines.¹⁴⁹ Though landmines in border areas are a legacy of the past¹⁵⁰ it has also been reported that anti-personnel and anti-vehicle landmines have been newly laid by Government forces, particularly in the outskirts of Ajdabiya¹⁵¹ and in Benghazi.¹⁵² Human Rights Watch reported that 24 anti-vehicle mines and roughly three dozen anti-personnel

after ratifying the amendment. There remains some debate as to whether customary international law includes a blanket prohibition on the use of expanding bullets in non-international armed conflict.

¹⁴⁶ The accounts of at least five injured persons interviewed in Alexandria match the description of wounds that may have been caused by expanding bullets.

¹⁴⁷ Upon exploding on contact with an object, each submunition disintegrates into high-velocity fragments to attack people and releases a slug of molten metal to penetrate armoured vehicles. Human Rights Watch, “Libya: Cluster Munitions Target Misrata,” 15 April 2011. Available from www.hrw.org/en/news/2011/04/15/libya-cluster-munitions-strike-misrata.

¹⁴⁸ Rule 81, ICRC Study on Customary International Humanitarian Law.

¹⁴⁹ Human Rights Watch “Government Use of Landmines Confirmed”, 30 March 2011. Available from www.hrw.org/fr/news/2011/03/30/libya-government-use-landmines-confirmed.

¹⁵⁰ Dating back to the Second World War and to the conflicts with Egypt in 1977 and with Chad in 1980–1987.

¹⁵¹ It was reported by Human Rights Watch and Amnesty International that on 28 March 2011 two antipersonnel mines detonated, 1 km from Ajdabiya town, when a truck of Eastern Libya Electricity Company was passing by. After the incident, a clearance operation was conducted by a civil defence team which reported having disarmed 24 anti-vehicles mines and more than 30 plastic anti-personnel mines.

¹⁵² Human Rights Watch reported that during the retreat of Government forces on 19 March 2011 in Benghazi, anti-vehicle mines were left behind in the area around Ghar Yunis University.

mines were found on the eastern outskirts of Ajdabiya, a town that was held by Government forces between 17 and 27 March 2011. Human Rights Watch said that the mines, because of their location, posed a direct threat to civilians.

177. **Use of phosphorous weapons:** The Commission received some information pertaining to the possible use of phosphorous weapons. A doctor in Benghazi who met with the Commission described injuries that might be consistent with those produced by explosive ordinances containing phosphorus. At Al-Jalaa' Hospital, Benghazi, the Commission was provided with photos of the bodies of nine persons who had been brought to the hospital during the second half of February. The bodies were burnt but were shrunk in such a way that may be consistent with the use of phosphorous weapons. A Human Rights Watch report refers to the Government forces having access to white phosphorous artillery projectiles.¹⁵³ Further investigation, including military and forensic pathologist expertise, would be required to verify the usage of such weapons.

178. **Mortars:** Based upon the facts available to it, the Commission believes that Government forces of the Libyan Arab Jamahiriya utilized mortars in their attacks on Misrata and Zintan. Mortars are weapons that kill or maim whoever is within the impact zone after they explode and they are unable to distinguish between combatants and civilians. A decision to deploy them in a location where a large number of civilians is likely to be present, is a decision that a commander should know will result in the death and/or and injuries of some of those civilians.

4. Conclusion

179. From the information available to it, the Commission is concerned that the Libyan authorities have not been undertaking appropriate and precautionary assessments which would, in the Commission's view, militate against the use of weapons, such as mortars, in densely urban areas. The Commission is also concerned about reports of the use of weapons such as expanding bullets, cluster munitions or phosphorous weapons within highly populated areas. Further investigation, however, including forensic analysis would be needed to confirm the usage of these ammunitions.

H. Use of mercenaries

1. Introduction

180. Allegations concerning the use of mercenaries during the armed conflict in Libya have been widely reported.¹⁵⁴ The Security Council, in its resolution 1973 (2011), deplored

¹⁵³ In an April report on Libya, Human Rights Watch confirmed the discovery of white phosphorous artillery projectiles in a weapons storage facility in Ajdabiya after opposition forces took control of the city. Human Rights Watch, "Libya: Abandoned Weapons, Landmines Endanger Civilians", 5 April 2011. Available from www.hrw.org/node/97835.

¹⁵⁴ For instance, Ali al-Essawi, former Libyan Ambassador to India, told Al-Jazeera that "People say they are black Africans and they don't speak Arabic. They are doing terrible things, going to houses and killing women and children". Al-Jazeera, "Libyan diplomat decries 'massacre'", 22 February 2011. Available from <http://english.aljazeera.net/video/africa/2011/02/2011222165119717549.html>. One report suggested that nomadic Tuaregs from Mali were also entering Libya to fight with the Government forces. Ofeibe Quist-Arcton, "Libya's Gadhafi Accused Of Using Foreign Mercenaries", National Public Radio, 23 February 2011. Available from www.npr.org/2011/02/23/133981329/who-are-foreign-mercenaries-fighting-for-gadhafi. Another report stated that about hundreds of elite sniper from Belarus also participated in the Government forces with a monthly salary of £1,900. Andrew Osborn, "Libya: Belarus mercenary 'paid £1,900 a

the continued use of mercenaries by Libyan authorities (preambular para. 16). The Government of the Libyan Arab Jamahiriya has referred to the Al-Qaida mercenaries operating within the ranks of opposition armed forces. As the Commission carried out its investigation, it also received reports of the use of mercenaries, including violations committed by mercenaries. In many cases, the term appears to be being used in a general term to refer to fighters on either side who are foreign nationals. While there is strong evidence of the participation of foreign nationals in the armed conflict, the precise route by which such persons came to be engaged remains unclear. In particular, the Commission has not had sufficient information as to whether foreign nationals were previously resident in Libya, whether they were engaged as part of an existing foreign military exchange, and the timing of their recruitment (e.g. if they were recruited in 2011, whether this was for the purpose of suppressing the demonstration or to take part in the armed conflict). These factors have an obvious importance for the classification of persons as “mercenaries”.

2. Applicable law

181. The use of mercenaries is prohibited under two treaties that Libya has ratified: the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the Convention for the Elimination of Mercenarism in Africa. The definition of mercenary is very specific. Under article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, a mercenary is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- (d) Is not a member of the armed forces of a party to the conflict; and
- (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

182. Situations other than armed conflict fall within a second part of the definition of that Convention. However, in these cases, there are additional requirements to show that the person is recruited for the purpose of participating in a concerted act of violence aimed at overthrowing a Government or otherwise undermining the constitutional order of a State or

month to help Gaddafi forces”, *The Telegraph*, 6 April 2011. Available from www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8432996/Libya-Belarus-mercenary-paid-1900-a-month-to-help-Gaddafi-forces.html. According to *The Telegraph*, a defected former Libyan army official has given details of the recruitment of 450 fighters from the disputed Western Sahara region with each of them paid \$1,000 to fight for the Government forces for two months. Con Coughlin, “Libya: Col Gaddafi ‘has spent £2.1m on mercenaries’”, *The Telegraph*, 20 April 2011. Available from www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8464254/Libya-Col-Gaddafi-has-spent-2.1m-on-mercenaries.html. *The New York Times* reported how Libya recruited mercenaries from poor communities in Mali as well as in the nomadic Tuaregs, who live cross borders among Algeria, Libya, Mali and Nigeria, paid 1,000 US\$ a day. Jeffrey Gettleman, “Libyan Oil Buys Allies for Qaddafi”, *The New York Times*, 15 March 2011, available from www.nytimes.com/2011/03/16/world/africa/16mali.html?_r=1&ref=mali.

undermining the territorial integrity of a State. Under the Convention for the Elimination of Mercenarism in Africa, the definition of mercenaries is narrower: it is restricted to the armed conflict situation (art. 1), and has a further restriction in defining the crime of mercenarism as committed “by the individual, group or association, representative of a State and the State itself who with the aim of opposing by armed violence a process of self-determination stability or the territorial integrity of another State” that practises specific acts (art. 1, para. 2).

