



2012年4月24日

## Human Rights Now

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### 国際社会の介入後のリビアの人権状況に関する声明

2011年3月2日に、国連人権理事会によって設置された、リビアに関する国際調査委員会(International Commission of Inquiry on Libya)はリビアに関する報告書(A/HRC/19/68)を公表した。

報告書は、「国際的な犯罪、特に人道に対する罪や戦争犯罪、がリビアのカダフィ軍によって行われた」とし、広範で系統的な市民への攻撃としての殺害、強制失踪、拷問が行われたうえ、超法規的殺害や市民への攻撃、レイプも行われたと指摘する。他方で報告書は、反カダフィ勢力も戦争犯罪や国際人権法に違反する深刻な人権侵害を行っており、国際人権法に違反する行為が現在も継続している」と報告した。現在も続く国際人権法違反行為には、超法規的殺害、恣意的拘束、拷問、強制失踪、無差別攻撃等が含まれるという。

委員会は、報告書において、リビア暫定政府に対し、この報告書に記載されたすべての国際人権・人道法違反行為について調査し、その責任を負う者を訴追すること、現在続いている人権侵害行為を停止することを勧告するとともに、国連人権理事会に対して、報告書の勧告の履行を確保するためのメカニズムを設置するよう求めている。

東京を本拠とする国際人権 NGO ヒューマンライツ・ナウ(HRN)は、独立調査委員会の勧告を支持する。そして、リビア暫定政権に対し、不処罰の横行に終止符を打つために、内戦中に発生した、すべての勢力による深刻な人権侵害について、徹底した調査・訴追を行うよう要請する。

リビアにおいて、現在も深刻な国際人権法違反が継続していることは極めて深刻である。リビア暫定政権がこうした人権侵害を停止させること、国際的な調査を受け入れることを要請する。

国連安全保障理事会決議 1970号に基づき、2011年2月15日以降のリビア国境内における戦争犯罪、人道に対する罪については国際刑事裁判所の管轄に服し、その管轄権は紛争両当事者による犯罪すべてに及ぶ。そして、リビアの司法制度が重大な国際犯罪に対する正義を実現する場として未だ機能していない状況に鑑みるなら、国際刑事裁判所が人権侵害行為の不処罰に終止符を打ち正義を実現するべきである。

リビア政府は(カダフィ将軍の次男である)、サイファルイسلامカダフィの身柄を国際

刑事裁判所検察官に引き渡すべきである。国際刑事裁判所に指名された公設弁護人は、同人の刑事手続上の権利の無視や略式処刑に対する懸念を表明しており、人権保障と公正な裁きの実現のために速やかな引き渡しを要請する。

委員会は、ムアンマル・カダフィとムタシーニ・カダフィの死が、超法規的殺害であったか否かについて、十分な証拠がないため、結論に至ることができなかったという。HRNは、国際社会がさらなる調査を行うこと、リビア暫定政府に対し、この問題についての調査に全面的に協力することを要請する。

HRNは、NATOの一連の空爆に関する更なる調査がなされるべきであると考えている。委員会は、NATOの空爆による民間人の犠牲や、軍事目標とは考えられない目的物が攻撃対象となったのを確認したとしている。NATOの行為が戦争犯罪を含んでいないか、さらなる国際的な検証が不可欠である。

委員会がなした勧告が効果的に実現するためには、勧告の履行状況を監視するための、効果的で強力なメカニズムが早急に国連において確立されるべきである。HRNはそのための国連人権理事会のイニシアティブの発揮を求めるとともに、国連人権高等弁務官事務所がリビアの人権状況の保護・促進のために明確な役割を果たすことを期待する。

HRNは、多国籍軍による軍事行動を授権した国連安保理決議 1973 とそれに連なる軍事介入について、国連としての監督責任・アカウントビリティの所在は曖昧であり、このような安全保障理事会決議のあり方については、今後の十分な検証と再検討が必要であると表明してきた(2011年4月12日付HRN声明)。

カダフィ軍のみならず反政府勢力も深刻な人権侵害行為に関与し、カダフィ政権崩壊後も現在に至るまで深刻な人権侵害が継続しているリビア情勢に鑑みるならば、リビアに対する今回の国際社会の介入のあり方について、国際社会が十分な検証と再検討が行う必要があることを再度強調するものである。