3. Factual findings

183. The Commission received confirmation from the Government of the Libyan Arab Jamahiriya that before the conflict, foreign military personnel were present in Libya through bilateral military cooperation arrangements with other countries, particularly in the area of air-force training. It has also received numerous accounts which indicate the participation of foreign fighters in the conflict, mostly on the side of Government forces.

184. In areas under the control of the opposition forces, the Commission found that the term “mercenaries” was most commonly used to connote persons with dark skin who had taken part either in the conflict, or in actions suppressing the demonstrations. Witnesses spoke of mercenaries as coming from sub-Saharan countries and referred both to the skin colour and inability to speak Arabic. In a minority of cases, it was suggested that some fighters had come from Eastern European countries.

185. In Benghazi, the Commission was provided documents by the Office of the Prosecutor containing some transcripts of interrogations of alleged mercenaries who had not yet been brought to trial. According to the transcripts of interviews with one individual of Libyan nationality, “mercenaries” were used as snipers firing at demonstrators on 17 February. The transcript of another individual, a Nigerian-born Libyan disclosed that he was member of *Khamis Katiba*, and was transported on 2 March to Ras Lanuf military base. He stated that a military officer provided him with a military uniform as well as a rocket-propelled grenade weapon. Documents collected by the Prosecutor’s Office from those questioned concerning involvement in events included some 24 photocopies of passports from four sub-Saharan countries.

186. The Commission visited a detention centre in Benghazi where some of the detainees were said to have been arrested during hostilities, while others had allegedly carried out missions in support of the Governmental forces. The majority of the 21 detainees were Libyan nationals. Only three were foreign nationals: one Syrian, one Algerian and one Ghanaian. However, the Commission was not able to verify further the background of these foreign nationals. Two of the foreign nationals interviewed denied any involvement with the security forces: One referred to instead having been a worker at a construction firm in Benghazi for several years.

187. Sixteen of the interviews conducted by the Commission included explicit reference to the use of mercenaries; in particular in Al-Bayda, Benghazi, Az-Zawiyah and Misrata. Doctors working at the Al-Bayda hospitals reported that out of 1,300 injured persons received by the hospital during the period 17 to 21 February, 26 were identified as “mercenaries”. The doctors reported receiving information from a colleague at the hospital that mercenaries had been paid 7,000 dinars each (found in their pockets) and that he had heard the mercenaries had come from African countries. One doctor told the Commission that some foreign identity cards had been collected from persons received at Al-Jalaa’ hospital in Benghazi.

188. The Commission also received information from participants in demonstrations in Az-Zawiyah that they had seen “mercenaries” from bordering countries who carried foreign

currency including dollars, euros and old Libyan money being captured by opposition forces.

189. One witness stated to the Commission that the “Governmental forces established voluntary recruitment offices across Sirte and continue to recruit newcomers in their ranks. Foreigners particularly are offered certain entitlements and privileges including provision of nationality. Those recruited receives Libyan citizenship, arms and 200 dinars at the spot. In addition to cigarettes, food and other things, they are also entitled to receive 250 dinars on a daily basis. They also promised them an apartment, a car and 30,000 dinars at the end of the conflict.” He noted that “many people who volunteered were already awarded cars but the risk of being killed is however very high. Governmental forces routinely deploy the new recruits to the frontline, particularly to Benghazi and Misrata, where the fighting has entered its intensified phase. Meanwhile some autonomous groups, apparently separate from Qadhafi and rebels, have also set-up parallel voluntary desks in Az-Zawiyah, inviting people to join the military campaign. These groups offer cash and arms to the volunteers.”

190. The Commission has also received considerable information regarding serious violations committed against sub-Saharan Africans as a result of a generalized equation of these groups with “mercenaries,” a subject discussed further in chapter III, section I. The Government of Chad has issues a series of statements in February and April expressing its concern about reports of allegations of the involvement of Chadians in the conflict and the backlash against Chadians remaining in Libya.¹⁵⁵

4. Conclusion

191. The Commission considers that it has established that foreign nationals have taken part in the conflict, including perpetrating human rights violations, particularly on the side of the Government forces. However, further investigation would be required to determine whether those armed individuals fall into the category of “mercenaries” within the provisions of international law. In particular, there is a need to receive more information concerning the residential status of foreign nationals and the means and purposes for which they were recruited.

I. Migrant workers

1. Introduction

192. A majority of those who have fled Libya since February are migrant workers who have left due to insecurity, conflict and economic hardship.¹⁵⁶ There have been a variety of allegations made concerning the mistreatment of migrant workers: whether in the form of arbitrary arrest or detention, or arbitrary interference with privacy, beatings or other forms of cruel and inhuman treatment. Reports of extrajudicial killings were received by the Commission. In carrying out its investigation into this topic, the Commission has had access to first-hand information from 35 migrant workers or members of their families,¹⁵⁷

¹⁵⁵ An information note thereon was issued by the Permanent Mission of Chad to the United Nations Office in Geneva on 5 April 2011.

¹⁵⁶ The Commission received information regarding the economic difficulties faced by migrant workers where contracts were terminated at short notice, sometimes without salaries due being paid, and the impact of loss of benefits associated with the jobs.

¹⁵⁷ Interviews were conducted with persons from Sudan (11), Chad (10), Palestine (5), Nigeria (3), Bangladesh (3), Ethiopia (1), Eritrea (1) and Iraq (1). In addition, group discussions were held with large numbers of foreign nationals, including Moroccans, Philippines, Malians and Somalis. All

meetings conducted with United Nations partners, in particular UNHCR and the Office for the Coordination of Humanitarian Affairs, and analysis of various reports.¹⁵⁸

2. Applicable law

193. The term “migrant worker” refers to any person who “is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” as defined by article 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This Convention contains a range of human rights protections including general rights such as the right to life (art. 9), the prohibition of torture, cruel, inhuman or degrading treatment or punishment (art. 10), the right to liberty and security of person (art. 16), and the right to be treated with humanity when deprived of liberty (art. 17), as well as rights of more particular application to migrant workers.¹⁵⁹ The Convention explicitly includes an obligation for the State to protect migrant workers and their families from “violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions” (art. 16, para. 2). Importantly, obligations owed under international human rights law apply to migrant workers, including rights against racial discrimination under the Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination.¹⁶⁰ Migrant workers are also civilians entitled to the protections afforded to civilians under international humanitarian law and international criminal law.

3. Factual findings¹⁶¹

194. The Commission received information reporting that both Government forces and armed opposition forces raided houses of sub-Saharan migrants, threatening them and giving them deadlines to leave Libya. The Commission also received information that armed civilians entered into private houses at night, mistreating and harassing the sub-Saharan population. Migrant workers trying to leave Libya to the east and to the west reported facing the same difficulties, including being regularly stopped and violently harassed at multiple checkpoints.¹⁶² Some reported being beaten and many stated they had property (such as mobile phones) taken from them at gunpoint.¹⁶³

interviews were adults and five were women. Many accounts were second-hand, with a smaller number of interviewees giving information of their personal experience.

¹⁵⁸ In particular, see OCHA Report, *Initial Assessment of Migrant Workers from Libya in Tunisia*, OCHA, Tunisia, 18 March 2011. Available from [http://northafrica.humanitarianresponse.info/Portals/0/Reports/Assessment/IA%20Assessment%20Report-%20Choucha%20Camp%20%20March%202022,%202011\(f\).pdf](http://northafrica.humanitarianresponse.info/Portals/0/Reports/Assessment/IA%20Assessment%20Report-%20Choucha%20Camp%20%20March%202022,%202011(f).pdf).

¹⁵⁹ Such specialized rights include the right not to be subject to unauthorized confiscation or destruction of identity cards (art. 21) or to be subject to collective punishment or expulsion (art. 22). The Convention also includes provisions with respect to equality of treatment with respect to a range of economic rights and additional rights for those who are documented or in a regular situation (see part IV).

¹⁶⁰ A minority of human rights are not applicable to non-citizens, such as political rights under the Covenant on Civil and Political Rights.

¹⁶¹ This section of the report is focused on cases where the source identified the violation as being motivated by the person’s identity as a foreign national. Other cases of violations against migrant workers are included in other sections of the report.

¹⁶² The number of checkpoints is reported to be much higher in the west. An OCHA report has revealed that on average migrant workers were stopped 10 times during their travel and reported at up to 100 checkpoints between Tripoli and Zuwarah on the way to Tunisia. OCHA, *Initial Assessment of Migrant Workers from Libya in Tunisia*. No similar data is available for the eastern part of Libya.

¹⁶³ This matter has also been addressed in chapter III, section E, of the present report.

195. Of the accounts received, Chadian nationals seemed to be particularly targeted, suspected of being mercenaries. It was reported to the Commission that isolated incidents were intended to convey a message, to the broader sub-Saharan African community, as to what would happen if they supported Government forces.

4. Violations committed by opposition groups¹⁶⁴

196. The Commission received several accounts of attacks on migrant workers carried out by armed opposition groups. The majority of the cases took place in the immediate aftermath of the opposition taking control of Benghazi on 19 February.¹⁶⁵ In one case, it was reported that on 19 February armed supporters of the opposition took one of the persons “arrested” as a suspected mercenary and hung him by his feet, pulling him out of the window of the court house in Benghazi and hitting him with weapons and machetes.¹⁶⁶ Another case reported to the Commission related to the extrajudicial killing of five Chadian nationals who had been arrested on the basis of their nationality, and taken to the military barracks in Benghazi. Dozens of armed persons either in military style or civilian clothing were said to have poured kerosene on their bodies and burned them to death on 21 February.¹⁶⁷ A secondary source told the Commission that two Chadian nationals were victims of extrajudicial killing when they were shot by the sons of their employee who had joined the armed opposition forces on 21 February.¹⁶⁸ Another case of physical abuse and a mock execution of a Sudanese national was reported to have taken place on 24 February at a checkpoint in Misrata controlled by armed opposition forces.¹⁶⁹

197. There were a number of cases received in which the attacks were carried out by civilians with no affiliation in areas under the control of the opposition forces. Health practitioners in As-Sallum referred to the case of four Chadian nationals with gunshot wounds (from close distance firing) who reported that they had been attacked in Benghazi after having been accused of being mercenaries.¹⁷⁰ Health workers also reported that a Chadian worker had recounted that his brother and two colleagues were “slaughtered” in the outskirts of Benghazi. Apparently the four of them were taken by armed civilians by

¹⁶⁴ This term “opposition groups” is being used to connote both supporters of the opposition in the period before an armed conflict was established, as well as the opposition armed group operating during the conflict.

¹⁶⁵ Given the preliminary view of the Commission in paragraph 55 of the present report, these cases may predate the date at which an armed conflict started nationally. However, they have been included in the report as, even if this is the case, the Commission notes the responsibility of Libyan Arab Jamahiriya under the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to protect migrant workers and their families from attacks from private actors (see article 16, paragraph 2, of the Convention).

¹⁶⁶ Information received by an eyewitness of the incident reported to have happened on 19 February. The witness believes that the victim died as a consequence of the attack.

¹⁶⁷ Information received by an eyewitness who was with the group of arrested persons and was able to escape the incident reported to have happened on 21 February.

¹⁶⁸ The incident was reported to have taken place on 21 February on the main street of Guarsha, Benghazi South. The witness mentioned that the killing of the men was motivated by the general animosity towards sub-Saharan nationals who were believed to be mercenaries.

¹⁶⁹ It was reported that the incident occurred on 24 February, when the victim was leaving Misrata for Zliten.

¹⁷⁰ The cases were presented to the Commission by secondary sources which could not provide further details. Wounded persons arriving at the border were evacuated to other locations, meaning that they were not present at the transit point.

force, cuffed and severely beaten before being killed.¹⁷¹ One Chadian woman reported having been raped by armed civilians in Benghazi on 26 February.¹⁷²

5. Violations committed by Government forces

198. A smaller number of attacks were reported as having taken place at the hands of Government forces. The current conflict appears to have exacerbated pre-existing discriminatory attitudes within the society. Reports of the ill-treatment include one case of arbitrary arrest and ill-treatment of a Nigerian national by Government forces in Misalata (Arba Area).¹⁷³ The enforced disappearance of his wife in the same incident was reported. The incident allegedly occurred on 30 March when heavily armed Government forces violently entered the victim's house, smashing him to the ground and beating him. He reported that he was handcuffed, blindfolded and taken in a military car to a place of detention. Another case concerned attacks by Government forces in Tripoli, including one case of a Sudanese man having been beaten by the *Katiba* of Saif al-Islam when they entered the camp of Sudanese and Egyptian workers in Tripoli.¹⁷⁴ One Palestinian source from Az-Zawiyah reported ill-treatment of migrant workers following a speech by Saif al-Islam Qadhafi calling them "traitors". However, overall, it is not clear to the Commission whether attacks by Government forces were motivated by race or by perception of political allegiance with the opposition forces.

199. The Commission received a range of information regarding abuses suffered by sub-Saharan Africans at the hands of civilians without apparent affiliation to one of the parties to the conflict in areas remaining under the control of the Government. In Tripoli, for instance, the Commission was told an Eritrean national had been ill-treated and subsequently denied medical treatment in the main hospital of the capital city.¹⁷⁵ The man reported having being attacked with arms and metal tools on 16 March by a group of civilians in the streets of Tripoli, causing a fractured leg, aggravated by the denial of medical care.

200. In the face of such threats posed, many sub-Saharan Africans have faced a particularly difficult time accessing necessities of life (such as food and water).

6. Conclusion

201. Consistent information was received by the Commission that migrant workers, in particular those from sub-Saharan Africa, were subject to mistreatment, contrary to international human rights law and international humanitarian law. Mistreatment took many forms, including having their houses subject to arbitrary search, being beaten and being 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 undertaken by persons associated with the opposition forces. There have also been cases of Government forces

¹⁷¹ The witness was able to escape, suffered from post-traumatic stress and was transferred to psychiatric care in Marsa Matruh, Egypt. No further details on the circumstances of the report incident were documented.

¹⁷² The case is addressed in paragraph 208 of the present report.

¹⁷³ The witness mentioned having being in different detention places in Ziniti and Tripoli for seven days and alleged ill-treatment.

¹⁷⁴ In the first incident, the victim reported that he was stabbed in the right leg when he was walking in the streets of Tripoli on 25 February 2011. In the second case, the victim alleged being beaten on 22 February 2011 by the *Katiba* of Saif al-Islam when they entered the camp of Sudanese and Egyptian workers in Tripoli.

¹⁷⁵ It was reported that medical care had been denied because of discrimination based on nationality.

subjecting migrant workers to human rights violations including arbitrary arrest, physical attacks and other ill-treatment, which require further investigation. In many locations there have been 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 received by the Commission of extrajudicial killings of migrant workers.