A/HRC/19/68

2 March 2012

**Human Rights Council Nineteenth session** Agenda item 4

**Human rights situation that require the Council's attention**

Report of the International Commission of Inquiry on Libya

*Summary*

In emergency session, the Human Rights Council on 25 February 2011 established the International Commission of Inquiry on Libya and gave it the mandate “to investigate all alleged violations of international human rights law in Libya, 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 conducted its investigations applying the international legal regimes dictated by the situation. It concluded that international crimes, specifically crimes against humanity and war crimes, were committed by Qadhafi forces in Libya. Acts of murder, enforced disappearance, and torture were perpetrated within the context of a widespread or systematic attack against a civilian population. The Commission found additional violations including unlawful killing, individual acts of torture and ill-treatment, attacks on civilians, and rape.

The Commission further concluded that the *thuwar* (anti-Qadhafi forces) committed serious violations, including war crimes and breaches of international human rights law, the latter continuing at the time of the present report. The Commission found these violations to include unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate attacks, and pillage. It found in particular that the *thuwar* are targeting the Tawergha and other communities.

The Commission concluded that North Atlantic Treaty Organization (NATO) conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties. On limited occasions, the Commission confirmed civilian casualties and found targets that showed no evidence of military utility. The Commission was unable to draw conclusions in such instances on the basis of the

information provided by NATO and recommends further investigations.

The interim Government faces many challenges in overcoming a legacy of more than 40 years of serious human rights violations and deterioration of the legislative framework, judicial and national institutions. It has nevertheless expressed a commitment to human rights and has taken positive steps to establish mechanisms for accountability. The government is gradually restoring the judiciary by reopening courts and recalling judges, and there has been some progress in the transfer of detainees to central government control.

The Commission is nevertheless concerned by the failure to hold accountable *thumar* committing serious violations. Libyan authorities can break with the Qadhafi legacy by enforcing the law equally, investigating all abuses - irrespective of the perpetrator - and ensuring that amnesty processes comport with Libya's obligations under international law.

To give effect to its commitment to improve the human rights situation in Libya, the interim Government will need considerable support from the United Nations and the international community.

## **V. Assessment and findings**

### **A. Introduction**

805. The Commission benefited from a far greater availability of information than was the case for its first report, primarily because it was able to spend a significant amount of time on the ground in Libya and because witnesses were much more willing to provide information in the knowledge that the Qadhafi Government was no longer in power. As with its first report, however, the quality of the evidence and information obtained by the Commission varied in its accuracy and reliability. The Commission maintained the cautious approach it adopted for its first report, while recalling that its evidentiary standard is less than that required for criminal proceedings.

806. Robust efforts were made to corroborate information received, through cross-referencing and testing of witness testimony; interviews with both perpetrators and victims where possible; and visits to scenes where violations allegedly occurred to seek physical evidence. While it took account of information from media sources and NGOs, the Commission relied primarily on evidence gathered from its own interviews and observations. Photographs and videos supplied by witnesses were also taken into account, but the Commission was mindful that it was unable to authenticate most of the video material. The conflict was recorded on thousands of mobile phones and was posted on the internet; these are a remarkable source of contemporaneous information about the demonstrations and subsequent conflict. Given their propagation over the internet and across the mobile phone network, however, locating the original recordings for authentication purposes has proved

challenging. 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.

807. Alongside the substantial additional evidence of violations by Qadhafi forces which the Commission has been able to gather for this second report, a significant amount of new information was also gathered relating to violations by the *thuwar*. The Commission is impartial and its mandate covers all violations irrespective of the perpetrator.

#### **i Qadhafi Forces**

808. The Commission has concluded that international crimes, specifically crimes against humanity and war crimes, were committed by Qadhafi forces in Libya. The Commission confirms its finding from its first report that there have been acts of murder, torture, enforced disappearance committed by Qadhafi forces within the context of a widespread or systematic attack against a civilian population, with knowledge of the attack. These constitute crimes against humanity.

809. The Commission confirms its finding from its first report that there have been many serious violations of international humanitarian law by Qadhafi forces which amount to war crimes. Violations identified included murder, torture, rapes, attacks on civilians and civilian objects and protected buildings, medical units and transport. Breaches of international human rights and humanitarian law include indiscriminate attacks, arbitrary arrests, and recruitment and use of child soldiers.