J. Sexual violence

1. Introduction

202. Reports of rape committed by Government forces have been recounted by numerous persons with whom the Commission met. The Commission had the opportunity to speak with only one victim of rape, Iman al-Obeidi whose case of gang-rape by Government forces has been well-publicized by the media. Allegations of rape committed by armed opposition forces and armed civilians were made to the Commission by other persons, including in some cases, family members. The number of cases reported was small. However, the Commission recognizes the difficulties in collecting evidence in cases of sexual violence, including a victim's reluctance to disclose information due to the trauma, shame¹⁷⁶ and stigma linked to reports of sexual assault. In Libya, the fact that Libyan criminal law punishes by flogging sexual relations outside a lawful marriage¹⁷⁷ also increases the reluctance of victims to report sexual violence. These factors thus need to be taken into account in evaluating the information received.

2. Applicable law

203. Rape violates the prohibition on torture and cruel, inhuman or degrading treatment and also impairs other human rights including the right to the highest attainable standard of physical and mental health under the Covenant on Economic, Social and Cultural Rights. It is also expressly prohibited in armed conflict, with Protocol II prohibiting "rape, enforced prostitution and any form of indecent assault" (art. 4, para. 2 (e)). Common article 3 to the Geneva Conventions also covers the conduct through its prohibition of "violence to life and person, in particular ... cruel treatment and torture" and "outrages upon personal dignity, in particular, humiliating and degrading treatment". Rape constitutes a war crime under the Rome Statute (art. 8, para. 2 (e) (vi))¹⁷⁸ as well as potentially constituting a crime against humanity if it is part of a widespread or systematic attack on civilians (art. 7, para. 1 (g), of the Statute). The Security Council has urged parties to armed conflict to protect women and children from sexual violence. Its resolution 1325 (2000) calls on all parties to the conflict to take special measures to protect women and girls from rape and others forms of sexual abuse and its resolution 1820 (2008) stresses that "sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict".

¹⁷⁶ Rape in a conservative and religious society, such as Libya is considered an affront to family honour.

¹⁷⁷ Article 2 of Law No. 70 of 1973 provides for the flogging penalty of 100 lashes for adultery (or zina) which is defined as sexual intercourse of a man and a woman who are not bound to each other by marriage (art. 1 of Law No. 70 of 1973).

¹⁷⁸ The Rome Statute was the first international criminal law treaty to explicitly include rape as a "war crime" though it had been recognized as a matter of customary international law and in jurisprudence relating to the ad hoc tribunals.

3. Factual findings

(a) Violations committed by Government forces

204. The Commission received several reports of rape committed by Government forces. The Commission spoke with Iman al-Obeidi, whose case has received international media attention. She reported that, after being stopped at a check-point, she was raped over two days by 15 Government security force members, and subject to further degrading treatment. Journalists present at the media conference in which she first recounted her story noted that, “she displayed a broad bruise on her face, a large scar on her upper thigh, several narrow and deep scratch marks lower on her leg, and marks from binding around her hands and feet”.¹⁷⁹ In Benghazi, the father of a 30-year-old Libyan woman informed the Commission that his daughter was detained in her house in Misrata for two days and raped by Government forces. She had returned to check on the safety and whereabouts of her brother when Government forces “came and restrained them for two days, keeping them in separated rooms. They were raping her, while trying to extract information from my son about the ‘rebels’”.

205. In another case, a relative of a Libyan woman informed the Commission that a woman was raped in Ajdabiya by Government forces trying to abduct her brothers. The woman was beaten and raped in front of them. A female photographer working for the *New York Times* was arrested on 15 March at a check point near Ajdabiya and detained for six days, during which period she was subjected to sexual assault by Government forces.¹⁸⁰ The Commission received accounts indicating that minors have been subject to sexual assault in Misrata, Ajdabiya and Ras Lanuf.¹⁸¹ Several sources, for instance, spoke about a 10-year-old girl raped in Misrata by Government forces who was later treated at Al-Jamhiriya Hospital in Benghazi. More speculative information repeated was that members of the *Kata'eb* were found with condoms and Viagra pills, leading those recounting these occurrences to suggest that troops were given instructions to engage in rape and that they were supplied with both the pills and the condoms. A psychologist in Benghazi informed the Commission that out of 60,000 persons responding to a survey, 259 reported cases of sexual abuse.¹⁸² However, the Commission has no further details of the methodology or the findings of this study.

206. Reports of the threat and fear of rape by Government forces were frequently raised by interviewees. Libyan interviewees in Tunisia, for instance, noted that they had received phone calls from their relatives in Az-Zawiyah and Zuwarah reporting collective rape of residents by Government forces and “alleged mercenaries” as well as some unidentified armed men. Other interviewees coming from Misrata, told the Commission that the main reason for fleeing was to safeguard family members from rape, whilst at least one witness

¹⁷⁹ David D. Kirkpatrick, “Libyan Woman Struggles to Tell Media of Her Rape”, *The New York Times*, 26 March 2011. Available from www.nytimes.com/2011/03/27/world/middleeast/27tripoli.html?_r=2.

¹⁸⁰ This case is addressed in paragraph 141 of the present report.

¹⁸¹ A number of Sudanese persons interviewed by the Commission mentioned that several women and minors (7–10 years old) were raped in Ajdabiya by Government forces, without providing further details. Moreover, an international NGO which conducted interviews with 200 children and 40 adults in four IDP camps in Benghazi reported that minors as young as 8 years were subject to sexual abuse. These reports were unconfirmed.

¹⁸² Psychologist Siham Sergewa was interviewed by CNN on 23 May 2011. Sara Sidner and Amir Ahmed, “Psychologist: Proof of hundreds of rape cases during Libya’s war” CNN, 23 May 2011. Available from <http://edition.cnn.com/2011/WORLD/africa/05/23/libya.rape.survey.psychologist/>. The Commission has not yet been able to receive further details of the methodology used in the survey and its results.

from Nalut referred to threats being given on 18 February, by Government forces patrolling the streets, to the effect that residents of the district would face serious consequences, including rape, if they did not ally themselves with the regime. Media reports mention that there were a number of video recordings of rapes by Government soldiers recorded on their mobile phones being circulated in Misrata.¹⁸³

(b) *Rape by opposition armed forces*

207. The Commission also received reports of rape during raids conducted by armed opposition forces in Ajdabiya and Al-Marj area. One Iraqi and one Libyan woman spoke of being raped by armed opposition forces in Al-Tulat Street in Ajdabiya during the raid of their houses in early March. The Commission collected other information, that a Syrian woman in the Benghazi area was also raped by armed opposition forces during the second half of February.

208. The Commission also received some reports of rapes being carried out by armed civilians in areas controlled by the armed opposition force, raising issues of failures to protect from non-State violence. In one case, it was reported that eight heavily armed civilians gang raped a Chadian women on 26 February, “eight armed civilians with grenades, AK47s and knives entered into the compound he was living with his family and with many other Chadian families in Majuri neighbourhood in Benghazi. It was midnight and they entered in the compound, beaten the people with machetes and threaten people with their arms, asking them to leave the country and robbing their belongings. That night they entered into the room of his neighbour, a Chadian woman, 28 years old. Her husband was in Tripoli so she was alone that night. The eight armed civilian entered into her room, took her by force, took her clothes away and raped her, one after the other.”

4. Conclusions

209. The Commission received but was unable to verify individual accounts of rape. However, the Commission notes there was sufficient information 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 the reports of the rapes have had a major psychological and social impact and have spread fear among the population. Given accounts that rape was committed as part of a policy to spread such fear, further investigation would be warranted.

K. Children in armed conflict

1. Introduction

210. In its inquiry, the Commission has sought to investigate the situation of children within the conflict. As previous sections have demonstrated, children have often been among the victims of the armed conflict (through death and injury of themselves or their family members) and displacement. The Commission has also received allegations concerning the use of child soldiers by both sides to the conflict. The Special Representative of the Secretary-General for Children and Armed Conflict has spoken of having evidence of the recruitment and use of child soldiers.¹⁸⁴ The Commission has

¹⁸³ See Andrew Harding, “Libya: forced to rape”, BBC News, 23 May 2011. Available from www.bbc.co.uk/news/world-africa-13502715.

¹⁸⁴ See United Nations press release, “Press Conference to Launch Secretary-General’s Annual Report on Children and Armed Conflict”, 11 March 2011. Available from www.un.org/News/briefings/docs/2011/110511_Children.doc.htm.

received accounts of the presence of children, but would need to undertake further investigation to verify the claims and evaluate the extent of such usage. Information received from other United Nations agencies and in particular the office of the Secretary-General's Special Representative on Children in Armed Conflict also raises significant protection concerns relating to children affected by the ongoing conflict in Libya.

2. Applicable law

211. All parties to a non-international armed conflict are under an obligation to provide children with the care and aid they require (art. 4, para. 3, of Protocol II). Measures are to be taken, if necessary, and whenever possible with the consent of their parents or persons responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country (art. 4, para. 3 (e), of Protocol II). Parties are under specific obligations not to recruit children who have not attained the age of 15 years into the armed forces or groups or allowed to take part in hostilities. Children are to be afforded special protection even if they take a direct part in hostilities and are captured (art. 4, para. 3, of Protocol II). Similar provisions are found within article 38 of the Convention on the Rights of the Child.¹⁸⁵ By ratifying the Optional Protocol to the Convention on the involvement of children in armed conflict, and making a declaration, Libya has declared 18 years of age as the age of voluntary recruitment. The Optional Protocol also obliges Libya to take all feasible measures to prevent armed groups (separate from the armed forces) recruiting and using in hostilities those under 18 (art. 4).

212. The Rome Statute also includes as a war crime the offence of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities (art. 8, para. 2 (e) (vii)).

3. Factual findings

(a) *Use of child soldiers by Government forces*

213. Eyewitnesses informed the Commission that many checkpoints controlled by the Government are currently manned by child soldiers. A report of the Office for the Coordination of Humanitarian Affairs also contains reference to child soldiers having been reported to be patrolling in the streets, stopping people and asking for the identity cards of those travelling in the west towards the Tunisian borders.¹⁸⁶ According to those who have fled Libya, Government forces have distributed a large number of weapons to a wide range of civilians, including children. A 16-year-old wounded soldier who spoke to the United Kingdom-based television company, Channel 4, stated that about 90 young boys between the ages of 15 and 19 had been called to military barracks in Tripoli "for training" as early as on 17 February, when the anti-Government uprising began. Another young soldier captured by the armed opposition stated to the broadcaster that "we were kept locked in the camp and trained a little and then they took us to the battalion".¹⁸⁷

214. The presence of children among the opposition forces in both the west and east of the country also continues to be reported by different sources including United Nations staff, international NGOs and migrant workers who have fled Libya since late February

¹⁸⁵ States are inter alia required to take all feasible measures to ensure persons under 15 do not take a direct part in hostilities, to refrain from recruiting those under 15, and within the age group 15–18, to give priority to the oldest (art. 38 of the Convention on the Rights of the Child).

¹⁸⁶ OCHA Report, *Initial Assessment of Migrant Workers from Libya in Tunisia*.

¹⁸⁷ Ruth Sherlock, "Child soldiers sent by Gaddafi to fight Libyan", Channel 4 News, 23 April 2011. Available from www.channel4.com/news/child-soldiers-sent-by-gaddafi-to-fight-libyan-rebels.

2011. One wounded member of the armed opposition force informed the Commission that a number of children from the ages of 15 to 18 have been trained by rebel fighters in the mountains.

(b) *Children as victims of armed conflict*

215. The Commission received numerous accounts of children being killed and injured in the ongoing fighting in Libya, particularly in the context of attacks committed by Government forces. The situation for children, in the besieged Misrata, during the reporting period has been particularly dire, with children featured amongst the civilian victims of heavy shelling and bombardment, snipers and attacks on hospitals. As noted in chapter III, section F, some injuries suffered appear to be consistent with Government forces undertaking indiscriminate attacks. Witnesses reported that on 11 March near Al-Abraq airport close to Tobruk, a girl under 10 years of age was killed while sleeping on the upper bed of a double deck-bed while her little brother was asleep on the lower bunk. She had been shot in the head by a single bullet, which may have been a stray round. On 4 May, media reports stated that at least three members of a family, including two children, were hit and killed by a missile while they waited for their evacuation from Misrata.¹⁸⁸

216. The Commission has also had concerns brought to its attention regarding the practice of the Government to systematically use children to participate in the organized pro-Government demonstrations in Tripoli through payments to the family. Given the security situation in Tripoli, such a practice exposes children to additional risk within the conflict.

4. Conclusion

217. The Commission notes that the ongoing conflict is having a significant negative impact on the rights of children. In relation 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 UNICEF and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, as well as other NGOs.

L. NATO use of force

1. Introduction

218. The Commission received reports stating that NATO military action has involved indiscriminate attacks on civilians. Media reports have also referred to a few instances where NATO operations have resulted in the death of civilians. On 18 May 2011, the Commission wrote to NATO Headquarters asking for specific information about its operations in Libya. As the Commission is awaiting the response from NATO, this section reflects information gathered from other sources.

2. Applicable law

219. The international humanitarian law rules applicable in international armed conflict govern international States' use of force in Libya. This comprises the four Geneva Conventions, plus Protocol I thereto in addition to norms of customary international

¹⁸⁸ Xan Rice, "Gaddafi targets relief ship as it evacuates Misrata wounded in Libya", *The Guardian*, 4 May 2011. Available from www.guardian.co.uk/world/2011/may/04/gaddafi-targets-relief-ship-misrata-libya?INTCMP=SRCH.

humanitarian law. The base principles of needing to distinguish between civilian and military persons and objects, not directing attacks against civilians and civilian objectives, taking precautions related to ensuring appropriate targeting and not engaging in attacks which involve loss of civilian life disproportionate to the concrete military objective apply both in international and non-international conflicts and have been outlined in chapter III, section F.¹⁸⁹ The Rome Statute includes a detailed listing of war crimes applicable in international armed conflict, including listed grave breaches of the Geneva Conventions and other serious violations of the laws and customs of war applicable in international armed conflict (art. 8, para. 2 (a) and (b)).

3. Factual findings

220. As of 30 March 2011, NATO has been in control of all military operations for Libya, that is, for the three components of: an arms embargo, a no-fly-zone and actions to protect civilians from attack or the threat of attack. Accordingly and on a daily basis, NATO conducts reconnaissance, surveillance and information-gathering operations to identify those forces which present a threat to civilians and civilian-populated areas. Acting on this information, NATO air and maritime assets engage targets on the ground or in the air.

221. Based on figures shown on NATO website, since the beginning of its operations up to 28 May 2011, a total of 8,729 sorties, including 3,327 strike sorties have been conducted. Targets struck to date have included command and control bunkers, tanks, armoured personnel carriers, air-defence systems and artillery around and approaching key civilian areas such as Misrata and Al-Brega. With respect to arms embargo activities, a total of 20 ships under NATO command are actively patrolling the central Mediterranean. Since the beginning of the arms embargo operations, a total of 954 vessels have been hailed, with 41 boardings and 5 diversions conducted.