#### **ii *Thuwar***

810. The Commission has also concluded that war crimes and crimes against humanity were committed by *thuwar* and that breaches of international human rights law continue to occur in a climate of impunity. The Commission found there have been acts of extra-judicial executions of those perceived to be loyalists, suspected mercenaries and captured Qadhafi soldiers, particularly when towns first came under the control of *thuwar*. Armed *thuwar* have also arbitrarily arrested thousands of former Qadhafi soldiers and members of communities perceived to be loyalist, and continue to hold the majority outside the framework of the law. Torture and other forms of ill-treatment are prevalent in detention centres, and at least a dozen individuals died as a result of torture at the hands of the *thuwar*. The *thuwar* have also carried out revenge attacks against targetted communities perceived as loyalist. The Commission found acts of extrajudicial killings, torture, enforced disappearance, indiscriminate attacks, and pillage. Tens of thousands are prevented from returning home. No investigations have been carried out into any violations committed by the *thuwar*.

811. The Commission was unable to reach a conclusion in relation to the deaths of Muammar and Mutassim Qadhafi and recommends further investigation.

#### **i.NATO**

812. NATO conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties. For the most part they succeeded. On some limited occasions, the Commission confirmed civilian casualties and found targets that showed no evidence of military utility. The Commission was unable to draw conclusions in such instances on the basis of the information provided by NATO and recommends further investigation.

## **a. Current situation in Libya**

813. The current situation must be seen against the background of a legacy of more than 40 years of serious human rights violations and deterioration of the legislative framework, judicial and national institutions generally. The interim Government faces many challenges in restoring respect for human rights and in holding perpetrators accountable for human rights violations during the Qadhafi era, during the conflict and after the conflict ended. Processing more than 8,500 detainees who are currently in custody is a daunting task, even for a well-resourced judicial system, let alone one that is being rebuilt.

814. The interim authorities have expressed their commitment to human rights and concerns about torture, ill-treatment and other violations. They are gradually restoring the judiciary by re-opening courts and recalling judges, but there still exists a serious lack of trained staff such as prosecutors, judicial police and forensic investigators. There has been some progress in the transfer of detainees to the control and authority, but many detainees still remain under the control of individual *thuwar* brigades outside the framework of the law. Detainees often have limited or no access to families and legal counsel and are unable to challenge the legality of their detention or to lodge complaints about torture and ill-treatment.

815. The Commission finds that the authorities are failing to hold accountable *thuwar* who have committed serious violations including unlawful killings and arbitrary arrests. That situation is symptomatic of a lack of equal implementation of the law and a serious obstacle to the achievement of the objective of full accountability for serious crimes.

816. The interim Government has taken positive steps to establish new mechanisms for accountability including the creation of a National Fact-finding and Reconciliation Commission under the Transitional Justice Law and a National Council on Civil Liberties and Human Rights. A draft amnesty law is under consideration, but the Libyan authorities will have to ensure that this law, and any future amnesty process is in conformity with Libya's obligations under international law with respect to accountability.

817. While the interim Government has shown a commitment to improve the human rights situation in Libya, it will need considerable support from the United Nations and the international community in achieving this goal.

## **VI. Recommendations**

132. The Commission calls upon the interim Government of Libya to:

- (a) Investigate all violations of international human rights law and international humanitarian law set out in this report and to prosecute alleged perpetrators, irrespective of their location or affiliation, while affording them all their rights under international law.
- (b) Bring all remaining detainees under control of the Judicial Police or the Military Police as soon as possible.