222. While in Tripoli, the Commission met with a Government health official who stated that 64 civilians have been killed by NATO bombardments. The Commission also received written reports from the authorities stating that NATO launched about 3,000 airstrikes on several civilian and military targets in Libya. According to the same reports, these strikes resulted in the death of 500 civilians and 2,000 injured. The same reports stated that NATO had targeted schools, universities, mosques, and others civilian locations. According to the same sources, 56 schools and three universities were directly hit by these strikes. Furthermore, it is claimed that NATO airstrikes have resulted in the closure of 3,204 schools, leaving 437,787 students without access to education.

223. Despite the reports received, while in Tripoli, the authorities did not show to the Commission any evidence of civilian areas targeted by NATO forces. Libyan officials in charge of coordinating the visit explained that some of the NATO attacks occurred within the premises of the Bab al-Aziziyah compound, without providing the possibility to enter the compound. The Commission also notes that the Government of the Libyan Arab Jamahiriya did not provide the details of or show concrete evidence of alleged incidents, such as civilian objects which had been destroyed (e.g. schools).

224. Although statistics and information provided by NATO do not refer to air strikes resulting in the killings of civilians, numerous press articles and media reports have referred to specific incidents in which NATO air strikes resulted in the death of civilians. A NATO

¹⁸⁹ See, in particular, articles 48, 51 and 52 of Protocol I. Article 57 of Protocol I obliges States to take precautions.

airstrike resulted in the killing of at least 13 rebels near Al-Brega on Friday 4 April 2011.¹⁹⁰ Another incident reported by Reuters on 13 May 2011 and shown on Libya TV indicated that a NATO air strike killed at least 16 civilians and wounded up to 40 civilians at a guesthouse in the eastern Libyan city of Al-Brega. It was reported by the State television that the attack occurred at dawn and that most of the victims were clerics who had gathered for a religious ceremony. Following the departure of the Commission from Tripoli, it was further reported that on 1 May, NATO air strike in Tripoli resulted in the killing of Sayf al-Arab the youngest son of Colonel Qadhafi, his wife and three grandsons.

4. Conclusion

225. The Commission is not in a position at this stage to assess the veracity of the information received. Furthermore, the Commission has not seen evidence to suggest that civilian areas have been intentionally targeted by NATO forces, nor that it has engaged in indiscriminate attacks on civilians.

IV. Assessment and findings

226. The Commission has been able to accomplish much in a relatively short period of time and particularly during the period of an ongoing conflict. However, much more needs to be done, particularly because the conflict continues and alleged violations of international human rights law and international humanitarian law, including those amounting to international crimes, continue to be reported.

227. The quality of the evidence and 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 capable of being used in criminal proceedings, whether national or international. It was also careful to distinguish between information and reports received and testimony it heard first-hand, as well as facts that it observed first-hand. This cautionary approach should not, however, be read as an indication that the allegations of international human rights law and international humanitarian law violations contained in this report are not credible or sufficient in quality and quantity to warrant the concern of the international community.

228. It should be noted that the reports received by NGOs were useful and, apparently, reliable. The reports received from the Government sources and those of NTC 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 NGOs on both sides, informing them of these standards and advising them on reporting requirements. Nevertheless, all such information, notwithstanding qualitative differences, was taken into account.

229. Since the beginning of this situation in February 2011, the media, including the international media, have been active in producing reports on events, including videotaped materials. Similarly, a large number of videos and still pictures have been given to the Commission by individuals, NGOs, the Government, and NTC. While the Commission

¹⁹⁰ Rebels in eastern Libya reported that a NATO air strike hit their forces near the oil town of Al-Brega, killing at least 13 rebel fighters. Peter Walker, "Nato air strike 'kills Libyan rebels'", *The Guardian*, 7 April 2011. Available from www.guardian.co.uk/world/2011/apr/07/nato-air-strike-libyan-rebels.

took these visual documentary sources into account, their authenticity will need 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 violations of international human rights law, humanitarian law and criminal law.

230. The present situation has to be viewed contextually in light of the regime's 42 years. The *jamahiriya* system of Government instituted by Qadhafi's regime is a very particular one. By its very nature, it is not susceptible to systems of governance based on the rule of law and whose aims include the protection of human rights. Such fundamental rights as the right to freedom of association, the right to freedom of expression and association have been criminalized and are subject to penalties, including the death penalty and life imprisonment. The regime also prohibited private ownership and certain forms of retail trade, banned a free press and, to all practical purposes, subverted the civil service, the police, military and paramilitary organizations to the achievement of the regime's purposes. In addition, the regime's record of disregard of international law and the human rights of others in respect of its sponsorship and support of international terrorism and subversive groups in different countries of the world over a prolonged period of time is indicative of how the regime views both international law obligations and respect for human rights.

231. The historical background outlined in the report reveals a unique form of government which is dominated by a rule by who has governed by fear, intimidation and incentives based on loyalty. The repressive climate which has been established, coupled with the ability of the ruler to provide strong economic incentives to those supporting him and disincentives to those who do not, has also created opportunities for abuses of power leading to international human rights law violations, which in turn have led to the protests that escalated into the ongoing civil war. Moreover, the absence of an effective rule of law system and an independent judiciary, as well as the dominance of a number of paramilitary and security apparatuses, have also led to the consolidation of a climate of fear and oppression.

232. The Commission met protagonists on both sides of this conflict who are not motivated by ethnic, tribal or religious causes. They also do not wish to see their country break up. On both sides of the conflict, the common goal is to see a unified modern and progressive Libya with democracy, rule of law and human rights prevailing.

233. The events that have occurred since February have produced a traumatic impact on society as a whole. It is against this background that the patterns of violations outlined in this report are to be assessed. The ongoing Libyan conflict, which is characterized by a relatively small number of victims, has nonetheless produced a significant socio-psychological impact on the society as a whole, particularly in relation to reports of sexual violence. Moreover, previous violent experiences, such as those involving the Abu Salim prison and the hanging of students (see paragraph 24 of the present report) deemed to have views opposing those of the Government, as explained, have also been traumatic for Libyan society.

234. 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 for the control of territory. The conflict thus acquired the legal characteristics of a conflict of a non-international character under international humanitarian law. Thus the

initial phase, which was subject to international human rights law, was transformed in the second phase, in which international humanitarian law applied alongside international human rights law.

235. The combination of the factors mentioned in the report has not only led to the impunity of those who committed violations of international law identified in the report but has also led them to feel emboldened in the continuation of their abuses against the civilian population. This, in turn, explains why during the two phases of this conflict, namely the phase of peaceful protests and demonstrations followed by the civil war phase, those on the Government side have committed many violations of international human rights and humanitarian law.

236. The estimated number of violations committed by Government forces is an indication of certain patterns of behaviour which can logically be inferred to be either the product of established policies or the product of a single person directing multiple paramilitary and security organizations and groups for the accomplishment of the results referred to above and identified throughout this report. The assumption that these patterns of violence would have continued had they not met with opposing force was realistic. Certainly the resulting consequences in terms of human harm would have been significantly higher than what is estimated at the present stage of the conflict. It is not certain what the cumulative number of persons killed or injured has been to date, with Government officials, NTC and NGOs providing estimates ranging from 10,000 to 15,000 persons killed.

237. In relation to the Government's response to the demonstrations beginning on 15 February 2011, the Commission has concluded that there is sufficient evidence to suggest that the Government forces used excessive use of 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, freedom of assembly and freedom of expression. In relation to the latter days of protests as the situation escalated, more investigation would be required to assess the security forces' use of force, in particular more detail concerning actions taken by demonstrators to assess the response by Government authorities.

238. The Commission has also established that many persons were incarcerated by the Government without it being publicly known how many, for what reasons, where they were kept, in what conditions and how they were being treated. Numerous allegations have been made concerning disappearances by the Government were received by the Commission either directly or through NGOs. The precise number of such cases cannot currently be assessed. Access to medical treatment was impeded in the aftermath of the demonstrations and freedom of expression was significantly curtailed by the Qadhafi regime including through suppression of communication and attacks on journalists and other media professionals. Torture and inhuman and degrading treatment can be considered to have been committed on numerous occasions by both Government and opposition actors.

239. In relation to the conduct of hostilities, the Commission has noted violations of international humanitarian law including attacks on protected medical staff, transport and facilities, the misuse of the Red Cross/Red Crescent emblem, and a failure to take sufficient precautionary steps to minimize damage to civilians and civilian objects. Further investigation is required in determining if attacks on civilians (in general and in relation to specifically protected persons) and civilian objects (including mosques and humanitarian-related objects) have been intentional or indiscriminate. 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. Other areas requiring further investigation include allegations concerning the use of child soldiers on both sides of the conflict.

240. In relation to the use of weaponry, the Commission is concerned that the Libyan authorities have not been undertaking appropriate and precautionary assessments which would, in the Commission's view, militate against the use of weapons such as mortars in densely populated areas. The use of munitions that are either unlawful or are being employed in an unlawful method, such as expanding bullets, phosphorus shells and cluster munitions, needs to be confirmed, together with information as to whether any use was ascertained as either being part of a governmental policy or the result of individual combatants or commanders' decision-making.

241. While it is clear that foreign nationals have participated in the conflict in Libya, more investigation is required to determine whether these persons qualify as "mercenaries" within the meaning of the relevant international conventions. Considerable mistreatment of migrant workers has occurred. Those coming from sub-Saharan countries have been particularly targeted, due to a perception that they were "mercenaries" because of the colour of their skin and/or nationality. These attacks were most often attributed to members of opposition forces.

242. Sexual violence is an area which requires further investigation to ascertain the extent of these violations, including whether cases involved incitement by the command of either side. It is evident that reports of rape have had a major psychological and social impact, spreading fears amongst the population. Given the sensitive nature of the subject, the Commission considers it important that further investigation employ specifically tailored methodologies that take into account the stigmatization of sexual violence.

243. The Commission is concerned with respect to reports of ongoing violations – not only in relation to new instances of violations, but also the continuing effect of past violations, in particular regarding victims who have been disappeared and whose fate remains unknown.

244. The Commission is also concerned by a lack of apparent action to address the violations which have been the subject of considerable attention to date. Although some progress has been made in relation to the release of some persons from detention, including journalists and other media professionals, it has not received information about the many persons unaccounted for, nor did it receive information indicating that credible investigations are being instituted into violations which have occurred.

245. The Security Council in its resolution 1970 (2011) referred the situation in Libya 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 Court. It is in that light that the Commission has consulted the Court (see paragraph 18 of this report), but has not to date shared information about its findings. At this point, however, the Commission feels that it is not in a position of identifying individual criminal responsibility or command responsibility for international humanitarian law violations or other potential violations of international criminal law. This is due essentially to the need to complete and confirm the information and data that it has received from various sources.

246. Nonetheless, the Commission has identified a number of violations which have led to its reaching the conclusion that international crimes, specifically crimes against humanity and war crimes, have been committed in Libya.

247. **Government forces:** In relation to crimes against humanity, the Commission has found that there have been acts of murder, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, persecution, enforced disappearance committed by Government forces within the context of a widespread or systematic attack against a civilian population, with knowledge of the attack.

248. The Commission has found that there have been many serious violations of international humanitarian law by Government forces which amount to war crimes. Within the listing of war crimes applicable to non-international armed conflict in the Rome Statute, the Commission has identified in chapter III violations involving violence to life and person, outrages upon personal dignity in particular humiliating and degrading treatment and intentionally directing attacks against buildings, materials medical units and transport using the distinctive emblems of the Geneva Conventions.

249. It has also received a considerable quantity of information concerning possible 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 transports. Nevertheless, further investigation would be required to determine if these 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 there has been conscription or enlistment of children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities and in relation to the commission of rapes during the conflict.

250. The consistency of patterns of violations creates an inference that they were carried out as a result of policy decisions by Colonel Qadhafi and senior leadership. Further investigation is required in definitively establishing who is responsible for the crimes committed. The Commission has received some information concerning individual perpetrators of crimes, but more investigation is required on this topic.

251. **Opposition armed forces:** The Commission received fewer reports of facts which would amount to the commission of international crimes by forces connected with the opposition than connected to the Government forces. It has established that some acts of torture and cruel treatment and some outrages upon personal dignity in particular humiliating and degrading treatment have been committed by opposition armed forces, in particular against persons in detention and migrant workers. Those which occurred during the period of armed conflict constitute war crimes under the Rome Statute.

252. Further investigation would be required into acts of rape and whether there has been conscription or enlistment of children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities. On the basis of the information currently before the Commission, it 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.

253. Notwithstanding the cautious approach taken by the Commission as reflected in this report, it should be clear that a significant number of international human rights law violations, war crimes and crimes against humanity have occurred, as described above. These violations and crimes have been committed in large part by the Government of the Libyan Arab Jamahiriya 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 of his regime and his leadership. There have also been violations by the opponents of the regime, which are also described in the present report. The Commission has expressed its concerns to both sides, urging them to cease and desist from these practices and to ensure their respective conduct conforms to international law.

254. The Commission is aware of the challenges that lie ahead for Libya in responding to the violations that have occurred. It is as yet unknown when or how the conflict will come to an end. The prospective transition to democracy, introduction of the rule of law, equitable allocation of national resources, restoration of public safety, reconstruction of public administration, reinforcement of social cohesion across clans and provinces,

strengthening civil society and opening the country to a new peaceful and democratic Libya will necessarily have to take into account the historic baggage left behind by Qadhafi regime, including the situation described in the present report.

255. The present report should also be viewed in light of future post-conflict justice and transitional justice mechanisms designed to provide justice and reconciliation among the people of Libya in order to sustain peace in that country and peace between Libya and the international community. While post-conflict justice and transitional justice are not within the scope of the present report, its fact-finding work will nevertheless be useful in of the work to ensure post-conflict justice and transitional justice.

256. Although the contemporary political situation is unrelated to the Commission's mandate, it has a bearing on the continuation of the conflict and as a consequence on the ability of the Commission or any succeeding body's ability to continue the necessary investigations into the human rights and humanitarian law situations in that country. In addition, it should be noted that identifying violations, how they occurred, and why they have occurred will necessarily have a bearing on post-conflict justice (transitional justice) after the conflict has ended.

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

V. Recommendations

258. **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.

259. 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.

260. 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.

261. 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.