- (c) Charge detainees being held in connection to the conflict for their involvement in specific criminal acts that constitute serious crimes and release those against whom there is no such evidence.
- (d) Ensure that conditions of detention comply with applicable international law, including proper treatment of detainees, access to lawyers and family, and the ability to lodge complaints of torture and ill-treatment.
- (e) End all torture or ill-treatment of detainees and unlawful interrogation techniques.
- (f) Secure all sites of alleged crimes identified in this report to prevent destruction or loss of evidence.
- (g) Ensure that all evidence obtained as a result of torture is excluded as evidence in criminal trials.
- (h) Encourage all parties involved in the conflict to divulge any information they have on missing persons and establish an independent investigation into the fate of all missing persons, irrespective of the missing person's role in the conflict.
- (i) Take measures to stop and prevent further attacks against the Tawerghans and other targeted communities, facilitate the return of displaced communities in satisfactory conditions, and establish independent mechanisms to achieve reconciliation of these communities.
- (j) Establish appropriate gender-sensitive psychological, medical, legal and social support services throughout the country; recruit and train female investigators and encourage and support the establishment of civil society organizations to provide support to victims of sexual violence.
- (k) Establish public awareness campaigns through the media in support of victims of sexual violence.
- (l) Take urgent steps to establish an independent judiciary.
- (m) Ensure that all accountability mechanisms operate in accordance with international fair trial standards and impose only penalties that conform to international standards.
- (n) Apply the law equally and ensure that alleged violations are investigated and prosecuted where appropriate, irrespective of the identity of the perpetrators.
- (o) Create an integrated and comprehensive plan for enhancing the legal system and its accountability capacity.
- (p) Ensure that any amnesty process conforms to Libya's obligations under international law by holding accountable all perpetrators of serious crimes.

- (q) Take steps to ensure that persons alleged to have committed violations of human rights or international humanitarian law are excluded from positions in any security, military police, prison or judicial institutions.
- (r) Consider the rights of victims in all mechanisms of accountability in accordance with international norms and standards.
- (s) Ensure that the National Fact-finding and Reconciliation Commission undertakes a thorough assessment of the Qadhafi legacy to prevent a repetition of repressive practices.
- (t) Establish programs for the training for all officials including judicial, police, military and prison officials in international human rights law, in particular specialized training for the handling of sexual violence cases.

133. The Commission calls upon the NTC and the future Constituent Assembly to:

- (a) Ensure that the future Constitution of Libya incorporates international human rights law defined in the human rights treaties ratified by Libya.
- (b) Undertake legislative reform to incorporate international crimes into the Libyan Criminal Code and repeal any statutory limitations applying to such crimes.
- (c) Reform all laws to bring them into conformity with Libya's obligations under international law.

134. The Commission Calls upon the United Nations Support Mission in Libya to:

- (a) Monitor the implementation of the recommendations set out in this report
- (b) Provide technical assistance to the government of Libya on meeting its international human rights law obligations, particularly those where shortcomings have been noted in this report.
- (c) Work with the interim Government on capacity strengthening programs for courts, prisons, police, prosecutors and defence lawyers, and coordinate the support of the international community for such programs.

135. The Commission calls upon NATO to:

- (a) Conduct investigations in Libya to determine the level of civilian casualties, and review how their procedures operated during Operation Unified Protector.
- (b) Apply the "Non-Binding Guidelines for Payments in Combat-Related Cases of Civilian Casualties or Damage to Civilian Property (NATO 20 September 2010)" to civilian losses in Libya resulting from Operation Unified Protector, preferably in cooperation with NTC efforts to make amends for civilian harm across the country.

136 The Commission calls upon the International Community to:



(a) Take immediate steps to release funds of the Libyan government to enable it to implement the recommendations in this report and allocate some of those funds specifically for the establishment of an independent judiciary and the training of judicial, police, prison and other officials.

(b) Provide support to the Libyan authorities in developing their plan to enhance the legal system and in strengthening the capacity of the judges, prosecutors, judicial police, national police, military police and prison officials, in particular in the development of specialist investigative and prosecution skills.

(c) Assist the judicial authorities to secure all major crime sites identified in this report to prevent destruction or loss of evidence.

(d) Assist the Libyan authorities to obtain extradition of alleged perpetrators of serious crimes who may be in their territory, while ensuring that their basic rights are protected.

137. The Commission calls upon the Human Rights Council to establish a mechanism to ensure the implementation of the recommendations in this report.

138. The Commission calls upon the United Nations Secretary-General to ensure that, in its assistance to the Government of Libya in implementing the above recommendations, the United Nations agencies adopt a coherent and integrated approach.

139. The Commission calls upon the League of Arab States to assist, to the extent possible, in the implementation of the above recommendations.

140. The Commission calls upon the African Commission on Human and Peoples' Rights to establish a mechanism to monitor the implementation of the above recommendations, in particular measures taken to ensure longer term respect for human rights.