Annexes

Annex I

Programme of work of the International Commission of Inquiry on Libya

1. Geneva, 6–8 April 2011 and 18–20 May 2011

Meetings held with representatives of:

OHCHR

The United Nations High Commissioner and the Deputy High Commissioner for Human Rights

The Human Rights Council and the Regional Coordinators:

The President of the Human Rights Council

Permanent Mission of Austria to the United Nations in Geneva

Permanent Mission of Czech Republic to the United Nations in Geneva

Permanent Mission of Costa Rica to the United Nations in Geneva

Permanent Mission of Iraq to the United Nations in Geneva

Permanent Mission of Nigeria to the United Nations in Geneva

Other permanent missions:

Permanent Mission of China to the United Nations in Geneva

Permanent Mission of Egypt to the United Nations in Geneva

Permanent Mission of France to the United Nations in Geneva

Permanent Mission of Germany to the United Nations in Geneva

Permanent Mission of Italy to the United Nations in Geneva

Permanent Mission of Qatar to the United Nations in Geneva

Permanent Mission of Russian Federation to the United Nations in Geneva

Permanent Mission of Tunisia to the United Nations in Geneva

Permanent Mission of Turkey to the United Nations in Geneva

Permanent Mission of United Kingdom of Great Britain and Northern Ireland to the United Nations in Geneva

Permanent Mission of the United States of America to the United Nations in Geneva

Former representatives of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations in Geneva

United Nations agencies:

United Nations Office for the Coordination of Humanitarian Affairs
Office of the United Nations High Commissioner for Refugees (UNHCR)

Intergovernmental organizations:

International Committee of the Red Cross
African Union
League of Arab States
Organization of the Islamic Cooperation

Non-governmental organizations

Amnesty International
Cairo Institute for Human Rights Studies
CIVICUS
Fondation Alkarama
Human Rights Watch
Human Rights Solidarity
International Commission of Jurists
International Federation for Human Rights (FIDH)
International Service for Human Rights
Reporters sans Frontiers International

2. Egypt: Cairo, Alexandria, Marsa Matruh and As Sallum, 11–15 April 2011

(a) Meetings held with representatives of the following:

Government

Ministry of Foreign Affairs
Ministry of Interior
League of Arab States
National Transitional Council

United Nations officials and agencies

Special Envoy of the Secretary-General for Libya
United Nations Humanitarian Coordinator for Libya
United Nations Resident Coordinator for Libya

United Nations Development Programme
United Nations Office for the Coordination of Humanitarian Affairs
United Nations Office on Drugs and Crime
United Nations Fund for Children (UNICEF)
World Health Organization
United Nations Mine Action Service
Office of the United Nations High Commissioner for the Refugees (UNHCR)
United Nations Department of Security and Safety
World Food Programme

Other intergovernmental organization

International Organization for Migration

Professional and non-governmental organizations

Board of Trustees of the Arab Organization for Human Rights
Arab Medical Union
Human Rights Watch

(b) Sites visited

Cairo: Nasser Medical Institute, Cairo Specialized Hospital
Alexandria: Al Asafra Hospital, Alexandria Vascular Centre
As Sallum: Transit Point

3. Eastern Libya: Tobruk, Benghazi and Al Bayda, 12–21 April 2011

(a) Meetings held with representatives of the following:

National Transitional Council
Special Envoy of the French President Sarkozy
Human Rights Watch

(b) Sites visited

Benghazi Medical Centre
Al Jalaa' Hospital
Benghazi Detention Centre
Benghazi Internally Displaced Persons' Camp
The Office of the Prosecutor

4. Tunisia: Tunis, Djerba, Ras Ejdair, Sfax, Sousse, Tataouine and Zarzis, 22–25 April 2011

(a) Meetings held with representatives of:

Government

Ministry of Social Affairs
Ministry of Foreign Affairs

United Nations agencies

United Nations Resident Coordinator for Tunisia
Office of the United Nations High Commissioner for Refugees (UNHCR)
United Nations Office for the Coordination of Humanitarian Affairs
World Health Organization (WHO)
United Nations Fund for Children (UNICEF)

Other intergovernmental organizations

World Bank
International Committee of the Red Cross
International Organization for Migration

Non-governmental organizations

Amnesty International
Ligue Tunisienne des Droits de l'Homme

(b) Sites visited

Ramada refugee camp
Choucha refugee camp
United Arab Emirates Red Crescent refugee camp (Ras Ejdair)
Tunisian Red Crescent refugee Camp (Ras Ejdair)
Tataouine Regional Hospital
Habib Bourguiba University Hospital
Najda Private Hospital
Sahlul University Hospital

5. Tripoli, 27–28 April 2011

(a) Meetings held with representatives of the following:

Government

The General People's Committee for Justice
The General People's Committee for Foreign Liaison and International Cooperation
Secretary of Foreign Affairs, General People's Congress

Libyan National Human Rights Committee

Non-governmental organizations

Waatasemu Society (Aisha Qadhafi Foundation)

General Union of Civil Society Organizations

(b) Site visited

Al-Jdaydah Detention Centre

Az-Zawiyah

Annex II

Glossary of terms

Abu Salim: top security prison in Tripoli where over 1200 prisoners were killed in 1996 after a riot.

Amazigh: also known as Berbers though that term is not favoured. They constitute the original population of North-West Africa before Arab populations arrived in the seventh century CE and the two populations are now largely mixed. Tmazight is their distinct language which has its own alphabet.

Al-Amn al-Am: Public Security Agency.

Baltaji/Baltajiyah: plain-clothed individuals engaged alongside security forces in activities to disrupt demonstrations, sometimes using batons, sometimes firearms or driving through crowds.

Al-Haras al-Thawri: Revolutionary Guard.

Hayat Amn al-Jamahiriya: Jamahiriya Security Organization.

Ibadi Muslims: heirs of a minority that refused the Sunni-Shi'a division in the early days of Islam. There are Ibadis in North and East Africa as well as Oman. Most of the Amazigh population of Libya are Ibadis. They pray together with other Muslims.

Jamahiriya: literally the State of the masses, used in the official name of the Libyan Arab Jamahiriya.

Jihaz al-Amn al-Dakhili: Internal Security Agency (ISA).

Jihaz al-Amn al-Khariji: External Security Agency (ESA).

Katiba/Kata'eb: translates as brigade but in Libya it refers to special uniformed units under the sole command of Colonel Qadhafi's inner circle, including his sons. They are separate from the regular army and some of these units are better equipped than the army.

Al-Lajnah al-Thawriya/Al-Lijan al-Thawriyah: Revolutionary Committee.

Liwaa al-Redah: Deterrence Division, one of the Kata'eb.

Qabilah/Qabael: tribe.

Al-Qaida: a radical Sunni Islamist group engaging in global political violence under the guise of religion. It was founded by Osama bin Laden in the late 1980s with Arab volunteer fighters in Afghanistan and then expanded to conduct numerous terrorist acts in many areas of the world. Its network comprises regional branches including one in the "Islamic Maghreb".

Quryna: a privately owned Libyan newspaper published in print and on the Internet, based in Benghazi, it was part of Al-Ghad Media Corporation owned by Saif al-Islam Qadhafi until the state took it over.

Quwat al-Da'm al-Markazi: Central Support Forces, specializing in crowd control.

Thawrat al-Fateh: Al-Fateh Revolution of 1 September 1969.

Annex III

Member States and organizations that submitted information to the International Commission of Inquiry

1. Member States

Australia
Italy
Libyan Arab Jamahiriya
Morocco
Spain
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland

2. Organizations

Amnesty International
Arab Organization for Human Rights
DePaul University
Fondation Alkarama
Human Rights Solidarity
Human Rights Watch
International Coalition Against War Criminals
International Criminal Court
International Federation for Human Rights (FIDH)
International Medical Corps
International Organization for Migration
Libya Appeal Team
Libyan General Union of Civil Society Organizations
Libyan National Human Rights Committee
National Transitional Council
Office for the Coordination of Humanitarian Affairs
United Nations Educational, Scientific and Cultural Organization
Office of the United Nations High Commissioner for Refugees
United Nations Children's Fund
United Nations Mine Action Service

Waatasemu Organization (Aisha Qadhafi Foundation)
World Engagement Institute
